

**GENERAL TERMS AND CONDITIONS**  
of  
HOERBIGER Compression Technology,  
HOERBIGER KT Malaysia Sdn. Bhd.  
for  
**Product Deliveries and Services**

**Version valid as of February 1, 2014**

**1. GENERAL**

These General Terms and Conditions apply to all purchases of Products from the Contractor and to any Services performed by the Contractor. They shall form an integral part of the Agreement entered into with the Principal. All quotations and order acknowledgements made by the Contractor shall be deemed to incorporate these General Terms and Conditions by reference. All orders shall be deemed to be an offer by the Principal to purchase the Products and/or the Services pursuant to these General Terms and Conditions. Acceptance of the Products delivered and/or Services performed shall be deemed conclusive evidence of the Principal's acceptance of these General Terms and Conditions.

These General Terms and Conditions, as amended or supplemented from time to time, shall also apply to any product supplied in the frame of the Services and to any subsequent services regardless of any agreement or explicit provision with respect to their applicability to such subsequent services. References by the Principal to terms and conditions of the Principal shall be deemed not made. Such references shall not have any effect on the applicability of these General Terms and Conditions. Diverging provisions shall only be applicable if agreed between the Principal and the Contractor in writing.

**2. DEFINITIONS**

Contractor	HOERBIGER KOMPRESSORTECHNIK HOLDING GmbH or its subsidiaries or any other company of the HOERBIGER Group (designated in the Agreement as contracting party) supplying Products and/or performing Services under these General Terms and Conditions
Principal	The company (designated in the Agreement) for whom the Contractor supplies Products and/or performs Services.
Agreement	Mutual agreement between the Contractor and the Principal in any written form on which the deliveries/Services of the Contractor are based. Unless expressly otherwise provided herein, in the case of contradiction between the Agreement and these General Terms and Conditions, the Agreement shall prevail.
Product	The object(s) to be supplied by the Contractor under these General Terms and Conditions.
Services	The services to be performed by the Contractor under these General Terms and Conditions
Place of Manufacture	The place where the final assembly is made before the Product is delivered to the Principal.
Acceptance Tests	Tests which are carried out before delivery in order to ensure that the Product is in compliance with the Agreement or with any requirements agreed in writing by the Contractor and the Principal
Equipment	Such plant, machinery or parts of plant or machinery on which or with respect to which the delivered Products shall be used and/or the Contractor shall perform the Services.
Location	Such place on which the Equipment of the Principal (as stated in the Agreement) is located and where the Products shall be used and/or the Services shall be performed.

**PROVISIONS FOR PRODUCT DELIVERIES**

**3. PRODUCT INFORMATION**

All information and data contained in general Product documentation and price lists, whether in electronic or any other form, are binding only to the extent, that they are by reference expressly included in the Agreement.

**4. DRAWINGS AND DESCRIPTIONS**

- All drawings and technical documents relating to the Products or manufacture submitted by the Contractor to the Principal, prior or subsequent to the formation of the Agreement, shall remain the property of the Contractor. Drawings, technical documents or other technical information received by the Principal shall not, without the consent of the Contractor, be used for any other purpose than that for which they were provided. They may not, without the consent of the Contractor, otherwise be used or copied, reproduced, transmitted or communicated to a third party.
- Upon request, the Contractor will provide engineering and/or technical information regarding its products and its uses and, if feasible, will provide personnel to assist the Principal in effecting field installations and/or field service. Any such information, service or assistance so provided, whether with or without charge, shall be advisory only.

**5. DELIVERY, PASSING OF RISK**

- Any agreed trade term shall be construed in accordance with the INCOTERMS 2010. If no trade term is specifically agreed, the delivery shall be Ex works (EXW).
- Transport insurance coverage shall only be provided by the Contractor upon explicit request by the Principal and at the Principal's cost. The choice of the means and route of transport shall be made by the Contractor according to his best judgment.
- Partial shipments shall be permitted unless otherwise agreed.

**6. ORDERS**

- The Contractor shall not be obliged with respect to any order of Products by the Principal until accepted in writing by the Contractor.
- Once accepted by the Contractor, orders placed cannot be cancelled or modified by the Principal without the Contractor's written consent.

**7. EXPORT CONTROL**

- The Products may be subject to export and re-export restrictions under some countries' export control laws orders and regulations, which may require the approval of the respective government or the relevant authorities for any re-export or retransfer ("Export Control Regulations").
- If the Principal transfers the Products (regardless of the mode of provision) to a third party, the Principal shall comply with all applicable national and international (re-)export control laws, orders and regulations, in particular (without limitation) with embargoes, and shall obtain and renew any necessary governmental export permits or similar authorisations which may be required.
- Prior to any transfer to a third party of the Products, the Principal shall in particular without limitation check and guarantee by appropriate measures that such transfer does not violate embargoes, complies with the rules prohibiting or requiring prior authorisation for use of the Products in connection with some activities or other products or for trading with some entities, persons and organisations.
- If required to enable authorities or the Contractor to conduct export control checks, the Principal, upon request by the Contractor, shall promptly provide the Contractor with all information pertaining to the particular end customer, the particular destination and the particular intended use of the Products, as well as any export control restrictions existing.

5. The Principal shall indemnify and hold harmless the Contractor from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with (re-)export control laws, order or regulations by the Principal, and the Principal shall compensate the Contractor for all losses (whether direct or indirect) and expenses resulting thereof.

## PROVISIONS FOR SERVICES

### 8. CONTRACTOR'S EXCLUSIVE RIGHT

The Principal shall not, except as specified in Section 144, without the Contractor's consent, himself carry out or have others carry out the maintenance, overhaul or upgrading which under the Agreement shall be carried out by the Contractor. If the Principal does so, the Contractor's responsibility for previously performed Maintenance shall cease.

### 9. ALTERATIONS TO THE EQUIPMENT

1. The Principal is required to immediately notify the Contractor of any changes in the Location of the Equipment, any changes of the required intervention or required time, to the extent such circumstances are relevant to the performance of the Agreement. Any agreed fees affected by these changes shall be re-determined by the Contractor in accordance with the effected changes.
2. The Principal shall without undue delay inform the Contractor by notice in writing of any alterations concerning the Equipment or its operation or other measures taken by the Principal which may affect the Contractor's obligations under the Agreement. If such alterations or measures seriously affect the Contractor's obligations, and if the parties fail to agree on how to amend the Agreement in respect thereof, the Contractor may, with immediate effect, terminate the Agreement by notice in writing to the Principal. The Contractor shall in case of such termination also be entitled to compensation.

### 10. HEALTH AND SAFETY

1. The Principal shall ensure that the maintenance, overhaul or upgrading is not carried out under dangerous or unhealthy conditions, and shall take all necessary measures to protect the Contractor's personnel from exposure to any safety or health hazard. Moreover the Principal shall ensure that the Contractor's personnel are informed of any safety regulations in force at the place where the Maintenance is carried out.
2. The Contractor is entitled but not required to communicate to the Principal suggestions with respect to the security of the Equipment and the operation thereof.
3. The Contractor is entitled to interrupt the performance of the Agreement if he is of the opinion that the security conditions at the Location required for the performance of the Agreement are not sufficiently provided and/or guaranteed by the Principal and the Contractor shall in such case be entitled to withdraw his personnel affected thereby or his entire personnel from the Location. The Principal shall be liable for all resulting detriments and disadvantages and indemnify the Contractor accordingly.

## JOINT PROVISIONS

### 11. PAYMENT, DELAY OF PAYMENT

1. Payment shall be made against invoice no later than 30 days after invoice date. Whatever means of payment used, payment shall not be deemed to have been effected before the Contractor's account has been fully irrevocably credited.
2. Upon a payment default by the Principal in the form of non-payment, incomplete payment or late payment, the Contractor shall be entitled to interrupt the delivery of the Products and/or the performance of the Services. Any applicable time periods for the delivery of the Products or the provision of the Services by the Contractor shall be extended by the duration of the interruption as well as by an appropriate time period for the preparation of the continuation of the services. Any additional costs arising in connection with such interruption shall be borne by the Principal.

3. Furthermore the Contractor is entitled to interest for default from the due payment date.
4. If the default is not remedied by the Principal within the period set by the Contractor, the Contractor shall be entitled to immediately rescind the Agreement. The Contractor shall in this case be due the entire consideration as well as compensation for the loss incurred less any non-incurred expenses.
5. In each of the above cases, the Principal shall be liable for any damages, debt recovery fees or legal fees incurred by the Contractor as a result of the payment default.

### 12. TAXES

Any tax or other charge imposed by law on the sales or production of products or the performance of services shall be paid by the Principal, unless the law specifically provides that such payment must be made by the Contractor, in which case the Principal shall reimburse the Contractor for such payment as part of the purchase price. Custom duties, consular fees, insurance charges and other comparable charges will be borne by the Principal.

### 13. WARRANTY

1. Subject to the exceptions, conditions and limitations set forth in these General Terms and Conditions, the Contractor warrants that the Products shall be free of any material defects or processing defects for a period of twelve (12) months from the date of installation or eighteen (18) months from the date of shipment, whichever period first expires, and that the Services shall be performed by specialised personnel in accordance with the requirements defined in the Agreement and/or confirmed by the Contractor. In case where the defect is in products or parts not wholly of Contractor's manufacture, the Contractor's liability shall be limited to the extent of its recovery from the manufacturer of such products or parts under its liability to the Contractor.
2. Notwithstanding the foregoing, the Contractor has no responsibility under the warranty and Contractor shall not be liable to the Principal for:
  - (a) delivery of used materials or Products subject to wear and tear;
  - (b) scheduled maintenance not subject of the Agreement;
  - (c) for defects and damage attributed to usage in accordance with specifications (e.g. wear parts);
  - (d) for defects arising out of materials provided or a design stipulated or specified by the Principal;
  - (e) for defects resulting from defective maintenance, deviant operating conditions, faulty installation, incorrect storage, insufficient security, use of inadequate operational materials by the Principal or third parties or other similar circumstances;
  - (f) for defects resulting from unapproved repair, alterations or changes of the Products by the Principal or third parties;
  - (g) for defects resulting from any other actions of the Principal or third parties; .
3. The warranty claim with respect to used Products shall be limited to the repair (improvement) or replacement (exchange) by the Contractor at Contractor's sole discretion. In case of hidden defects or defective Services the warranty claim shall be limited to claim for repair (improvement) only.
4. The Principal shall only be entitled to a price reduction if an improvement by repair or replacement is not possible or advisable for technical or economical reasons and the Contractor states that he will refrain from carrying out any improvement.
5. Any remedied Product (either by repair or by replacement) which is the subject of a warranty claim is warranted under the same terms and conditions as the originally delivered Product for the remaining of the warranty period.
6. Any defects on Products or Services shall be notified to the Contractor in writing immediately following their discovery, otherwise the warranty claim shall be lost. The Contractor is entitled to request to have the Product in question sent to him by the Principal. A non compliance of the Principal to this demand releases the Contractor from the performance of the warranty.
7. All warranty claims shall be subject to audit and approval of the Contractor. The Contractor shall notify the Principal of

- Contractor's disposition of each warranty claim in writing within a reasonable time period.
8. Approved warranty claims shall be performed and completed within an appropriate time period.
  9. If the Principal has contested the Contractor any defect and no defect is found for which the Contractor is liable, the Principal has to compensate the Contractor for all costs incurred from processing the objection.
  10. The Principal shall at his own cost arrange for any dismantling and reassembly of Equipment other than the Product, to the extent that this is necessary to remedy the defect.
  11. The Principal shall at his own cost ensure that the services of the Contractor necessary to remedy the defects (improvement) may be performed and that the required Equipment is accessible upon request.
  12. Any additional costs incurred with respect to Products delivered, repaired or replaced in connection with the warranty, including without limitation travel expenses, Principal's costs for installation and removal of the defective Products shall be borne by the Principal.
  13. Property in the defective Products which have been replaced shall be transferred to the Contractor.
  14. The warranty as defined herein is given by the Contractor and accepted by the Principal in place of all other express, implied or statutory terms, representations, warranties and conditions (including without limitation, in place of any warranty or condition of merchantability or fitness for a particular purpose), in connection with any defect in the Products and Services.
  15. The only remedy for breach of warranty is as set out herein. The Principal shall not have further remedy, warranty claims or any additional rights and any such remedy, rights and claims are hereby expressly excluded, including without limitation damage claims for non-fulfilment or faulty performance by the Contractor, except in the case of gross negligence or wrongful intent of the Contractor.
  16. In such case, the claim for damages shall however be limited to direct damages; any claim for indirect, special, incidental or consequential damages and any financial loss is expressly excluded. The amount of claim for damages shall be capped at the contractual consideration (including in the case of multiple damage events).

#### **14. DELAYS FOR WHICH THE CONTRACTOR SHALL NOT BE HELD LIABLE**

1. Unless expressly otherwise stipulated in the Agreement, delivery dates and/or dates for the fulfilment of the Services specified by the Contractor are estimates only.
2. The Contractor shall not be liable for delayed, interrupted Products deliveries or provision of the Services or otherwise delayed performance or partial or total non-fulfilment of the Agreement to the extent such delay or partial or total non-fulfilment is due to reasons which shall not be ascribed to the Contractor, such as, without limitation:
  - Force majeure (see Section 19);
  - Actions or omissions of the Principal, for which the Principal is liable and which have a significantly effect on the Products deliveries and/or performance of the Services by the Contractor.
  - Differences with workmen, local labour shortages, fire, flood, shortages or failure of raw materials, supplies, fuel, power or transportation, breakdown of equipment, orders bearing priority ratings established pursuant to law or any other causes beyond Contractor's reasonable control.
3. The Contractor shall also notify the Principal within appropriate time periods of any circumstances which will lead to a delay or interruption of the Product deliveries and/or of the performance of the Services. The Contractor shall notify the Principal of the estimated consequences on the time schedule and deadlines.
4. If the aforementioned delays are not exclusively ascribed to the Contractor, the Contractor shall be entitled to an adequate adjustment of prices. Any further additional costs shall be borne by the Principal.
5. The Contractor shall be entitled to rescind the Agreement if services to be performed or parts to be provided by the Principal have not been delivered or performed within an adequate remedial period.

6. In the event that any delays or interruption of the performance of the Agreement for which the Contractor is not liable shall not be remedied within 120 days each of the parties shall be entitled to rescind the Agreement, provided that the Principal shall only be entitled to rescind the Agreement if he is not to be held liable for the delay. In such case, any Products already delivered and Services already performed by the Contractor shall be remunerated and all expenses incurred in connection hereto shall be reimbursed to the Contractor by the Principal.
7. Except as specified in this Section the Principal shall not be entitled to any compensation for the Contractor's delay.

#### **15. UNLAWFULNESS OF SET-OFF**

Any set-off of liabilities of the Principal against accounts receivable of the Contractor resulting from the Agreement or other agreements as well as the withholding of services by the Principal in connection with counter-claims against the Contractor shall be prohibited.

#### **16. RETENTION OF TITLE**

Any Products delivered by the Contractor shall remain in the Contractor's property until all liabilities resulting from the business relationship between the Principal and the Contractor have been settled by the Principal. Irrespective Section 5 and the stipulations in the Agreement regarding passing of risk this provision shall apply.

#### **17. INSURANCE**

The Contractor has entered into a factory insurance and product liability insurance covering the usual risks and undertakes to maintain this insurance coverage throughout the performance of the Agreement. In excess thereof, the Contractor shall only enter into or maintain any further insurance as agreed in the Agreement.

#### **18. LIMITATION OF LIABILITY**

Notwithstanding the provisions of Section 13, the following shall apply:

1. The liability of the Contractor shall be limited to the Products deliveries/Services agreed in the Agreement. Services outside of the Agreement provided in connection with the performance of the Agreement shall not give rise to any liability of the Contractor.
2. The Contractor shall not be liable for defects of the Equipment, which were not readily discoverable, and which arose or showed effects in connection with the provision of Services by the Contractor or with the use of the delivered Products.
3. The Contractor shall not be liable for parts or services provided by the Principal or any third party. The Contractor shall not be required to examine such parts or services.
4. The Contractor shall not be liable for the personnel provided by the Principal, notwithstanding the use of the Principal's personnel together with the Contractor's personnel.
5. In no event shall the Contractor be liable for any indirect, special, incidental or consequential damages or losses arising out of or in connection with any failure to perform obligations under these General Terms of Conditions and/or the Agreement or for any negligent or tortuous act.
6. Indirect, special, incidental or consequences damages or losses as defined in this Section and in Section 13, includes in particular, without limitation, the exclusion of liability for lost profit or revenue, financial loss, production stop, restriction of the use of the Equipment or parts of the Equipment or other installations of the Principal, costs of eventual replacements or other substitutions, costs of energy supply etc.

#### **19. FORCE MAJEURE**

1. Either party shall be entitled to suspend performance of its obligations under this Agreement, if impeded by force majeure. The same applies to unforeseeable events which impedes or excessively hampers the fulfilment of the obligations under the Agreement, which value for force majeure and for which the Party is not to be held liable. Such circumstances are especially, without limitation, interruption of operations, strike, official order, war, military mobilization, requisition, riots and insurrection, the cessation of import or export possibilities especially embargo, natural disaster, fire, restrictions in the use of power as well as defects or delays in deliveries or work by sub-contractors caused by any such circumstances referred to in this Section.

2. A circumstance referred to in this Section, occurring after the formation of the Agreement, shall give a right to suspension only if this effect on the performance of the Agreement could not be foreseen at the time of conclusion of the Agreement.
3. Regardless of what might otherwise result from these General Terms and Conditions, either party shall be entitled to terminate the Agreement by notice in writing to the other party, if performance of the Agreement is suspended for reasons mentioned under this Section for more than 120 days.

#### **20. INDUSTRIAL PROPERTY RIGHTS**

1. The Contractor warrants that the Services provided and deliveries made by the Contractor shall not interfere with the rights of third parties.
2. In the event of any claims by a third party against the Principal as a result of a breach of 20.1, the Contractor shall defend such claims at his own costs provided the Principal immediately informs the Contractor of such claims and provided further that the Principal provides the Contractor with the required powers of attorney and certificates authorizing the Contractor to defend such claims on behalf of the Principal.

#### **21. CONFIDENTIAL INFORMATION**

1. Confidential Information provided by the Contractor and the Principal to each other shall be clearly labelled, stamped, provided with a sign or otherwise evidenced in writing as confidential.
2. In addition to the provisions of 21.1., the Contractor and the Principal agree to treat all information received directly or indirectly from the other party as confidential and to only use such Confidential Information in connection with the performance of the Agreement. The parties agree not to disclose or provide access to such information to third parties in any form. For the purposes of these General Terms and Conditions, third parties shall be deemed to include any person or entity other than corporate affiliates of the Principal or Contractor.
3. Confidential Information pursuant to 21.2 shall include in particular:
  - know-how and results of internal processes, organisations etc. of the Principal or Contractor achieved or used in connection with the performance of the Agreement,
  - description of the performance of the Agreement, timetables, goals and ideas for the performance of the Agreement.
  - any other not publicly available information which is obtained by either party on the other party in connection with the performance of the Agreement.
4. The provisions regarding the Confidential Information shall apply to all employees and agents of the parties regardless of the type and legal form of employment or cooperation. The parties agree to ensure that these persons shall be subject to appropriate confidentiality provisions to the extent not already the case.
5. The confidentiality provisions shall not apply to the extent that it can be proven that the relevant information is publicly known or has become publicly known without the fault of the party subject to the confidentiality provisions, has been or will be legally obtained from a third party, is already known and available to the receiving party at the time the information is provided.

#### **22. COMPLIANCE**

1. The Principal warrants that it will comply with all applicable laws, regulations and other legal requirements regarding the export, import, sale, distribution, marketing and service of the Products and/or Services, including without limitation with the anticorruption laws and anti-bribery laws of any country having jurisdiction over the Principal or the transaction involving the Products or the Services.
2. The Principal shall not, whether passively or actively, directly or indirectly commit an act which in particular could lead to sanctions for corruption, undue advantage, fraud, infringement of competitions law or insolvency. In case of infringement, the Contractor shall have the right to immediately terminate the Agreement as well as all other agreements, orders or otherwise business relationship with the Principal and to require

compensation for the damages suffered; right to other remedy is not waived.

#### **23. WRITTEN FORM**

Contractual communications, in particular regarding the performance of contractual services and/or notification of defects, damage claims, and notifications in accordance with contractual or legal requirements shall be made in writing.

#### **24. APPLICABLE LAW**

Except to the extent otherwise agreed in the Agreement, the contractual relationship between the parties shall be exclusively governed by the laws of the state in which the Contractor's office is located, except for reference norms of these laws and the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

#### **25. ARBITRAL JURISDICTION**

1. All disputes arising in connection with the Agreement shall be finally settled under the Rules of the Malaysia Arbitration Act 2005.
2. The arbitral court shall be managed by Kuala Lumpur Regional Center for Arbitration.

#### **26. COURT OF JURISDICTION**

Unless the Agreement excludes the appliance to the rules of arbitration, or for whatever reasons Section 25 cannot be applied to, the exclusive jurisdictional venue shall be the court competent as to the subject matter located at Contractor's business.