Sauer Compressors CHINA

标准销售及交付条款

1. 总则

1.1 除双方另有相反书面约定外，我方所提供之货物及服务仅适用以下销售及交付条款。任何由买方单方作出的与本标准条款不符的条款和条件均不应约束我方。即便我方知晓买方的订单违反或不符合本标准条款而已实际发货且未保留任何权利的情况下，本标准条款也同样适用于该买卖行为。

1.2 为推进双方继续合作，即便未被明确表示接受的情况下，本标准条款同样适用于未来的交付和服务。

2. 要约

2.1 我方的要约可不经通知而变更，并构成要约邀请。

2.2 除非我方明确表示受约束外，否则我方在类似于商品名录、宣传册、通告、广告、图表、价格单或其它文件中披露的有关产品的尺寸、重量、产量等信息，均为大致描述，该些信息对我方并不具有约束力。

2.3 如果我方提供的产品与邀约或宣传册中描述不一致，但对合同目的无任何不利影响且能被买方合理接受的情况下，我方将保留对产品改善及修改的权利。

2.4 我方保留对模型、样品、图纸、方案、描述、算法、要约以及其他文件的所有权及版权。买方不得将该些文件及所载内容泄露给任何第三方。

3. 合同的订立

3.1 买方同意，自其订货单发送之日起四个星期内，均受订单条款的约束。

3.2 经我方书面确认或者履行买方订单时方视为双方达成合同条款，达成时间以两者先发生的时间为准。

3.3 任何口头或电话达成的合同附件、修改意见或对订单的增加均需经我方书面确认后方可有约束力。

4. 价格

4.1 若订单中无双方同意的价格的，则以交货当天适用的价格清单所列价格进行履行。

4.2 除双方在确认订单时另有相反约定外，我方的报价均为“卖方上海仓库交货”，不包含包装费、运费或任何买方要求的运输上锁费用，组装或操作材料。前述费用均需另行开票并支付。

4.3 我方的报价不包括增值税，增值税应当按照开具发票当天的法定税率在发票中分项列明。

5. 付款、拖欠货款、抵销

5.1 除现金及银行转账外的其它的付款方式仅在双方事先有约定的情况下方可被接受，且应为附条件的付款方式。

5.2 折扣或返利仅在双方书面确认的情况下方可被适用。只有当我方在订单规定的期限内收到全部款项的，买方才可能享有现金返利。

5.3 除双方另有相反约定外，一经卖方交付货物，发票或其他类似付款明细时，买方应当在 30 日内支付发票金额。除法律另有规定外，即便买方没有收到任何催款通知，若其未在货款到期后 30 日内付款的，应视为违约。若双方对买方是否已收到或何时收到发票或付款明细有任何争议的，则以买方收到货物及收到的时间为准。若买方违反付款义务的，则应以采购价格为基数，按高出中国人民银行基准利率 8%的利率计算违约利息。这并不影响我方采取进一步救济措施的权利。

5.4 若买方逾期提货超过一个月的，我方有权将货物仓储，且有权要求买方支付我方因仓储所产生的费用。若我方将货物仓储于我方自己的仓库的，买方应按照第三方仓储公司通常收取的市场价格向我方支付仓储费。

5.5 若因买方逾期提货的，则货物毁损或灭失的风险自买方逾期提货或逾期付款之时转移至买方。

5.6 买方不得对反请求主张抵销权，不得行使任何留置权，不得保留履行合同的权利。如双方对上述反请求的抵销权或留置权并无争议，或权利已被法院支持的，则本条不适用。

Standard Terms and Conditions of Sale and Delivery

1. General provisions

1.1 In the absence of anything to the contrary agreed in writing, solely the following Terms and Conditions of Sale and Delivery shall apply to all goods and services which we supply. We shall not be bound by any other standard terms or conditions on the part of the buyer deviating from our own Standard Terms and Conditions of Sale and Delivery. These Standard Terms and Conditions of Sale and Delivery shall also apply notwithstanding the fact that we effect deliveries to the buyer without any reservations in spite of being aware of provisions in the buyer's terms and conditions which are contrary to or deviate from our own Standard Terms and Conditions of Sale and Delivery.

1.2 For the purposes of ongoing business relations, our Standard Terms and Conditions of Sale and Delivery shall also apply to future deliveries and services notwithstanding the fact that they may not have been expressly acknowledged.

2. Offers

2.1 Our offers are subject to change without notice and shall be construed as constituting an invitation to treat.

2.2 The disclosures on dimensions, weights, output and the like contained in catalogues, brochures, circulars, advertisements, diagrams, price lists and other documents shall be deemed to be approximate only and not binding unless we expressly agree to be bound by them.

2.3 We reserve the right to make any improvements or modifications to the product differing from the details specified in any offers or brochures provided that they do not adversely affect the purpose of the contract and are reasonably acceptable for the buyer.

2.4 Models, samples, drawings, plans, descriptions, calculations, offers and other documents shall remain our property and be subject to our copyright. They may not be disclosed to any third parties.

3. Conclusion of contract

3.1 The buyer agrees to be bound by its order for a period of four weeks starting with the date of which the order is sent.

3.2 A contract shall not be deemed to have arisen until we have confirmed the order in writing or execute the order, whichever comes first.

3.3 Ancillary agreements, modifications made orally or over the telephone or any additions to orders already confirmed shall be binding only if confirmed by us in writing.

4. Prices

4.1 Orders for which no prices have been agreed upon shall be executed in accordance with the list prices applicable on the day of delivery.

4.2 In the absence of anything to the contrary in the confirmation of order, our prices are quoted " FCA Shanghai" net of packaging, freight, any transport lock requested by the buyer, as well as assembly and operating materials, which shall be invoiced separately.

4.3 Our prices are quoted net of value added tax, which shall be itemised separately in the invoice at the statutory rate prevailing on the date of invoice.

5. Payment, default, netting of counterclaims

5.1 Means of payment other than cash or bank transfers shall be accepted only subject to prior agreement and even then only as conditional payment.

5.2 Discounts or rebates may only be applied if this has been agreed upon in writing. Cash discounts may only be taken if we receive all payments due under the order within the specified period.

5.3 In the absence of any agreement to the contrary, payment shall be payable within 30 days upon delivery of the goods and receipt of the invoice. In addition to the cases provided for by law, the buyer shall be deemed to be in default of payment if it fails to remit the amount owing within 30 days of such amount falling due for payment notwithstanding the absence of any reminder. In the case of any doubt as to whether or when the buyer received the invoice or statement of payments due, only the fact that it has received delivery of the goods bought shall be decisive. In the event of any default of payment, the purchase price shall be subject to interest at 8 % above the People's bank of China base rate. This shall not prejudice our right to seek further remedies.

5.4 If the buyer is in default of collection of the goods by more than one month, we shall be entitled to recover the storage costs which we incur as a result of such default. If we store the goods in our own warehouse, the buyer shall be liable for the storage costs at the normal market rate which would be charged by a third party for storage.

5.5 If the buyer is in default of collection of the goods, the risk of loss of or damage to the purchased goods shall pass to the buyer upon default of acceptance or payment arising.

5.6 The buyer may not net any counterclaims or exert any right of retention or right to withhold performance. This shall not apply if such rights of netting or retention relate to counterclaims which are not disputed or which have been upheld in a court of law.

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6. 交付日期及期间、逾期交付

6.1 交付期间自卖方收到订单时起算，但不应早于买方提交必要文件，核准文件或豁免函的时间。如双方约定预付款的，不应早于预付款的付款时间。

6.2 若发生以下情形之一的，交货期间将合理地延长：发生我方所不可预见、不能控制的不可抗力事由，且可以被证明该不可抗力事由对供应给买方的货物的生产和交付产生重大影响。我方应第一时间通知买方不可抗力情况，并于 5 日内向买方提供不可抗力发生的官方证明否则不视为发生不可抗力。同时，我方将采取一切措施防止因不可抗力产生扩大损失。本条同样适用于我方的供应商遭受前述事件或受到妨碍的情形。

6.3 若第 6.2 条情形的发生已导致订单无法履行的，我方和买方均有权单方解除本合同。

6.4 如因我方责任逾期交货的，则买方有权要求我方继续履行合同。逾期交货的赔偿金额应以净采购价格的 0.5%/周为限，但最高不超过总购买净额的 5%。

7. 发货及风险转移

7.1 除双方另有书面相反约定外，我方有权自行选择发货的线路、方式以及货运代理机构。

7.2 自买方收到货物后，货物的风险转移至买方，包括由我方交货后在买方处进行组装的情况。若因买方责任导致我方逾期发货的，则货物的风险自货物可发货通知发出之日起转移至买方。

8. 保证

8.1 我方保证所供应的货物依据德国现行适用的技术标准，在设计、使用的材料以及工艺上不存在任何瑕疵。

8.2 因以下情况所主张的索赔不属于保证范围：

a) 使用不恰当、不正确的
b) 未按照使用说明书操作的
c) 未经我方同意自行拆除或修改的
d) 放置不正确的
e) 使用绍尔原装配件以外的零部件的
f) 自然损耗
g) 使用不合适的燃料
h) 未充分、适当保养的

8.3 对于设备的零配件，我方仅在供应商提供相应保证的情况下，在该保证范围内承担责任。

9. 已交付货物瑕疵的责任

9.1 买方收到货物后应立即进行检验，检验后发现有明显瑕疵的，应于收到货物后 30 日内通知我方。同样地，买方一旦发现有不明显的瑕疵，应立即向我方书面报告所存在的具体瑕疵，无论如何，该报告时间最晚不超过一周。若我方没有收到前述书面报告的，则视为我方交付的货物已通过验收。

9.2 若我方交付的货物存在瑕疵的，在货物风险转移前，我方可选择对出现故障或实质上影响货物使用性能的货物进行更换。对于空气冷却压缩机，自交付之日起至 12 个月或 2000 个运营小时内；水冷却压缩机，自交付之日起 12 个月或 1000 个运营小时内出现故障的，我方承担维修责任。换下的零部件归我方所有。若因我方不可控因素导致机械逾期发货、组装或调试的，则自货物风险转移之日起 12 个月后，我方不再承担维修、更换义务。我方支付所需更换零配件运送至买方指定地点的运输费用（无论运输方式是海运、铁路、空运或者其它方式），且所更换的零部组装以及其它所有必要的措施，符合合同约定并通过买方验收合格的，则应视为我方已充分履行更换瑕疵货物的义务。

9.3 除以上情况外，如故障无法维修，或经多次维修仍未达到预期结果或在维修后的货物或替代物无法交付的情况下，买方仅可解除本合同或要求降价 20%。

9.4 保修期至一年后期满。

10. 索赔

10.1 若买方因我方代表或代理商故意或重大过失造成损害而提出索赔的，我方应按照相关法律规定承担责任。如非故意违约，则损害赔偿责任仅限于可预见以及通常会发生的损失。

10.2 如我方构成根本违约的，我方应根据法律规定承担责任，但以可预见以及通常会发生的损失为限。根本违约是指违约方违约的行为将导致

6. Delivery dates and periods, delays in delivery

6.1 The delivery periods shall commence upon receipt of the order, however no earlier than upon submission by the buyer of the necessary documents, approvals or releases and no earlier than upon remittance of any prepayment which may have been agreed upon.

6.2 The delivery period shall be reasonably extended in the event upon the occurrence of acts of God and unforeseeable hindrances which are beyond our control, to the extent that it can be proven that such hindrances exert a significant effect on the production and delivery of the goods to be supplied. We shall promptly inform the buyer in writing and shall give within five(5) days valid proof of the occurrence. We shall also use all reasonable endeavors to terminate the Force Majeure. This shall also apply if our own suppliers are afflicted by such events and hindrances.

6.3 If the circumstances referred to in Article 6.2 impair our operations to such an extent that execution of the order is rendered impossible, both parties may rescind the contract.

6.4 If as a result of default of delivery for reasons for which we are responsible the buyer may assert a claim for continued performance of the contract.
The amount of entitlement to damages in the event of any default of delivery shall be limited to half a percent of the net purchase price per week of default or any part thereof, provided that this does not exceed 5 % of the total net purchase price.

7. Dispatch and transfer of risk

7.1 In the absence of any express agreement to the contrary, we shall select the route, the method of dispatch and the forwarder at our own discretion.

7.2 Risk shall pass to the buyer after the goods received by the buyer,including in cases in which we are responsible for post delivery assembly of the goods at the buyer's site. If dispatch is delayed due to circumstances for which the buyer is responsible, risk shall pass to the buyer as from the day on which the goods are declared to be ready for dispatch.

8. Warranty

8.1 We warrant that the goods supplied are free of any faults in their design, the materials used and workmanship in the light of current technical capabilities in accordance with the technical standards applicable in Germany.

8.2 No claims shall be accepted under this warranty in the following cases:

a) Inappropriate or improper use;
b) Failure to observe the operating instructions;
c) Dismantling or modifications without our approval;
d) Improper positioning;
e) Use of parts other than original Sauer spare parts;
f) Natural wear and tear;
g) Unsuitable lubricants
h) Inadequate maintenance.

8.3 We shall be liable for parts of the machinery which we source from our own suppliers only to the extent that they grant us warranties of their own.

9. Liability for faults in the goods delivered

9.1 The buyer shall examine the goods supplied by us immediately after receipt and notify us of any visible faults within thirty days. Similarly, the buyer shall report in writing any invisible faults immediately after discovery, however no later than within one week. In the absence of the receipt of any such written report, the goods shall be deemed to have been duly accepted.

9.2 In the event of any faults in the goods delivered, we shall repair or, at our discretion, replace all parts which exhibit faults or are materially impaired in their suitability for their intended purpose as a result of any circumstances arising prior to the transfer of risk between the day of delivery and a period of 12 months or 2,000 operating hours in the case of air-cooled compressors or 1,000 operating hours in the case of water-cooled compressors. Replaced parts shall become our property. If dispatch, assembly or start-up of the machinery is delayed for reasons beyond our control, liability shall expire no later than 12 months after the date on which risk passes. We shall be deemed to have duly complied with our duty to supply replacements for faulty parts upon releasing the corresponding part for transportation (regardless of whether this is by ship, by rail, by air or by any other means) carriage paid to designated location, and meet the requirements set forth in this Agreement and duly accepted by buyer.

9.3 Otherwise, the buyer shall only be entitled to rescind the contract or demand a 20% reduction in price if repairs are not possible, several attempted repairs fail to produce the desired results or the repairs or replacement deliveries cannot be executed.

9.4 Warranty claims shall be time-barred upon the expiry of one year.

10. Claims for damages

10.1 We shall be liable in accordance with statutory provisions in as much as the purchaser makes claims for damages which are based on deliberate or gross negligence on the part of our representatives or vicarious agents. Provided there is no intentional breach of contract, liability damages will be limited to the foreseeable and typically occurring loss.

10.2 We shall be liable in accordance with statutory provisions in as much as we break an essential contractual obligation; however in this case the liability

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合同目的无法实现。如果未按照已确定的交货日期交货不等同于违约的，则该行为不构成根本违约。同样地，如设备整体运作并未受损，仅个别性能未达到双方约定的情况下，也不构成根本违约。
10.3 在可归责的情况下造成生命、身体或健康损伤的，则责任承担不受影响。
10.4 如双方未就上述事宜另行达成协议的，则至此责任承担完成。
10.5 索赔有效期为自风险转移之日起 12 个月内。

11. 所有权保留
11.1 在收到合同项下到期应付款前，我方将保留对交付货物的所有权利。若买方有任何违约行为包括但不限于未按约付款的，我方有权取回货物。除我方明确书面声明外，取回货物的行为并不视为我方解除本合同。依法没收货物才视为我方解除本合同。在取回货物之后，我方有权自行选择合适的方式对货物进行清算。清算所得款项在扣除合理清算费用后作为买方所欠我方的费用。
11.2 买方承诺将谨慎对待货物，尤其是将自费按货物的重置价值给货物投保，包括火灾险、水险和盗窃险。若需要进行任何必要的维护或服务活动，则由买方自行定期安排并承担相应费用。
11.3 如发生任何第三方扣押或干预货物的情况的，买方应立即书面通知我方。
11.4 买方可以将货物转售，作为其正常经营活动的一部分。但我方承诺，只要买方履行其付款义务、未违反付款约定，更没有提出任何关于倒闭、破产、债权人清算程序的申请，也没有暂停支付货款的情况的，我方不会向买方的买方或第三方收取上述应收账款。否则我方有权要求买方披露应收款项的金额，欠款方名称，并提供收集应收款所需之信息、相关文件，同时通知第三方上述债权转让行为。
11.5 如果现有证券价值超出我方向买方索赔总额 20%以上的，我方应按买方的要求以我方认为合适的价格抛售证券。

12. 履约地点和争议解决地
12.1 所有争议均应提交我方住所地有管辖权的法院。我方也有权向买方住所地有管辖权的法院提起诉讼。
12.2 本合同适用中国法；不适用《联合国国际货物销售合同公约》。
12.3 除双方在确定订单中有相反约定外，我方的住所地应被视为本标准条款履行地。

13. 保密
13.1 买方有义务将订立本合同事宜作为机密，未经我方书面同意，不得披露其与我方的业务关系。
13.2 合同双方相互承诺将因建立交易关系而知悉的一切不为公众所知的商业、技术信息作为商业机密，并保证其员工也负有同样的保密义务。本保密义务在本合同有效期及双方合同关系终止后的 36 个月内持续有效。
13.3 保密信息特别包括技术资料、图片、图纸、算法以及其它文件，采购数量、价格及产品和产品开发相关的信息，目前及将来的调查研究及发展计划，客户及供应商信息以及所有合同相对方的公司信息。

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damages will be limited to the foreseeable and typically occurring loss. An essential contractual obligation exists if the breach of duty relates to an obligation whose contravention jeopardizes the purpose of the contract. This does not include the non-fulfilment of fixed delivery dates as long as the non-fulfilment of a fixed delivery date is not the equivalent of a default. Similarly a violation of essential contractual obligations does not exist if individual specifications of the contractually agreed work are not maintained in as far as the performance of the work as a whole is not impaired.
10.3 The liability for culpable injury to life, body or health remains unaffected.
10.4 To the extent that no other agreement differing from the above has been reached, liability shall be excluded.
10.5 The expiry period for claims for liability is 12 months from the passing of risk.

11. Retained ownership rights
11.1 We shall retain all rights to the goods delivered pending receipt of all payments due under the delivery contract. In the event of any breach of contract on the part of the buyer including but not limited to default of payment, we shall be entitled to recover the goods. Such recovery shall not be deemed to constitute rescission of the contract by us unless we expressly declare this in writing. Seizure of the goods shall always be deemed to constitute rescission of the contract by us. After recovering the goods, we shall be authorised to liquidate them as we see fit and to apply the proceeds from such liquidation to the amounts due from the buyer less reasonable liquidation costs.
11.2 The buyer undertakes to treat the goods carefully and, in particular, to insure them at their replacement value against the risk of fire, water and theft at its own expense. If any maintenance or service activities are necessary, the buyer shall arrange for these to be done regularly at its own expense.
11.3 The buyer shall notify us immediately in writing in the event of any third-party seizure or other intervention.
11.4 The buyer may resell the goods as part of its ordinary business activities. However, we undertake, as long as the buyer complies with its payment obligations, is not in default of payment and, particularly, has not lodged any application for the commencement of insolvency, bankruptcy or creditor settlement proceedings or has not suspended its payments. Otherwise, we may demand that the buyer disclose to us the amount of the receivables assigned to us and the names of the persons owing them, provide all information required to collect the receivables, produce all the related documents and inform the third-party debtors of the assignment.
11.5 In the event that the value of the existing security exceeds the total value of our claims against the buyer by more than 20 %, we shall be obliged at the buyer's request to release securities as we see fit.

12. Place of fulfilment and legal venue
12.1 All disputes shall be referred to the responsible courts of law in the town or city in which we are domiciled. However, we shall also be entitled to com-mence suit against the buyer before the court of law in its town or city of domicile.
12.2 Chinese law shall apply; the UN Convention on Contracts for the International Sale of Goods shall be excluded.
12.3 In the absence of anything to the contrary in the confirmation of order, our domicile shall be deemed to be the place of fulfilment.

13. Confidentiality
13.1 The orderer is obliged to treat the conclusion of the contract as confidential, and must not make any reference to its business relationship with us without our written consent.
13.2 The contracting parties mutually undertake to treat as industrial secrets all commercial or technical information that is not publicly known and of which they are made aware as a consequence of their business relationship, and to ensure that their employees are bound by the same obligation. This shall continue to apply for a period of 36 months after the contractual relationship ends.
13.3 The protected information particularly includes technical data, images, drawings, calculations and other documents, procurement quantities, prices and information relating to products and product developments, all current and future research and development plans, customer and supplier information and all corporate data of the other contracting partner.

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