

**Burckhardt Compression US Inc: General  
Terms and Conditions for Purchase and  
Ordering of Products and Services 2017-04**

**Burckhardt Compression** General Terms and Conditions for purchasing and ordering of products and services (the "Group GT&C") shall apply to all contractual relationships between the Supplier and the Ordering Party (the "Parties"), respectively as defined below.

**1. Definitions and Applicability**

1.1. The following defined terms shall have the following meanings:

"Contract" shall mean the contract between the Supplier and the Ordering Party consisting of these Group GT&C and the Purchase Order.

"Contract Price" shall mean the total sum set forth in the Contract to be paid by the Ordering Party to the Supplier for the due and timely delivery of the Products.

"Ordering Party" shall Burckhardt Compression US Inc, Houston, Texas, USA.

"Product" shall mean any equipment, instruments, materials, articles, documentation, packaging, computer hardware and software and items of all kinds to be provided by the Supplier under the Contract.

"Purchase Order" and "PO" shall mean the purchase order to which these Group GT&C apply, issued by the Ordering Party to the Supplier for the Products or Services (including all documents belonging to the Purchase Order, if any) and excluding other general terms and conditions of purchase of the Ordering Party unless expressly referred to in the PO.

"Service" shall mean the service required by the Ordering Party and provided by the Supplier.

"Supplier" shall mean the person/legal entity supplying Products and Services to the Ordering Party pursuant to the Contract.

1.2. In case of conflict between these Group GT&C, the PO and any other documents belonging to the PO or referred to in the PO (such as other general terms and conditions of purchase of the Ordering Party), the documents shall be interpreted and prevail in the following order: (i) the PO including other documents referenced in the PO (ii) these Group GT&C, (iii) other general terms and conditions of the Ordering Party (if referred to in the PO).

1.3. Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the Contract.

1.4. The general terms and conditions of the Supplier are herewith rejected, unless the Ordering Party has expressly agreed thereto in writing.

1.5. If any provision of the Contract is held to be invalid, illegal or unenforceable under applicable law, all other provisions shall remain in full force and effect.

1.6. Except where the Contract expressly states otherwise, any amendments, alterations or variations to the Contract shall be binding only if in writing and signed by duly authorized representative of the Ordering Party and the Supplier.

**2. Order**

The Supplier shall acknowledge acceptance of the PO within 7 days at the latest after receipt thereof. In case the Supplier fails to respond within such period the PO shall be deemed accepted. In any event, (i) the

Supplier's commencement of performance in any manner, (ii) sending of an invoice or (iii) acceptance

of any payment in relation to the PO, shall constitute unconditional acceptance of the PO.

**3. Terms of Payment**

3.1 Unless otherwise agreed the Contract Price shall be firm and fixed. Unless otherwise agreed in the PO, the Contract Price includes all levies, taxes, fees and duties applicable to the performance of the Service or the delivery of the Product at the named destination and the Supplier shall promptly pay all such taxes, fees or duties and immediately indemnify the Ordering Party if the Ordering Party is called upon to pay the same. The Contract Price also includes the cost of packing.

3.2 Any payment shall be made in accordance with the terms specified in the PO. Unless agreed otherwise in the PO, the Supplier shall be entitled to invoice for payment for the Products and Services only when delivery of the Products or performance of the Services has occurred in accordance with the Contract. Payments due by the Ordering Party shall then be made within 60 days net after receipt of the invoice. The Ordering Party shall not be under any obligation to make any payment if the Supplier is in breach of the Contract and for so long as such breach continues. Payment by the Ordering Party shall not be deemed to constitute an acceptance of the Product or Service.

3.3 The invoice shall at least include the Supplier's reference number, the date and number of the PO as well as the PO positions (if any), the payment due date, the quantity and Product reference or description of Services performed, the date of the delivery or performance, the agreed price.

**4. Inspection and Quality Assurance**

4.1 The Supplier shall implement an appropriate and recognized quality assurance program and conform with the agreed technical specifications and any quality requirements specified in the PO.

4.2 The Ordering Party has the right to inspect the work in progress. Any inspection shall not relieve the Supplier from any liability nor imply the Ordering Party's acceptance of the Product.

4.3 The Supplier shall inspect the quality of the Products before delivery.

4.4 The Supplier shall notify the Ordering Party in writing at least 6 months in advance of any intention to make changes of materials or parts provided by sub-suppliers for the Products, changes in the production methods, the relocation of production sites and changes in the analysis methods used for and in connection with the Products. Such changes require prior written approval of the Ordering Party.

**5. Subcontracting**

5.1 The Supplier shall be liable for the components procured from his sub-contractors. The Supplier shall endeavour, wherever feasible, to use subcontractors who maintain a quality assurance system and who in any case are able to produce an adequate declaration.

5.2 Supplier shall not subcontract units or components to a third party which usually are manufactured in his factories without written approval. If the Supplier intends to have the units or components, which usually are manufactured in his works, made by a third party, the Supplier shall in due course ask for the prior written approval of the Ordering Party.

5.3 The Supplier shall impose on the sub-supplier the same Confidentiality obligations imposed upon him by the Ordering Party.

**6. Free Issue Material Documents/ Tooling**

6.1 Title to any materials, documents, drawings, tools and/or patterns supplied by the Ordering Party for execution of an order shall remain with the Ordering Party even following machining or processing. Such materials, documents, drawings, tools and/or pattern shall be marked accordingly and shall be stored separately. They shall be insured by the Supplier

against damage and loss. Upon demand, machining waste shall be returned to the Ordering Party. Waste recycle benefit shall be forwarded to the Ordering Party. The Supplier has to notify immediately any faulty or insufficient quantity of material otherwise such defense shall be forfeited.

6.2 Documents, drawings and tools made available may be used for the execution of the Contract exclusively. They must neither be copied nor used for other purposes except Supplier has obtained prior written approval. Documents, drawings and tools must be returned upon first request.

6.3 The Supplier agrees to be responsible for normal maintenance, storage, damage or loss of tooling and/or free issue material while consignment in his facility, at no expense to the Ordering Party.

**7. Shipping**

7.2 Products shall always be packed so as to exclude the possibility of damage from applicable transport and storage handling as further described in more detail in the shipping and/or packaging instruction of the Ordering Party (each of the latest edition) available on the website of the Ordering Party or upon request.

7.3 The delivery terms set out in the PO are binding. In case the delivery terms are not expressly stated in the PO then the delivery terms shall be FCA according to the INCOTERMS. Any deviation from the agreed delivery terms requires the written approval of the Ordering Party.

7.4 The Products shall be delivered as per the latest shipping instruction of the Ordering Party available on the website to make sure that shipment is complete with all instructions, warnings and other data necessary for safe and proper operation, regardless of whether mentioned or described in the specifications set forth in or related to the PO.

**8. Transfer of Ownership and Risk**

8.1 Transfer of title of the Product (including all documentation related thereto) takes place at the time when the Product or part thereof have been completed (even partially) or at the time when the Ordering Party has paid the first instalment, whichever is first. In case, materials delivered by the Ordering Party have been processed, title shall pass to the Ordering Party as soon as the said materials have been integrated into the Product or parts of it. Between transfer of title and delivery, Supplier shall store the Product without costs to the Ordering Party.

8.2 Risk shall pass to the Ordering Party at the time of delivery of the Product.

8.3 The title for materials delivered by the Ordering Party to the Supplier for further processing shall remain with the Ordering Party. The risk for such material shall be transferred to the Supplier from the delivery of the Ordering Party until delivery back to the Ordering Party or any third Party.

8.4 Should the requested shipment documents for a Product not be supplied in accordance with instructions, the consignment shall be stored at the Supplier's charge and risk until supply and acceptance of the same.

8.5 If it is required for the enforceability of a Contract to register legal title to the Products in a public register and/or any other action has to be taken with respect to the title of the Product, the Supplier undertakes, at the request of the Ordering Party, to execute any and all necessary acts in this regard at their own cost without delay.

**9. Delays**

9.1 The Supplier shall notify the Ordering Party immediately in writing if any delivery or performance is delayed or likely to be delayed beyond its specified date. The Ordering Party has at any time the right to carry out on-site expediting visits at the cost of the Supplier.

9.2 Except with prior written consent of the Ordering Party, if the performance of the Service or delivery of the Product at the named destination is delayed beyond the performance date or delivery date,

the Supplier shall be liable for liquidated damages without prejudice to the Ordering Party's right to claim compensation from the Supplier for any additional damage arising out of or in connection with the delay. Unless stated otherwise, the liquidated damages due by the Supplier for a delay shall be 1% of the Contract Price for each commenced week of delay up to a maximum of 10% of the Contract Price without any requirement to prove actual damage and for delayed documentation the liquidated damages shall be 500 CHF per document and per week up to a maximum of 2% of the Contract Price.

9.3 The liquidated damages shall be due from the time that such liquidated damages are claimed and may be deducted by the Ordering Party from the Purchase Price. The payment of any liquidated damages does not release the Supplier from its duty to deliver the Products or perform the Services.

9.4 The Ordering Party may arrange for substitute performance by a third party or undertake performance itself at the expense of the Supplier if a further deadline for performance has expired. If any materials are necessary for such substitute performance and the Supplier is in possession of such materials, such materials shall be provided to the Ordering Party without delay. In so far as any industrial property rights limit any delivery or performance by a third party, the Supplier shall provide all necessary declarations in order to make such rights available.

9.5 Nothing herein shall be deemed to limit any other remedy that may be available to the Ordering Party, nor shall the Ordering Party's enforcement of any other rights it may have be deemed or construed to affect or waive any of its rights hereunder.

## 10. Environment, Health and Safety (EHS)

10.1 The Supplier represents and warrants that the Products shall not include any hazardous and/or contaminated substances, elements or waste of any kind (such as arsenic, asbestos, lead) that are restricted by law or regulation at the place of origin and/or final destination of the Product or any part thereof pursuant to the Contract.

10.2 The Supplier represents and warrants that the Products and Services are in strict compliance with all applicable EHS requirements. In case of conflict between EHS requirements, the most stringent standard shall apply. The Ordering Party is entitled to demand evidence if there is reason to assume the health and safety requirements are not complied with.

10.3 The Ordering Party is authorized to conduct EHS audits at the Supplier as far as it deems to be necessary.

## 11. Compliance, Export Control and Foreign Trade

11.1 The Supplier warrants that the Product and/or Service are in strict compliance with all applicable laws and regulations at the place of origin and/or final destination of the Product or any part thereof pursuant to the Contract including, without limitation, all applicable export control regulations. In addition, the Supplier agrees that it will fully comply with all applicable policies of the Ordering Party, including without limitation, the Burckhardt Compression Code of Conduct and all applicable export control policies.

11.2 The Supplier will provide, for each line item in all trade documents, full correct data required for export control purpose such as export control classification number, country of origin and HS number. For Products which do not fall under international export controls, the Supplier shall provide a clear statement per line item confirming that no export controls apply. In addition, the Supplier shall provide to the Ordering Party the relevant preferential trade documents or statements relating to import duties needed by the Ordering Party in accordance with the applicable preferential trade agreements. The Supplier shall provide to the Ordering Party, if applicable, a long term declaration

for preferential trade purpose at the end of each year without prior written request.

11.3 The Supplier agrees that it will not export, re-export, sell, resell or transfer any data or any export-controlled commodity, technical data or software provided under this Contract (i) in violation of any law, regulation, order, policy or other limitation imposed by any government authority with jurisdiction; or (ii) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or equivalent.

11.4 In the event that any of the Product, technology, data or information provided under this Contract is or becomes classified or listed as subject to export or re-export restrictions in the context of applicable export regulations, the Supplier shall immediately inform the Ordering Party in writing of such export control requirements, and if requested, the Supplier will provide other relevant export control information and documentation. In the event of Supplier's failure to comply with the above, Supplier shall hold the Ordering Party fully harmless from all damages arising out of or in connection with any violation.

## 12. Intellectual Property Rights

12.1 All information and know-how including drawings, specifications and other data provided by the Ordering Party in connection with the Contract as well as any documents or data shall remain at all times the property of the Ordering Party and may be used by the Supplier only for the purpose of performing the Contract. Any such information and documents are confidential information and subject to Clause 16 (*Confidentiality*).

12.2 The Supplier shall not copy, reproduce or use the Products or any information and know-how provided by the Ordering Party nor give them or allow their use by a third party, without the Ordering Party's written permission.

12.3 The Supplier warrants that no third party intellectual property rights have been infringed by the production, delivery or operation of the Products or the performance of the Services and the Supplier shall indemnify and hold harmless the Ordering Party against any claims by third parties resulting from any infringements of intellectual property rights.

12.4 The Supplier shall grant the Ordering Party and the customers or end-users of the Ordering Party the irrevocable, royalty free and unrestricted worldwide right to use all systems, programs, documentation, know-how or other intellectual property rights related to or embodied into the Service or Product delivered to the Ordering Party.

## 13. Warranties and Liabilities

13.1 The Supplier expressly warrants that:

(i) the Service and Product will be new, that the Product will be constructed, and the Service will be performed, in a safe and workmanlike manner by qualified and efficient personnel and be of the highest professional quality;

(ii) the Service and Product will be of good and satisfactory quality and fit for the purposes for which it is intended, in strict conformity with all requirements of the Contract and free from any defect or lack of conformity;

(iii) the Service and Product have been tested and controlled and meet all industry standards and all legal requirements under existing laws, regulations and directives relating to design, safety, fire and environmental protection; and

(iv) the Service and Product have been designed in a manner not to endanger life and health if the Service and Product are used as directed; and

13.2 The Ordering Party is not obliged to inspect the Services or Products for defects or notify the Supplier of defects or non-conformity in order to maintain the Ordering Party's warranty claims.

13.3 In case of defect the Ordering Party is entitled to:

i. to demand proper performance of the Contract by the Supplier, or

ii. to remedy itself the defect and demand the Supplier for reimbursement of the incurred expenses occurred in the necessary remedial measures, or

iii. to rescind the Contract or claim reduction of the purchase price, or

iv. to demand damages in lieu of performance of the Contract.

13.4 The warranty in respect of each Product delivered by the Supplier or Service performed by the Supplier shall survive for a period of 36 months from the date the Product is delivered or the Service is performed or 24 months from usage whichever is later. The Supplier shall be liable for all damages, including consequential damages, caused by the breach of any warranty applicable to the Product or the Service.

13.5 The Supplier shall indemnify, hold harmless and defend the Ordering Party from and against claims, liabilities and expenses (including legal fees) arising out of or in relation to the performance or non-performance of the Contract and resulting in bodily injury or death or damage to or destruction of third-party property.

## 14. Insurance Coverage

14.1 The Supplier shall obtain and maintain in full force and effect a commercial general liability and product liability insurance to cover all claims or otherwise related to the Service or the Product. Such insurance shall provide coverage of at least CHF 5 million for any occurrence. Evidence shall be produced by the Supplier at least once per year.

14.2 The transport insurance shall be arranged in accordance with the delivery terms.

## 15. Service, Repairs and Obsolete Products

15.1 The Supplier shall provide a repair and maintenance service staffed by qualified technical experts for each Product delivered to the Ordering Party for a period of at least 10 years.

15.2 The Supplier warrants the availability of original spare parts for each Product delivered to the Ordering Party for a period of 10 years after delivery. In case the Supplier is unable to provide original spare parts to the Ordering Party during this period the Supplier is obliged to notify the Ordering Party thereof in writing 6 months in advance and give the possibility to the Ordering Party to place a last call order with respect to such Products.

15.3 If the Supplier has to perform Services at the customer site of the Ordering Party, he has to ensure that all the authorization to access the respective customer site are available in due time to perform the Services. Any trainings or qualifications necessary of the staff are at no cost to the Ordering Party.

## 16. Confidentiality

For the purposes of this GT&C, "Confidential Information" shall mean any manufacturing, engineering, technical, business, financial, process, information systems and other non-public information relating to the products, services or business of the Ordering Party, and trade secrets developed for or learned by the Supplier from the Ordering Party in connection with the performance under this GT&C, whether such Confidential Information is in written, graphic, magnetic, disc, visual or other form. Supplier shall maintain in confidence all Confidential Information and shall not divulge such Confidential Information in whole or in part to any third party, including subsidiaries or affiliates, licensees or customers anywhere, and shall not make use of such Confidential Information in any manner other than as authorized by the Ordering Party in relation to the performance of a Purchase Order.

Supplier agrees that it shall restrict its disclosures of Confidential Information within its own organization only to those persons having a need to know for the purposes of Supplier's performance of a Purchase Order and that such persons shall be advised of the obligations of confidentiality set forth herein and shall be obligated in a

similar way.

The Supplier shall not use for any purpose not authorized by the Ordering Party or shall not disclose to any third party any trade or manufacturing secret or customer data of the Ordering Party. This provision shall survive the termination of the Contract. Upon request Supplier shall promptly give back or destroy all the Confidential Information and confirm so in writing to the Ordering Party.

#### **17. Drawings, Test Certificates and Operating Instructions**

The Ordering Party's approval of final construction drawings shall not relieve the Supplier of responsibility for his supplies.

Final construction drawings, test certificates and the maintenance and operating instructions and spare parts lists required for the proper maintenance of the supplies shall be handed over in the quantities and languages requested at the latest together with the delivery of the Products if not agreed otherwise.

Drawings, tools, foundry patterns and the like made available to the Supplier are to be stored properly and insured by him. They remain the property of the Ordering Party and shall be returned after execution of the Purchase Order unless other arrangements have been agreed in writing.

#### **18. Intellectual Property and Secrecy**

The Ordering Party retain all intellectual property rights on all documents, such as drawings, sketches, calculations, models and foundry patterns, etc. handed over to the Supplier before or after the conclusion of the Contract. The Supplier will use these documents for the exclusive purpose of executing the order. Without prior written approval, he shall not be entitled to manufacture product based on these documents for third parties or to copy such documents or to make them known in whatever way to third parties, which are not directly charged with the execution of the order or parts thereof. However, Supplier shall be entitled to retain one copy for legally or contractually required archiving purposes. The Ordering Party and/or its customers shall not be mentioned in any publications for advertising purposes without our prior written approval.

#### **19. Data Protection**

The Supplier acknowledges and agrees to the storage and the processing of data related to the Product by the Ordering Party.

#### **20. Assignability**

The Ordering Party may assign the Contract or any part thereof (i) to any of its affiliates without notification or (ii) to a third party upon written notice to the Supplier. The Supplier shall not assign the Contract or any part thereof without the Ordering Party's prior written consent.

#### **21. Advertising and Duty to Inform**

Any use of trademarks or brands by the Supplier owned by the Ordering Party for advertising or similar purposes shall only be allowed upon the prior written consent of the Ordering Party.

The Supplier shall inform the Ordering Party actively about any significant changes in his business organization such as changes within his organization, change of ownership, deterioration of assets, liquidity constraints, relevant changes of subcontractors, etc.

#### **22. Termination for Convenience**

Work may be terminated by the Ordering Party at their discretion in whole or in part at any time by written notice. In this case, the Ordering Party shall reimburse the Supplier's actual and non-cancellable expenses, unavoidably incurred for the appropriate execution of the Contract until the termination, all as determined by generally accepted accounting principles. Such reimbursable expenses shall not include the loss of business profit, fixed overhead, royalties, development costs for serial machines and other similar costs of the Supplier. In particular the Ordering Party shall be entitled to terminate the Contract with the Supplier, if the customer of the

Ordering Party cancels his order.

#### **23. Cancellation for Default**

In the event Supplier shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or if a receiver shall be appointed on account of Suppliers insolvency, or in the event Supplier is in default of any provisions or requirements under the Contract, the Ordering Party may, by written notice to the Supplier, without prejudice to any other rights or remedies he may have under the Contract or by law, cancel performance by Supplier under the Contract. In the event of such cancellation, the Ordering Party may complete the performance of the Contract by such means as selected and Supplier shall be responsible for any additional costs incurred by the Ordering Party in doing so. Supplier shall deliver or assign to the Ordering Party any work in progress as requested. Any amounts due to Supplier for the Product and Services completed by Supplier in full compliance with the terms of the Contract prior to such termination shall be subject to set off of additional costs of completing the Contract and other damages incurred as a result of Suppliers default.

#### **24. Supplier's Code of Conduct**

Burckhardt Compression and its subsidiaries ("BC") are committed to unyielding integrity and high standards of business conduct. To help BC Suppliers to understand the BC commitment to integrity and business conduct, BC has prepared this Code of Conduct for its Suppliers.

#### **Responsibilities of BC Suppliers**

BC will only do business with Suppliers that comply with all applicable legal and regulatory requirements. Unacceptable practices by BC Suppliers include such as but not limited to:

- **Minimum Age:** Employing workers younger than the required minimum age.
- **Environmental Compliance:** Lack of commitment to observing applicable environmental laws and regulations.
- **Health & Safety:** Failure to provide workers a workplace that meets applicable health and safety standards.
- **Business Conduct:** Failure to maintain and enforce company policies requiring adherence to lawful business practices.
- **Business Practices and Dealings with BC:** Offering or providing, directly or indirectly, anything of unreasonable significant value, including cash, bribes or kickbacks, to any BC employee. Such prohibition includes the offering or providing of any consulting, employment or similar position by a Supplier to any current or past BC employees (or their family member).
- **Intellectual & Other Property Rights:** Failing to respect the BC intellectual and other property rights by not using BC information and property (including tools, drawings and specifications) for the purpose for which they are provided to or by not observing and respecting all BC patents, trademarks and copyrights and comply with such restrictions or prohibitions on their use as BC may from time to time establish.

#### **25. Compliance Clause**

25.1 Supplier undertakes to observe and comply with the principles stipulated in the Supplier's Code of Conduct and the applicable law in force, in particular, the rules of fair competition and anti-bribery.

25.2 The Supplier undertakes that as of the effective date of the Contract, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Contract and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.

25.3 If the Ordering Party brings evidence that the other Party has been engaging in material breaches of the applicable law in force, in particular, to not comply with the rules of fair competition and anti-bribery it will notify the other Party accordingly and require such Party to take the necessary remedial

action in a reasonable time and to inform it about such action. If such Party fails to take the necessary remedial action, or if such remedial action is not possible, the Ordering Party may, at its discretion, either suspend the Contract or terminate it.

#### **26. Applicable law and Jurisdiction**

26.1 The law of Texas shall apply to the Contract, without regard to the application of the principles of conflicts of law and excluding the United Nations Convention on Contracts for the International Sale of Goods (1980).

26.2 The place of jurisdiction shall be Houston, TX, USA, the seat of business of the Supplier or the place of performance of the Contract at the exclusive choice of the Ordering Party.

#### **27. Miscellaneous**

##### **27.1 Force Majeure**

Supplier shall not be liable for any non-performance, loss, damage, or delay due to war, riots, fire, flood, national strikes or labor difficulty, governmental actions, acts of God. In the event of delay in performance due to any such causes, the date of delivery or time for completion will be extended to reflect the length of time lost by reason of such delay. If the reasons for Force Majeure continue for more than two (2) months, the Ordering Party may terminate the Contract upon seven (7) days written notice to the Supplier. Supplier shall be entitled to be compensated in case of termination, for the work done prior to termination and the expenses for non-cancellable procurements. The Ordering Party shall be entitled to receive all work results for which we have paid.

##### **27.2 Waiver of Rights**

Failure of the Ordering Party to exercise any of his rights shall not constitute or be deemed a waiver or forfeiture of such rights.

##### **27.3 Severability**

If a provision of the Contract is determined to be void or unenforceable, this finding shall not render other provisions void or unenforceable, and the Ordering Party and the Supplier shall make best endeavors to replace such provision by a valid one covering the original commercial intention as far as legally possible.