

**TERMS AND CONDITIONS OF PURCHASE UNICCOMP GMBH****§ 1 Contractual bases**

- (1) The individual agreements as well as framework agreements concluded with the Supplier shall apply with precedence to a contract between Bauer Kompressoren GmbH or Unicom GmbH or Rotorcomp Verdichter GmbH (hereinafter respectively referred to as: Customer) and the respective contractual partner (hereinafter referred to as: Supplier). In addition the contractual terms and conditions, regulated separately in the correspondence, in particular in the offers and possible order confirmations, as well as the following General Business Terms shall apply. Otherwise the statutory provisions shall apply.
- (2) Possible General Business Terms of the Supplier shall not become a part of the business relationship between the Customer and the Supplier, even if the Customer does not explicitly object hereto and/or accepts the service of the Supplier in full or in part without reservation. Such General Business Terms are also pre-formulated and non-negotiated contractual terms and conditions contained in the correspondence, in particular in offers and possible order confirmations of the Supplier. This shall not apply insofar as a contract has been concluded between the Customer and the Supplier concerning the validity of the General Business Terms of the Supplier owing to an explicit declaration of intent.

**§ 2 Scope of these General Business Terms**

These General Business Terms shall only apply to business relationships of the Customer with suppliers, which are entrepreneurs within the meaning of § 14 Par. 1 BGB (German Civil Code) within the framework of purchase contracts and contracts for the delivery of work and services (hereinafter also collectively referred to as: Procurement contracts).

**§ 3 Precedence of the German language version**

This full translation of the General Business Terms for Purchase Management in the German language has been prepared by a certified translator and serves for purposes of information. The wording of the version of the General Business Terms in the German language, which can be called up under [www.baugroup.de/de/agb.php](http://www.baugroup.de/de/agb.php) under "Allgemeine Geschäftsbedingungen für das Beschaffungswesen" is decisive and takes precedence.

**§ 4 Offer, conclusion of the contract, acquisition costs**

- (1) Written declarations designated by the Customer as an order, include a binding offer for the conclusion of a procurement contract with the Supplier. The Customer is entitled to revoke such an order at all times until the acceptance of the order of the Customer by the Supplier. The Supplier undertakes to accept the offer of the Customer within one week insofar as a shorter acceptance deadline is not contained in the offer of the Customer. After the expiry of this deadline the binding effect of the offer shall cease to apply. Orders of the Customer can exclusively be accepted unchanged and in writing. Other declarations submitted by the Customer, which are directed at the conclusion of a procurement contract, represent a request to the respective Supplier, to submit an offer itself.
- (2) The Supplier is bound to an offer submitted by it for two weeks, unless a longer binding deadline is contained in the offer.
- (3) The costs incurred at the Supplier until the conclusion of the contract with the Customer shall be borne by the Supplier. This shall in particular apply to the costs for the samples, the measurement and the calculation.

**§ 5 Prices, terms of payment and invoicing**

- (3) The agreed price is a fixed price. If the agreed service is not provided on the premises of the Customer the transport of the contractual service of the Supplier to the agreed place of use is included in the agreed price, if such is not agreed, to the Customer. Also included in the agreed price are the packaging and freight costs and possible customs duties incurred.

If a price is agreed in deviation from the afore-mentioned provisions, which does not include the transport of the contractual service of the Supplier to the Customer, then the Customer shall only bear the lowest costs of a customary transport. In this case the Supplier shall also bear all costs incurred until the hand-over to the freight forwarder including the loading. The agreement concerning the place of performance is not affected by such a price agreement.

Price increase agreements shall also only be effective with continuing obligations between the Customer and the Supplier owing to individual agreements.

- (2) Original invoices are to be sent to the invoice address stated in the order or the acceptance declaration of the Customer by stating the tax number and – insofar as the service of the Supplier is liable to value added tax and capable of value added tax – with the statement of the value added tax and the value added tax rate and by stating the order number of the Customer with details of the product number and designation of the Customer, the ordered quantity, the delivery quantity and the day of the delivery.
- (3) The Customer is obliged to pay the services of the Supplier after the provided service and after receipt of an invoice which complied with Par. 2 within 30 days with the deduction of 3 % settlement discount or within 90 days without deduction. If the invoice has not been properly issued and therefore the maturity of the Customer's payment obligation does not

occur, then the Customer undertakes to inform the Supplier of the inaccuracy of the invoice within 3 days after gaining knowledge thereof.

- (4) The Customer is entitled to the statutory rights of retention and to reconciliation to the full extent.
- (5) There is no factual or time limitation of the statutory rights of the Customer to verify the invoices of the Supplier.

**§ 6 Surplus of or shortfall in services**

- (1) The Supplier is not entitled to a surplus of and/or shortfall in services.
- (2) If the Supplier provides a shortfall in services then, irrespective of its further claims, the Customer is entitled to request the still outstanding contractual service, unless it is not possible for the Supplier to provide this still outstanding service.
- (3) If the Supplier provides a surplus of services then the Customer is not obliged to remunerate this surplus of services even in the case of the acceptance of the surplus of services without reservation unless there is a statutory claim for payment of the Supplier, for example owing to unjustified enrichment and/or management without an order.

**§ 7 Type and time of the service, delay in the service, contractual penalty**

- (1) The Supplier undertakes to provide its contractual services free of defects of quality and title. With regard to the defects of title the Supplier is aware that the Customer uses the contractual services of the Supplier worldwide.
- (2) Changes to the object of delivery require the prior consent of the Customer.
- (3) The agreed service times are binding.
- (4) The receipt of the service by the Customer is decisive for the adherence to the service time and/or the service deadline. If the Supplier is not obliged to transport the service to the Customer to the agreed place of use at its own costs and if no other place of performance was agreed than the registered office of the Customer or the place of use, then the Supplier undertakes, by taking the customary times for the transport of the service to the Customer or to the place of use into consideration, to make this available in good time so that under normal circumstances it will arrive there within the agreed service time or service deadline.
- (5) The Supplier is obliged when transporting movable objects to the Customer to have the receipt at the address of receipt stated in the order or in the acceptance declaration of the Customer confirmed in writing.
- (6) The Supplier undertakes to inform the Customer immediately if circumstances occur or are recognised by him, from which it can be seen that the agreed service time cannot be adhered to. This shall have no effect on the obligation of the Supplier to adhere to the agreed service time.
- (7) In the event of the delay in service the Customer is entitled to require a contractual penalty in the amount of 0.2 % of the agreed total purchase price of the objects, with the delivery of which the Supplier is in default, per working day (excluding Saturdays), in total however no more than 10 %. The Customer is entitled to apply the contractual penalty in addition to the fulfilment. If the Customer accepts the delayed service of the Supplier without reservation this shall not be deemed a waiver of the claims of the Customer justified by this delayed provision of services. The Customer is entitled, and also obliged, to declare the reservation of the contractual penalty towards the Supplier within 10 working days, beginning from the acceptance of the delayed service. The Customer remains entitled to assert further statutory claims and rights, in particular to assert damages which go beyond the contractual penalty.

**§ 8 Delivery terms and conditions, transfer of risk**

- (1) Partial deliveries are not permitted.
- (2) Each delivery has to be carried out with the hand-over of a delivery note, which in addition to the exact designation of type and quantity of the delivered objects also has to contain the order number of the Customer and the product number of the Customer.
- (3) The factual risk for an object which is to be delivered shall only pass to the Customer with the hand-over at the agreed place. This shall not apply insofar as the Customer is in default with the acceptance and the Supplier only owes the delivery of an object of which the class has been determined.

**§ 9 Quality, standards, certification**

- (1) The objects delivered by the Supplier must comply with the agreed qualities, in particular the plant standards of the Customer which are notified to the Supplier.
- (2) The objects delivered by the Supplier must comply with the general status of technology. If no general status of technology exists for an object, the objects have to comply with the generally recognised standards. If the Supplier is obliged to comply with a quality standard upon conclusion of the contract (such as e.g. ISO 9001) it undertakes to maintain this quality standard during the business relationship with the

Customer and to carry out the certifications which are necessary according to this standard. This shall also apply insofar as the requirements of the respective quality standard change during the existence of the contract. The Supplier undertakes to inform the Customer hereof immediately by stating the reasons, in the event that it is refused a certification.

#### § 10 Defects, limitation period

- (1) If the service which is to be provided by the Supplier contains a defect, the Customer shall be entitled to all statutory claims in full. This shall also apply insofar as the Customer is entitled to an option with regard to the exercising of the claims for defects according to the statutory provisions.
- (2) The limitation period for claims for defects of the Customer is 36 months from the transfer of the risk.
- (3) If the object which is to be delivered by the Supplier is inseparably combined with other objects by the Supplier or by the Customer as intended and if the delivered object contains a fault, which cannot (no longer) be remedied and the fault must not necessarily have been recognised by the Customer within the framework of an examination which essentially has to be carried out according to § 377 HGB [German Commercial Code], the Supplier is also obliged to reimburse the costs for the further object inseparably combined with the faulty object of the Supplier and the costs of the combination of the object. If the object delivered by the Supplier can be separated, the costs of the separation are to be reimbursed by the Supplier.

#### § 11 Product liability, product liability insurance

- (1) If a claim is asserted against the Customer under product liability, then the Supplier undertakes to indemnify the Customer against all claims from the product liability insofar as the Supplier is a manufacturer within the meaning of the Product Liability Act and insofar as the Customer is liable according to the Product Liability Act owing to a fault with the object delivered by the Supplier. This shall have no effect on the claims of the Customer from the contract existing with the Supplier.
- (2) Insofar as the Supplier is obliged to indemnify the Customer against claims under product liability according to the afore-mentioned provisions, it is also obliged to the Customer to reimburse all costs and expenses, including the costs of a possible legal prosecution or a recall action.
- (3) The Supplier undertakes to conclude product liability insurance which is reasonable with regard to the type and scope of its service obligations, justified to the Customer, and to maintain this for the duration of the existence of the product liability with regard to its services which are to be provided under the contractual relationship with the Customer.
- (4) The Customer undertakes to inform the Supplier within a reasonable period of time if as a claim is asserted against the Customer under the Product Liability Act and this can accordingly result in an indemnification obligation of the Supplier.

#### § 12 Objects and information of the Customer, insurance obligation

- (1) All objects such as in particular diagrams, drawings, calculations, production means, samples, video and audio media as well as data media, which the Customer makes available to the Supplier within the framework of the initiation of the contract and/or during the term of the contract shall remain the property of the Customer.  

The Supplier undertakes to use these objects carefully and as intended and exclusively within the framework of the service relationship with the Customer, and not to make these accessible to third parties without the explicit written consent of the Customer.
- (2) The Supplier undertakes to insure these objects at own costs against fire, water and theft damages with a sum insured of at least € 100,000.00. The Supplier hereby assigns all claims for compensation from this insurance to the Customer. The Customer hereby accepts this assignment.
- (3) The Supplier undertakes to carry out all possibly necessary service and inspection work on the objects as well as all maintenance work on the objects in good time and at its own costs. The Supplier is further obliged to report possible restrictions to the functional capability of the objects to the Customer immediately.
- (4) The Supplier undertakes to hand over the objects and information, made available by the Customer during the initiation of the contract, to the Customer upon request of the Customer immediately after termination of the initiation of the contract and the objects and information, made available by the Customer during the term of the contract, immediately after termination of its services for the Customer, for which it respectively requires the objects. A right of retention of the Supplier is excluded in this respect.
- (5) The Customer is solely entitled to the property rights existing to the objects and information which were made available, such as in particular copyrights, patent, utility model and registered design rights as well as rights associated with these property rights, such as in particular the right to apply for registration

#### § 13 Non-disclosure obligation of the Supplier, contractual penalty

- (1) During the service relationship with the Customer as well as for a period of two years after termination of the service relationship with the Customer the Supplier undertakes to refrain from
  - disclosing business and trade secrets as well as other confidential information and documents of the Customer to third parties, no matter in which manner, and no matter whether against payment or free of charge and/or
  - exploiting this information outside of the contractual relationship with the Customer or enabling such exploitation by third parties.

Third parties within the meaning of this provision are all persons who do not have to know the respective business and trade secret or the respective confidential information or document in order to fulfil the service obligations of the Supplier towards the Customer. The Supplier undertakes to oblige all persons, to whom it permissibly makes known information, to secrecy pursuant to these provisions.

Confidential information and documents are those which are described as such by the Customer, insofar as these were not generally known and/or already known to the Supplier, and this knowledge is not due to an unlawful act by the Supplier or third parties. The confidentiality shall end, insofar as the information or documents are again made known to the Supplier after the receipt by the Customer and this is not due to an unlawful act by the Supplier and/or a third party.
- (2) The Supplier undertakes to pay a contractual penalty in the amount of € 5,000.00 for each case of infringement of one of the afore-mentioned obligations. This shall have no effect on the right of the Customer to require damages above and beyond the contractual penalty as well as the future fulfilment of the afore-mentioned obligations.

#### § 14 Liability

- (1) The Supplier shall be liable to the Customer to an unlimited extent according to the statutory provisions.
- (2) If the Customer breaches its duties existing towards the Supplier, then the Customer shall be liable with respect to the amount limited to € 250,000.00. This shall not apply insofar as the breach of duty of the legal representatives and/or vicarious agents of the Customer was carried out owing to grossly negligent or wilful conduct. This restriction of liability shall further not apply in the event of injury to life, limb or health due to the breach of duty of the Customer and/or the Customer breaches its main service obligations towards the Supplier.

#### § 15 Notification obligations of the Supplier

The Supplier undertakes to report to the Customer matters of which it becomes aware immediately, which may endanger the purpose of the services which are to be provided by the Supplier for the Customer or which may involve an improved use and/or an increased cost-effectiveness of the contractual services for the Customer.

#### § 16 Right to cancellation of the Customer

The Customer is entitled to cancel the contract existing with the Supplier by a written declaration insofar as an unsuccessful enforcement is carried out against the assets of the Supplier or an application is filed for the opening of insolvency proceedings against the assets of the Supplier with the responsible bankruptcy court.

This shall not apply insofar as one of the afore-mentioned reasons for cancellation was identifiable for the Customer upon conclusion of the contract.

Irrespective of the afore-mentioned right to cancellation, the Customer is entitled to cancel the contract with the Supplier for other statutory or contractual reasons.

#### § 17 Termination

If a termination is permitted owing to the contract or owing to the law this shall require a written form both for the Customer as well as for the Supplier.

#### § 18 Data storage

The Supplier agrees to the storage and processing of the data associated with the provision of services by the Supplier, which are necessary for the further use of the service of the Supplier by the Customer. This shall also apply to data which are necessary for a possible follow-up order to the Supplier by the Customer.

#### § 19 Reservation of title of the Supplier

- (1) The Customer recognises a possible simple reservation of title of the Supplier within the meaning of § 449 BGB.
- (2) Each further reservation of title, such as in particular an extended reservation of title of the Supplier, is excluded.

**§ 20 Place of performance, place of jurisdiction, choice of law**

- (1) The place of performance is the place stated in the order or in the acceptance declaration by the Customer for the transport of the service of the Supplier. If no location is stated in the order then the place of performance is the registered office of the Customer.
- (2) The place of jurisdiction is the registered office of the Customer. The Customer is however entitled to also file action against the Supplier at its registered office.
- (3) The legal relationship between the Customer and the Supplier is subject exclusively to the law of the Federal Republic of Germany. The application of the UN Convention on the International Sale of Goods (CISG) is excluded.

**§ 21 The Customer as reference service**

The Supplier undertakes to refrain from advertising with the conclusion of contract with the Customer or the services provided under the contract between the Customer and the Supplier without the written consent of the Customer, insofar as the identity of the Customer can be concluded from such advertising.

**§ 22 Severability clause**

Should the provisions of this contract be or become invalid or null and void in full or in part this shall have no effect on the validity of the remaining provisions. The contracting parties are obliged to make a valid agreement which shall as far possible correspond with and replace the invalid or null and void regulation from the commercial point of view.