

**TAC007 – SERVICE PROPOSAL TERMS AND CONDITIONS**

These are the only express terms, conditions and warranties upon and subject to which compressor service contracts will be entered into by the company with the customer. They may be varied or waived by the company only in writing. The customer should not rely on any promise, representation, advice or warranty other than those contained herein. The company shall not be liable in any way whatsoever to the customer other than in accordance with these express terms and conditions and any terms and conditions which may be implied by law.

**BUYER'S STATUTORY RIGHTS:**

These Conditions shall not exclude, limit, restrict or modify the rights, entitlements and remedies conferred upon the buyer, or the liabilities imposed upon the seller, by any conditions or warranty implied by a commonwealth state or territory act or ordinance rendering void or prohibiting such exclusion, limitation, restriction or modification.

**GENERAL**

IN THESE SERVICE TERMS AND CONDITIONS

- a. Kaishan Australia Pty Ltd (58 114 574 515), trading as Kaishan Australia
- b. The Customer means the organisation entering into the Compressor Service Contract with Kaishan Australia.
- c. The contract shall include any terms and conditions set out in or accompanying the Company's tender or quotation, together with the following terms and conditions IN THE EVENT OF ANY INCONSISTENCY THE FORMER SHALL PREVAIL

**1. TERMS OF PAYMENT**

The terms of payment are net cash 30 days from date of invoice. For non-account Customers terms are net cash. The Customer agrees to indemnify and keep indemnified against any costs incurred by Kaishan Australia in connection with the Customer's failure to pay any money due and owing to Kaishan Australia including, without limitation, legal fees on an indemnity basis and debt collection agency fees.

**2. PRICE ADJUSTMENTS**

- a. The price in this contract is subject to renegotiation in the event of any change to the machine operational conditions as specified in 'Customer Equipment Details' schedule.
- b. The price per twelve (12) month period is based on a "Scope of Work" schedule and is subject to adjustment by Kaishan Australia on completion of each twelve (12) months from the commencement date (hereinafter referred to as the review date). The adjustment in the agreement price at each review date is based on the variation during the proceeding 12 month period of the published Consumer Price Index (CPI), and in exchange rates as applicable to imported parts if such variation exceeds 5%.

**3. QUOTATION VALIDITY**

This offer is open for acceptance for 30 days from quotation date. Beyond that, quotations will require confirmation or adjustment from Kaishan Australia.

**4. RESPONSIBILITIES OF KAISHAN AUSTRALIA**

- a. Kaishan Australia will provide the number of scheduled service calls to the site as per "Frequency of schedule services" to carry out the routine maintenance and condition monitoring of the machine specified in the "Scope of Work" schedule.
- b. Kaishan Australia will inspect and maintain the equipment in accordance with Manufacturer's Machine Instruction book(s).
- c. Kaishan Australia will provide 24 hour, 7 days a week breakdown service on failures affecting the safety and performance of the equipment at a reduced labour rate if the machine is serviced under a "Pre-paid maintenance" plan or as otherwise nominated. All other work will be carried out during normal working hours.
- d. Kaishan Australia will provide all spare parts and consumables deemed applicable to the items and services nominated in the "Scope of Work" schedule, and subject to the exclusions outlined in Clause 7.
- e. Kaishan Australia will provide all labour to carry out all scheduled service calls specified in the "Frequency of schedule services".
- f. Kaishan Australia will provide a copy of the "Site and Service

Reports" at the conclusion of each scheduled service call. The Site and Service Reports outline the service provided and any additional repairs recommended. The Site and Service Reports must be signed by representatives of both parties at the conclusion of each scheduled service call thereby verifying the work, as specified, has been completed.

- g. Scheduled service calls provided outside of the agreed service time, at the Customers request, will be covered by an additional charge to the Customer.

**5. RESPONSIBILITIES OF CUSTOMER**

- a. The Customer will perform daily and weekly servicing on the machine(s) as indicated in the Manufacturer's Machine Instruction book(s).
- b.
  - i. Only lubricants approved by Kaishan Australia are used.
  - ii. Water in the cooling circuits (if appropriate) is within the limits of quality, quantity and temperature as specified by Kaishan Australia.
  - iii. Air intake filters are approved by Kaishan Australia and serviced as recommended by Kaishan Australia.
  - iv. Adequate ventilation is available in the vicinity of the equipment
  - v. The equipment is regularly cleaned prior to each planned service call.
- c. The Customer will advise Kaishan Australia immediately of any changes to operation or site conditions and any malfunctions or failures that may influence the proper functioning of the equipment.
- d. The Customer will allow Kaishan Australia to have free and full access to the equipment during normal working hours to perform scheduled service calls pursuant to this Agreement, unless otherwise specified. The cost of waiting time, where required by the Customers operational conditions, will be covered by an additional charge to the Customer as per Clause 7 (a)
- e. The Customer is responsible for taking the necessary action on repairs recommended by Kaishan Australia.

**6. EXCLUSIONS**

- a. The Customer will bear the cost of maintenance arising from the following:
  - i. Damage to the equipment caused by incorrect operation.
  - ii. Damage to the equipment caused by external forces, ie falls, collisions etc.
  - iii. Damage to the equipment due to introduced contamination.
  - iv. Failure of the equipment due to lack of Customer daily/weekly maintenance and/or failure to inform Kaishan Australia of equipment faults and continued operations with the same.
  - v. Failure due to unavailability of the equipment to Kaishan Australia for scheduled service calls as and when required.
  - vi. Waiting time due to the Customer operating conditions.
  - vii. The Customer's failure to comply with repairs recommended by Kaishan Australia.
- b. Customer shall bear the cost of:
  - i. The supply of labour and parts required to repair or replace the compressor element drive motor
  - ii. Electrical equipment not supplied as a standard component of the package.

**7. WARRANTY**

The following warranty terms will apply.

- a. New Equipment. Warranty on parts and labour will be in accordance with the warranty provisions of the equipment.
- b. For all Service Plans, the warranty on parts is 90 days and labour 30 days from the date of site attendance. Travel costs (outside Metro), accommodation and messing (if necessary) are not included and will be charged to the Customer at the rates ruling at the date of site

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attendance.

**8. TERMINATION AND CONTRACT TERM**

- a. This contract may be terminated by either party hereto upon Sixty (60) days written notice. This contract can also be terminated by Kaishan Australia with immediate effect in the event of the Customer failing to perform any or all of its obligations under either Clause 1 or Clause 6.
- b. It is hereby agreed that upon termination of this agreement whether as a result of a mutual agreement between the parties hereto or by reasons of the Customer defaulting as aforesaid or otherwise, the Customer shall pay to Kaishan Australia a sum equal to the difference of services and parts provided under normal conditions and prices and the value of the installments already paid to the date of termination (if the installments are less than the value of actual services and parts at normal prices.)
- c. The term of this contract is as per quotation acceptance page. Depending on the services provided, there may be an additional charge according to clause 9 b) should the contract be terminated within the contract term.

**9. LIMITATION OF LIABILITY IN CONSUMER TRANSACTIONS**

In connection with the supply to a consumer of any goods or services within the meaning of the Trade Practices Act, 1974 other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of Kaishan Australia in the event of a breach of a condition or warranty implied by the Act (other than a condition or warranty implied by the Section 69) is limited, subject to Section 68A of that Act, at the option of Kaishan Australia:

- a. In the case of goods, to any one or more of the following:
  - i. The replacement of the goods or the supply of equivalent goods.
  - ii. The repair of goods.
  - iii. The payment of the cost of replacing the goods or of acquiring equivalent goods.
  - iv. The payment of the cost of having the goods repaired.

**OR**

- b. In the case of services.
  - i. To the supplying of services again

**or**

- ii. To the payment of cost of having the service supplied again.

**10. NO LIABILITY FOR INDIRECT OR CONSEQUENTIAL LOSS**

To the extent permitted by law, the Kaishan Australia shall not be liable in any way to the Customer, its servants or agents for consequential, secondary, indirect, special or abnormal loss or damage (including lost profits and economic loss) connected with any supply of equipment or services by Kaishan Australia to the Customer or any dealings between Kaishan Australia and the Customer, and the Customer indemnifies Kaishan Australia against claims, suits or actions by third parties relating to such loss or damage.

**11. DAMAGES TO BE REDUCED EQUITABLY HAVING REGARD TO CUSTOMER'S CONDUCT**

In any claim, suit or action against Kaishan Australia connected with any supply of equipment or services by Kaishan Australia to the Customer or any dealings between Kaishan Australia and the Customer, whether a claim, suit or action for breach of Contract, negligence or otherwise, any damages recoverable must be reduced, to the extent that is lawful, just and equitable, having regard to relevant acts or omissions of the

Customer, its servants or agents.

**12. ENVIRONMENTAL DISCLAIMER**

The Environmental Management at any site on which Kaishan Australia equipment is used is the responsibility of the Customer. In this regard Kaishan Australia disclaims any responsibility for any infringement which occurs related to Acts, Rules or Regulations pertaining to environmental pollution aspects such as noise, atmospheric, water, sewer, dangerous goods, waste disposal etc.

**13. EXCLUSION OF OTHER TERMS**

The above terms and conditions shall apply to all contracts given by Kaishan Australia to the exclusion of any other terms and conditions contained in any document submitted to the customer to the extent that such last mentioned terms and conditions are inconsistent therewith or with any rights of Kaishan Australia expressed or implied by law. No modification thereof shall be binding upon the parties hereto or either of them unless such modifications shall be in writing duly executed by the Customer and approved by Kaishan Australia.