



## **CITY OF LA MARQUE**

**Attn:** Rick Sailer  
1111 BAYOU RD  
LA MARQUE TX 77568-4160  
R.SAILLER@CITYOFLAMARQUE.ORG  
**AIRPlan Quote #** 042023CITYX26  
**Quote Date:** 04/26/2023

Dear Rick Sailer,

Thank you for your inquiry. We are pleased to provide our quotation for **AIRPlan** services.

**AIRPlan** is designed to provide our customers with worry-free operation using the highest efficiency equipment, while ensuring maximum availability. Atlas Copco will relieve the burden of asset management and maintenance planning by assuming the responsibility of delivering the compressed air.

You will be notified when service is due, and a mutually suitable date will be arranged. This will significantly reduce the chance of breakdown as potential problems will be recognized in advance. Appropriate preventive measures will be taken before any problems occur and production is jeopardized.

Atlas Copco is always available to provide you solutions for all your compressed air needs, from generation to point of use while guaranteeing the best performance for your whole system. Genuine parts and lubricants, specially developed for your compressor needs, are kept in stock and our service technicians are always up to date with our maintenance standards and will provide you with the best service in the market.

In case you need additional information on this quotation or any of our other service products, please feel free to contact me at any time.

Best regards,

Thomas McDaniel  
Sales Manager  
Phone:  
Email: [thomas.mcdaniel@atlascopco.com](mailto:thomas.mcdaniel@atlascopco.com)

**Atlas Copco Compressors, LLC.**  
300 Technology Center Way, Suite 550  
Rock Hill, SC 29730 USA

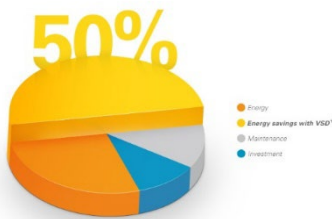
### A Complete Solution

AIRPlan is a complete solution combining Atlas Copco equipment and full service. This allows you to focus on your business through reliable compressed air supply and a flexible contract.

### A Complete Air System

AIRPlan uses the most efficient Atlas Copco compressor technologies, like VSD<sup>+</sup>, for the supply of compressed air. If required, our compressors can be equipped with dryers and filters to achieve clean and dry compressed air quality.

### Energy saving



AIRPlan gives you access to the best performance and lowest energy consumption due to VSD<sup>+</sup> (Variable Speed Drive) technology. By monitoring the system pressure and the compressor output, VSD technology continuously adjusts the compressed air flow to match your demand.

### A Full Service

We deliver on-time preventive maintenance by expert engineers using genuine Atlas Copco parts. This is your best guarantee for uninterrupted performance at the highest efficiency levels.

Benefit from:

- Full coverage of repairs and breakdown interventions
- Priority support with a guaranteed response time

Atlas Copco Full Service and Maintenance consisting of:

- Genuine parts: all parts, kits and lubricants for carrying out scheduled maintenance as described in the instruction manual, as well as parts for unexpected issues.
- Technical labor: own Atlas Copco trained and certified service technicians to perform all preventive and corrective maintenance
- Travel costs: including travel time, mileage, meals and hosting when needed

### Full Control of Costs

**AIRPlan** consists of one monthly fee based on expected running hours of the equipment that best suits your operation. At the end of each year, the exact number running hours will be recorded using SMARTLINK monitoring. If the number of actual running hours for the year exceed, the maximum running hours, a fee per additional running hour will be charged. If your actual running hours do not exceed the maximum annual running hours, there will be no additional charges.

## Pricing Summary

**Actual Annual Running Hours < Estimated Yearly Running Hours (Table 1 Below) - AIRPlan** Monthly fee up to Estimated Yearly Running Hours

*\*Less than Estimated Yearly Running Hours – Provided actual running hours less than estimated plan hours annually, there will be no refund and or credits.*

**Actual Annual Running Hours > Estimated Yearly Running Hours (Table 1 Below) -**

When annual running hours exceed Estimated Yearly Running Hours stated above, the Variable Price per Excess Running Hour above will be multiplied by the excess number of running hours and invoiced at the anniversary of the **AIRPlan** contract.

- If 8000 Estimated Yearly Running Hours selected above, customer will not be subject to Variable Price Per Excess Running Hour
- Greater than Estimated Yearly Running Hours - Provided estimated running hours plan are exceeded prior to, or by anniversary date from startup/commissioning of the **AIRPlan** Agreement. Subject to review and or an additional Invoice can or will be assessed for the excess hours above the estimated plan x hourly variable fee.

## Invoicing – What to Expect

- **AIRPlan** Monthly Fee to be invoiced each month
- *\*If Applicable in AIRPlan Anniversary Month\**
  - Excess Actual Running Hours of Estimated Yearly Running Hours multiplied by Variable Price Per Excess Running Hour

## Installation

- **AIRPlan** scope of services may include an option where Atlas Copco is responsible for the installation of the Equipment. In this case, the cost of initial installation is amortized and included in the monthly fee for the first 24 months. You only pay the full value of the installation early in the event Equipment is up or down-sized or if you terminate the **AIRPlan** contract prior to its Term.

## Flexibility – Right Size at the Right Time

If your production demand increases, you can upgrade your machinery. In case of decreased compressed air demand, it is possible to downsize your equipment. By continuously monitoring your consumption, we make sure that your compressor room remains the best fit for your compressed air needs.

## SMARTLINK – Remote Monitoring and Analysis

**AIRPlan** includes SMARTLINK Energy license. We monitor the equipment 24/7, so that you don't have to.

## Plan Duration

- **AIRPlan** contract durations are flexible. We offer 2, 3, 4 and 5 year plans with a minimum period of 24 months for any type of equipment. Pricing is set for the duration of the contract. You may cancel the **AIRPlan** contract without early termination fees at any time after the first 24 months.

**Planned Maintenance** will be scheduled 1 week in advance at a mutually agreed designated time during normal business hours. Preventative Maintenance parts and or service parts will be dropped shipped to the equipment site for work to be completed by Atlas Copco Technicians.

**Table 1 - Pricing and Services Summary**

**Summary of Contract Period**

Period	Monthly Invoice Amount
Months 1-60 AIRPlan Equipment	\$1,780.21

**AIRPlan Equipment - Monthly**

Machine Description	Estimated Yearly Running Hours	Service Type	Plan Duration	AIRPlan Fixed Charge	Variable Charge Per Excess Running Hour
ZB 5 VSD 140 (Air Cooled) (8152191481)	4000	AIRPlan	5 Year Agreement	\$1,780.21	\$3.44

**Pricing does not include installation or any applicable taxes.** If Installation Plan option is used and included in this plan, details are outlined in the section titled **“Installation Plan (Optional)”** above.

This quote is valid for **30 days** from generation.

Equipment Ship To Address \_\_\_\_\_

Atlas Copco AIRPlan TERMS AND CONDITIONS form an integral part of this quotation.

**Customer Acceptance**

Signature \_\_\_\_\_  
 Printed Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date Signed \_\_\_\_\_

**Purchase Order & Billing Information**

PO Number \_\_\_\_\_  
 PO Expiration Date \_\_\_\_\_  
 AIRPlan Billing occurs Monthly.

By signing this agreement, you are authorizing Atlas Copco Compressors LLC to automatically invoice as detailed above, using the PO number and invoicing frequency.

**Atlas Copco Approval**

Signature \_\_\_\_\_ Printed Name \_\_\_\_\_  
 Date \_\_\_\_\_ Title \_\_\_\_\_

# AIRPlan Terms and Conditions (Annex 1)

## 1. Definitions

1.1 In this Agreement, the following terms shall have the meanings set opposite, unless the context otherwise requires:

“Company” means Atlas Copco Compressors LLC (a Delaware limited liability company having its principal place of business at 300 Technology Center Way, Suite 550, Rock Hill, South Carolina 29730, USA)

“Company’s Depot” means the depot located at 11313 Steele Creek Rd., NC, 28273, Charlotte.

“Contract Period” means the period from the Date of Commencement to the Date of Termination as specified in the Order;

“Date of Installation or Commencement Date” means the date when the Equipment is installed at the customer site and commissioned by an Atlas Copco technician;

“Date of Termination” means the time at which the Equipment is returned to the Company’s Depot or other location previously agreed between the Company and the Customer;

“Equipment” means any type of machinery or equipment whatsoever provided by the Company to the Customer on a rental basis and any part or parts thereof and includes spare parts, fuel and tools issued and all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it;

“Customer” means the person, firm, company or other legal entity ordering the Equipment and Services, including the ultimate client of the Customer;

“Fixed Charge” means the charge payable by the Customer irrespective of the number of running hours of the Equipment;

“Installation Charge” means the charge for installing and un-installing the Equipment.

“Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names, domain names, rights to goodwill, rights in designs, rights in computer software (including source code and object code), database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and similar or equivalent rights which subsist or will subsist now or in the future in any part of the world;

“Invoice” means an invoice issued by the Company to the Customer in accordance with clause 6 below;

“Normal Business Hours” means Monday to Friday 8am to 5pm, excluding local and public holidays.

“Order” means the order from the Customer to the Company confirming that the Customer will proceed with the use of the Equipment on the terms set out in the Quotation and this Agreement;

“Postponement Period” means a period of 30 days starting on the provided Date of Installation;

“Quotation” means the quotation submitted by the Company to the Customer for the use of the Equipment and Services and any subsequent written amendment thereto;

“Services” means the services to be performed by the Company in accordance with the terms and conditions of the Agreement and as listed in the Quotation;

“Site” means the site at which the Equipment will be located and utilized as intimated to the Company by the Customer;

“Variable Charge” means the charge payable by the Customer calculated on the number of running hours of the Equipment.

1.2 The singular number includes the plural and vice versa. The masculine gender includes the feminine gender. Reference to persons includes companies and other forms of legal entity. Headings are for reference only.

1.3 This Agreement, together with the Quotation and any other documents referred to herein, constitutes the entire agreement between the Company and the Customer with respect to the use of Equipment and Services, superseding all proposals, negotiations and counter-proposals. The Company and the Customer acknowledge and agree that in entering into this Agreement, and any documents referred to herein, they do not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty.

1.4 The terms and conditions of this Agreement shall override any terms and conditions of purchase or rental of the Customer including, but not limited to, those included by the Customer in its acceptance of this Agreement or posted by the Customer on its internet site. Any special conditions stated on the front of this Agreement or

any Quotation shall apply equally with the terms of this Agreement except that, in the event of any conflict, the special conditions shall prevail.

### **Provisions applicable to both use of the Equipment and the Services**

#### **2. Duration of the Agreement**

This Agreement shall enter into force either when a) the Customer confirms acceptance of the Quotation or b) the Customer issues an Order to the Company for Services offered in the Quotation, and shall continue until the Date of Termination.

#### **3. Variations**

3.1 The Customer may issue written requests to the Company to make a variation to the Quotation or Order which is within the capability and resources of the Company only after a minimal duration of **24 months** after the Date of Installation. The Company shall be entitled to a reasonable amount of time to review and or reject a proposed variation. If in the negotiation of a variation, the Company incurs cost and expenses, the Customer shall be responsible for such costs and / or expenses.

3.2 Any commercial adjustment to the Fixed and / or Variable Charge resulting from any proposed variation shall be valued at the appropriate Fixed and Variable Charge set out in the Quotation or Order. Any commercial adjustment to the Fixed and / or Variable Charge shall be detailed in the variation communications annually.

3.3 A variation shall not be binding on the Company until such time as it is agreed and signed by an authorized representative of the Company.

#### **4. Order postponement / cancellation and or early termination**

##### **4.1 Order Postponement**

Where the Customer has supplied the Company with an Order and a Date of Installation is established, if the Customer subsequently informs the Company of a delay or postponement to the Date of Installation then an amount equal to the Fixed Charge stated in the Quotation and shall be payable by the Customer from the Date of Commencement until such Equipment is collected or mobilized to Site or, if earlier, the expiry of the Postponement Period. In the event that the Postponement Period expires prior to the Equipment being collected or mobilized to Site, the Company is entitled to terminate the Agreement without any compensation being due to the Customer. In such event, the Customer shall pay to the Company the Fixed Charge limited and equal to the remaining/open number of months to the minimum period referred on item 3.1.

##### **4.2 Cancellation**

Where the Customer has issued the Company with an Order to make ready Equipment for that Order and the Customer, before mobilization of the Equipment cancels that Order, the Customer will be liable for the full Fixed Charge for the Contract Period as it was specified in the Order.

##### **4.3 Early termination**

Where the Customer gives notice to the Company that the Equipment is to be returned to the Company's Depot prior to the Date of Termination as set out in the Quotation and/or Order, then the Customer will be liable for early termination fees in the amount of the full Fixed Charge remaining until the original Date of Termination plus Installation Charge as set forth in the Quotation. Notwithstanding the foregoing, Customer will incur no early termination fee if the Agreement is terminated at any time after 24 months from the Date of Commencement. In the event the Agreement is terminated in part, early termination fees shall apply to the Equipment so terminated on a pro rata basis.

#### **5. Non- Solicitation**

The Customer and / or its clients or associates shall not solicit or entice away or endeavor to solicit or entice away any individual person(s) who is employed or engaged by the Company as an employee, consultant or other role and with whom the Customer has had any dealings with whatsoever during the course of performance of any Order. Upon completion of an Order this provision shall remain in force and shall cease to be effective after a period of six months from a further Order being placed with the Company.

## **6. Fixed, Variable and Installation Charges**

(a) Unless otherwise agreed in the Order, the Company shall send an Invoice to the Customer for 1/12 of the Fixed Charge every calendar month in arrears and the Customer shall pay all sums due under the Invoice within thirty (30) days of the date of the Invoice. The Variable Charge, if any, shall be invoiced to the Customer once a year on the anniversary of the Commencement Date. The Fixed and Variable Charge shall be paid to the Company on the bank account as stated on the Invoice. In addition, the Customer will pay Value Added Tax at the rate for the time being in force, wherever applicable. All sums due hereunder shall be paid in USD, unless otherwise agreed between Parties. All payments to be made by either party under this Agreement shall be made without withholding or set-off on account of disputes, counterclaims or for any other reason whatsoever.

(b) If installation is not included within the scope of this Agreement, Customer shall be responsible for arranging the installation of the Equipment at its cost, and shall be responsible for the Fixed Charge and Variable Charge (if any) as set out in the Quotation.

If installation is included within the scope of this Agreement and is performed by Company, then Installation Charge is amortized for 24 months after the Date of Commencement as set out in the Quotation and shall be payable by Customer in addition to the Fixed Charge and Variable Charge, if any. In the event Customer and Company mutually agree to up- or down-scale the Equipment prior to the expiration of the Date of Termination, Installation Charge shall be the responsibility of the Customer and shall be paid prior to installation of new Equipment. In this instance, Installation Charge shall be limited to and equal to the remaining/open number of months remaining until expiration of 24 month period set forth above.

## **7. Non-payment of Fixed and/or Variable Charge**

In the event of the Customer failing to pay the Fixed and / or Variable Charges on the due date in terms of Clause 6 above then, without limiting the Company's other rights to terminate the Agreement in accordance with Clause 13 below, interest will be charged on the outstanding Fixed and Variable Charge at the monthly rate of 1.5% (18% per annum) or maximum rate allowed by law, whichever is lower. In the event of the Company being required to recover the Fixed and / or Variable Charge by due process of law, the Customer shall be responsible for all legal fees and expenses incurred by the Company in recovery of all sums outstanding.

## **8. Limitation of Liability**

8.1 The Company's liability under this Agreement shall be limited (to the fullest extent that such liability may be limited by law) to (1) the death or injury of any person; and (2) damage to property belonging to the Customer or any third party, arising in both cases as a result of (a) any negligent act or omission on the part of the Company, its employees, agents or those for whom the Company is responsible in law; or (b) the negligent operation or use of any property belonging to the Company, with the exception of (i) the Equipment, its operation or use (unless caused by a defect in the Equipment) and/or (ii) any property of the Company (including the Equipment) which has been used in a manner contrary to the Company's instructions or guidelines or outside the Company's reasonable supervision or control.

8.2 The Company accepts no responsibility for any other loss, injury or damage, arising out of (1) the operation or use of the Equipment; (2) any property of the Company which has been used in a manner contrary to the Company's instructions or guidelines or outside the Company's reasonable supervision or control; (3) the activities or negligence of any party with the exception of the Company, its employees, agents or those for whom it is responsible in law; and (4) the property of the Customer or any third party.

8.3 The Customer shall be solely responsible for and keep the Company fully indemnified against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses which may be brought against or incurred by the Company as the result of (1) any accident involving the Equipment, its operation or use (other than death or personal injury resulting from the negligence of the Company or its employees or agents); or (2) any negligent act or omission on the part of the Customer, its employees, agents or those for whom the Customer is responsible in law; or (3) any accident involving property belonging to the Company where such property has been operated or used in a manner contrary to the Company's instructions or guidelines or outside the Company's reasonable supervision or control; and (4) the operation or use of any property belonging to the Customer or any third party.

8.4 The use of the Equipment by the Company is not subject to any condition or warranty express, implied or statutory. ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS, ARE HEREBY DISCLAIMED.

8.5 UNLESS OTHERWISE STATED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT, LOSS OF GOODWILL, LOSS OF REVENUE OR TURNOVER, LOSS OF OPPORTUNITY, LOSS OF MANAGEMENT TIME AND LABOUR COSTS ARISING OUT OF THE IMPLEMENTATION, PERFORMANCE OR OBSERVANCE OF ANY OF THE TERMS OF THIS AGREEMENT OR THE EQUIPMENT, ITS OPERATION OR USE.

8.6 Company's liability to Customer under any theory of recovery arising from or related to this Agreement or breach thereof shall in no event exceed the amount received by Company from Customer under this Agreement in the twelve (12) months immediately preceding the event giving rise to the claim.

8.7 The Company shall not be liable in respect of any claims, losses, damages, costs, expenses and liabilities suffered, sustained or incurred by the Customer resulting from (1) any infringement or alleged infringement by the Company or those for whom they are responsible in law of any Intellectual Property Rights of any third party or the Customer or (2) pollution emanating from the Equipment or other property (a) of the Company whether owned, leased or hired or (b) of a third party, whether owned, leased or hired, where such property is made available to the Customer pursuant to this Agreement, and associated clean up costs, arising out of or in connection with the performance of this Agreement and whether or not contributed to or caused by the negligence or breach of duty (whether statutory or otherwise) of the Company.

8.8 For the avoidance of doubt, neither party hereby excludes or limits its liability for fraud or willful misconduct or for death or personal injury caused through its negligence.

#### **9. Insurance**

The Customer will, during the Contract Period, insure the Equipment with an insurance company of good repute for its full reinstatement value against loss or damage from all commercial risks (including third party or public liability risks) and against such other or further risks relating to the Equipment as may be required by law. Such insurance policies shall be primary and non-contributory, shall include a waiver of subrogation against the Company and evidence of such coverage shall be provided to Company.

#### **10. Ownership of Plans**

Any plans, documents, drawings, specifications, diagrams, formulae, calculations, cost details or other information tools or materials ("Plans") supplied by the Company to the Customer shall belong to the Company and must be returned to the Company on demand. No alterations of any kind may be made to the Plans without the Company's prior written approval and the Company accepts no liability for the consequences of any unauthorized alteration. Any and all Intellectual Property Rights in the Plans shall remain the exclusive property of the Company (or of any third party from which the Company may have obtained the Plans) at all times and no unauthorized copying or use of the Plans may be made.

#### **11. Licenses, Approvals etc.**

The Customer is solely responsible for obtaining and complying with all licenses, approvals, permits and authorizations, of whatever nature, which are necessary to enable the Equipment to be used for the purpose for which it is used and will indemnify the Company against any failure to do so.

#### **12. Indemnity**

The Customer shall keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature made by third parties (including employees of the Customer) and caused in whole or in part or arising out of any act or omission of the Customer in connection with the use of the Equipment or breach of this Agreement by the Customer.

#### **13. Termination**



13.1 In the event of this Agreement coming to an end for any reason whatsoever, then the Company is hereby irrevocably authorized to peaceably enter onto the premises of the Customer and repossess the Equipment, and any other equipment of the Company in the Customer's possession or under its control.

13.2 The Company may, without prejudice to any other right or remedy which may be available to it, terminate this Agreement immediately by written notice to the Customer if:

- (1) the Customer fails to pay any Fixed or Variable Charge or other sum due under the terms of the Agreement within 30 (thirty) days after its due date; or
- (2) the Customer sublets or pledges the Equipment to a third party, or vest any right with regard to the Equipment to such third party, without the prior written approval of the Company; or
- (3) the Customer fails to insure the Equipment to the amount of its full reinstatement value against all risks; or
- (4) the Customer commits a material breach of this Agreement which breach is not capable of being remedied, or which breach is not remedied within 30 business days after the service of written notice from the Company requiring it to do so; or
- (5) the Customer fails to use and maintain the Equipment properly or keep it in sound condition; or
- (6) any distress, execution or other legal process would be levied on or against the Equipment or any part thereof or against any premises in which the Equipment is used; or
- (7) the Customer goes into liquidation or bankruptcy, would call any meeting of creditors or appoint a receiver in respect of any of its undertakings or assets.

#### **14. Deposit – guarantee**

At the request of the Company, the Customer shall provide the Company with a guarantee or deposit within seven (7) days after such a request or at the latest two (2) working days before the Date of Installation, guaranteeing the performance by the Customer of its obligations under the terms of the Agreement.

#### **15. Confidential Information**

Neither party shall, during and after termination of this Agreement, without the prior written consent of the other party, use or disclose to any other person any information of the other party which is identified as confidential or which is confidential by its nature. Each party shall on demand and on termination of this Agreement surrender to the other party all materials relating to such confidential information in its or its personnel's, agents' or representatives' possession.

#### **16. Force Majeure**

Although the Company will use all reasonable endeavors to discharge its obligations under this Agreement in a prompt and efficient manner, the Company shall not be in breach of this Agreement, nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its control, including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary license or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labor or trade dispute, strikes, industrial action or lockouts;
- (h) non-performance by suppliers or subcontractors; and
- (i) interruption or failure of utility service.

#### **17. Exclusion of Warranties**

All statutory warranties with regard to the Equipment are expressly excluded to the fullest extent permitted by law.

#### **18. Assignment and sub-contracting**

18.1 The Customer shall not, without the prior written consent of the Company, assign, transfer, mortgage, charge or deal in any other manner with this Agreement or any of its rights and obligations under or arising out of this Agreement, or any document referred to in it, or purport to do any of the same.

18.2 The Customer shall not subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent without the prior written consent of the Company. The Customer shall in all cases retain sole responsibility for its performance of the task assigned to it under this Agreement, regardless of the use of authorized sub-contractors. The Customer is acting on its own behalf and not for the benefit of another person.

#### **19. No waiver**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

#### **20. Severance**

If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### **21. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of Delaware excluding its conflict of law principles.

#### **22. Dispute Resolution**

Any dispute, controversy or claim arising out of, or in connection with, this Agreement or the breach, termination or invalidity thereof, shall be finally settled in accordance with rules of the Arbitration Institute of the International Chamber of Commerce. Each party shall appoint one arbitrator who will jointly appoint the chairman. If they cannot agree on the chairman, then the chairman will be appointed by the said Arbitration Institute. Arbitration will take place in New York. The arbitration proceedings and the arbitral award shall be confidential and involved persons on both sides are pledged to secrecy.

### **Specific provisions relating to the use of the Equipment**

#### **23. Delay in provision of the Equipment**

23.1 Where the Company is unable to provide the Equipment in accordance with an Order or written instructions for the Customer in a timely manner, the Company shall give advance notification to the Customer of its inability to provide the Equipment. The Customer will not be afforded any commercial compensation for the Company's inability to provide the Equipment in accordance with this condition.

23.2 Unless otherwise agreed between the Parties, the Customer shall be solely responsible for the safe unloading and loading of the Equipment at the Site. Any personnel / employees supplied by the Company or any third party assisting the Customer shall be deemed to be under the Customer's control and shall comply with the directions of the Customer.

23.3 Subject to the terms of this Agreement, the risk of loss, theft, damage or destruction for the Equipment supplied by the Company to the Customer shall pass from the Company to the Customer upon delivery in accordance with the conditions stated in the Quotation. The Equipment shall remain at the sole risk of the Customer during the Contract Period. For the avoidance of doubt, once risk in the Equipment has passed to the Customer, in the event of loss of or damage to the Equipment which prevents the operation of the Equipment, the Fixed Charge will continue to apply until the Date of Termination.

#### **24. Care and Maintenance**

24.1 Unless the Company receives notification to the contrary within twenty-four (24) hours from the Date of Installation, all Equipment will be deemed to have been delivered to the Customer at the Date of Installation in good order and to the Customer's satisfaction.

24.2 The Customer will be responsible for the safe keeping of the Equipment, its operation, its service and maintenance in accordance with manufacturer's guidelines, its use in a workmanlike manner, and its return to the Company on the Date of Termination in a condition equal to that pertaining at the Date of Collection (fair wear and tear excepted). The Customer shall maintain records of service activities on the Equipment and shall produce the same to the Company on demand.

24.3 The Company accepts no responsibility for loss or damage to the Equipment or any part of the Equipment on hire from the Date of Installation until return of the Equipment on the Date of Termination.

24.4 In the event of the Equipment or any part thereof being lost or damaged during the Contract Period (fair wear and tear excepted), the Customer will be invoiced for (1) the full reinstatement value as new of the Equipment (or part thereof) or the cost of repairs to the Equipment (whichever being applicable), and (2) the full Fixed Charge for the later of (i) the period up to the Date of Termination, or (ii) the period up to the date at which the full replacement value of the Equipment (or part thereof) or the cost of repairs to the Equipment is paid to the Company, and (3) all associated costs of the Company (including legal fees).

24.5 The Customer will not allow the Equipment or any part of the Equipment to be used for any purpose beyond its capacity or agreed operational running period or in a manner likely to result in undue deterioration. It shall be the responsibility of the Customer to ensure that all Equipment is fully suitable for the purpose for which it is required and that it remains so during the Contract Period.

24.6 The Customer agrees that it will not:

- (i) without the prior consent of the Company, effect any mechanical or other modifications to the Equipment or any part of the Equipment or make any alterations or additions (for the avoidance of doubt, any such additions, alterations or modified parts (whether with or without consent) shall become part of the Equipment and shall belong to the Company);
- (ii) remove or interfere with any identification marks or plates affixed to the Equipment nor attempt or purport to do so nor permit the same;
- (iii) deface the paintwork or bodywork of the Equipment nor add or erect any painting, signwriting, lettering, or advertising to or on the Equipment;
- (iv) suffer or permit the Equipment or any part of the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment or any part of the Equipment is so confiscated, seized or taken, the Customer shall notify the Company and the Customer shall at its sole expense use its best endeavors to secure an immediate release of the Equipment and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (v) use the Equipment or any part of the Equipment for any unlawful purpose;
- (vi) do or permit to be done anything which could invalidate the insurances referred to in clause 9.

24.7 The Customer shall ensure that at all times the Equipment remains identifiable as being the Company's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment.

24.8 The Customer is responsible for ensuring that the Equipment is used in accordance with the manuals issued by the Company and installed in accordance with any statutory regulations, codes of practice, guidelines or recommendations about working loads relating to the Equipment and shall indemnify the Company, its agents, employees and contractors against all fines, penalties, and liabilities imposed on the Company its agents, employees and contractors or arising in respect of any noncompliance or contravention of any such statutory regulations, codes of practice, guidelines or recommendations, together with any proper and reasonable costs and/or expenses relating thereto and incurred by the Company.

24.9 For the avoidance of doubt, the Customer will be liable to the Company for destruction of or damage to the Equipment or any part of the Equipment caused by negligence, misuse or mishandling or damage to the

Equipment caused maliciously or mischievously by any party during the Contract Period and the terms of clause 24.4 shall apply in such circumstances.

#### **25. Ownership**

During the Contract Period (unless the Customer intimates to the Company at the time the Quotation is issued that the Customer wishes to purchase all or part of the Equipment), the Equipment shall at all times remain the property of the Company, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Agreement). Customer will keep the Equipment free and clear of all liens, levies, and encumbrances.

#### **26. Sub-Letting**

The Customer shall not sub-let the Equipment or any part of it without the prior written consent of the Company. The Customer shall not sell, assign, mortgage, or otherwise dispose of or part with possession of the Equipment or part thereof or charge the benefit of this Agreement nor attempt or purport to do so.

#### **27. Change of Site**

The Customer shall not move the Equipment from the Site without the Company's prior written consent.

#### **Specific provisions relating to the Services**

#### **28. Provision of Services**

28.1 During the Contract Period, the Company shall, depending on the number of running hours, perform periodical inspection and maintenance of the Equipment and perform the repair of any defects on the Equipment as well as any other task included in the definition of Services. This will include the repair or replacement of parts of the Equipment if such is the result of normal use of the Equipment under the indicated conditions and in as far the Customer can prove that the instructions of use of the Equipment given by the Company are strictly followed.

28.2 The Services shall be provided at such times as indicated in the Quotation or in case of breakdown.

#### **29. Personnel**

29.1 For the performance of the Services, the Company shall supply personnel whom they reasonably believe to be competent in the operation of the Equipment. Such personnel shall perform their duties with reasonable care and skill. The Customer shall not permit any other personnel to operate the Equipment without the Company's prior written consent.

29.2 Cost, charges and expenses applicable to the provision by the Company of personnel shall be specified on the Quotation and the Order. Any Services performed by the Company's personnel onshore during normal business hours will be included in the Variable Charge.

29.3 Company offshore personnel are not included in the Variable Charge and will be additionally charged to the Customer as specified in the Quotation. Any additional hours worked thereafter or nightshift working will be charged additionally at the rate of charge stipulated in the Quotation. Personnel charges shall commence on departure our works or check-in at air / heliport and or quayside vessel, whichever is stated on the quotation charges, and shall cease upon return to the same. Any cost for flights, transfer, mess and accommodation shall be made to the Customer's account.

29.4 An additional will be levied where the Customer requests onshore services of the Company's personnel at Site, outside Normal Business Hours. Such charge is not included in the Variable Charge and will be stated in the Quotation.

#### **30. Data monitoring**

The Equipment will contain a data monitoring system, called SMARTLINK. The data obtained through SMARTLINK will be used by the Company or any third party acting on behalf of the Company only for the purpose of customer service. The data can only be read, but the Company cannot direct the Equipment from distance. The Company takes reasonable measures to prevent unauthorized use of the data obtained. SMARTLINK is provided

“as is” and without any warranty. Additional terms and conditions are set forth in SMARTLINK Data Monitoring Terms and Conditions, which are incorporated herein by reference.

### **31. Inspection and Servicing**

31.1 The Customer shall afford the Company access to the Equipment at all reasonable times for the purpose of inspection, testing, adjusting, repairing or replacing the Equipment if necessary.

31.2 The Customer will be notified in advance if any preventive maintenance is to be performed.

31.3 Daily routine maintenance and inspection in accordance with the instruction manual (i.e. oil level, temperature, water conditions and quality, condensate drain) along with any other specific instructions intimated to the Customer is the responsibility of the Customer. All costs incurred as a result of damage caused by failure to carry out routine maintenance will be charged to the Customer. Records of service activities undertaken by the Customer at Site must be maintained and supplied to the Company on demand.

### **32. Breakdown**

32.1 Any breakdown at the Site or unsatisfactory working performance of any part of the Equipment will be identified via SMARTLINK or must immediately be reported to the Company. Oral communication shall be accepted to facilitate timely action, however full details of any breakdown must be confirmed in writing. Any claim for breakdown allowance or rebate will only be considered when supported by a fully documented history of events from the time of breakdown to reinstatement.

32.2 Where equipment breakdown / failure is attributed to Customers misuse or abuse then Customer shall pay all rental and transport costs to the Company for return to the Company works.

32.3 The Company shall not be liable to the Customer for any direct, indirect or consequential loss incurred due to any breakdown of the Equipment at the Site howsoever arising.

### **33. Allowances**

Subject to clause 32, no Fixed and Variable Charge will be charged to the Customer for any period during which an item of Equipment is not in full working order as a result of an inherent fault or anything regarded by the Company as a normal working repair. Save in respect of the Company's liability as provided for under this Agreement, the Company shall not be liable for stoppages resulting from causes outside the Company's control as set out in condition 29 of this Agreement.

### **34. Repairs and Adjustments**

The Customer shall not repair or attempt to repair the Equipment unless prior authorization has been issued by the Company in writing.

### **35. Obligations of the Customer**

The Customer shall:

- Provide all the electrical installation according Equipment Instruction Manual and follow the recommendations for the compressor room and environment;
- Provide constructions or modifications on the compressor room, ducts for electrical cables and other purposes as well as water facilities if needed and all installations other than compressed air system;
- Prepare all piping installation necessary for the passage of compressed air from the compressor room to the place of consumption;
- Perform the inspection / daily and weekly maintenance of the Equipment as indicated in the Equipment Instruction Manual;
- Not do, intervention in the Equipment without prior written consent of the Company;
- Provide adequate ventilation around the and clean regulate Equipment;
- Inform the Company immediately of any changes in operation or in site conditions and any problems in the functioning or failures that may influence the proper functioning of equipment;
- The Customer should also keep the goods as if you were avoiding wear it and cannot lend, rent, sell, dispose of, to pledge, among others.