

TERMS AND CONDITIONS OF SALE

- 1. Acceptance** – Performance Air Compressor Solutions, LLC. (PACS) is hereinafter referred to as “Seller” and the Buyer is hereinafter referred to as “Buyer.” Any order that contains terms and conditions in addition to or inconsistent with the following shall not be binding upon Seller unless acceptance of each non-conforming term or condition is clearly and expressly made in writing by Seller, and failure of Seller to object to provisions contained in any purchase order or other communication from Buyer shall not be construed as a waiver of these terms and conditions nor as acceptance of any such provisions. Acknowledgements of Buyer’s order forms or “releases” shall not be construed to be a waiver, amendment, or modification of these terms and conditions.
- 2. Payment** – Standard credit terms are NET-10 days from date of invoice, or as otherwise stated in proposal. Equipment, parts and service orders over \$50,000 are subject to progress payments of 25% upon order, 65% prior to shipment, and 10% NET-10 days from date of invoice. Charges not paid within 10 days are considered past due. Past due accounts are subject to a finance charges of 1.5% per month, on the past due balance, with interest charges accruing from the invoice date. If credit cards are used for purchases, then a 3% non-refundable processing fee will be charged. No retainage is permitted unless accepted in writing by Seller, but not to exceed 10% of the order value. All retainage held shall not to exceed 90 days from shipment. Purchase orders issued with a hold for release date are subject to re-evaluation at the time of release.
- 3. Order Acknowledgment** – All equipment purchase orders must reference Seller quotation and must be acknowledged in writing by Seller to be deemed accepted.
- 4. Shipments** – Merchandise is shipped F.O.B. Point of Shipment unless specifically stated in the quote. Freight cost is not included unless specifically stated in the quote and may be generated in a separate invoice. Partial shipments will be invoiced proportional to total quoted price. If job conditions or schedule results in partial or incomplete shipment of equipment, parts or services provided by Seller, Buyer will be invoiced per the dollar value of the items shipped or services performed, and Buyer agrees to pay the invoice as outlined in the payment policy herein. Completed equipment to be delivered to a 3rd party manufacturer for further fabrication will be invoiced upon shipment to the 3rd party manufacturer.
- 5. Price** – Quotation prices are firm for thirty (30) days from the date of the quotation, unless specifically stated to the contrary as part of a particular price quote and are subject to change without notice after the expiration of this thirty (30) day period. Any variations in quantity specified and/or rate of delivery may necessitate a revision in price.
Start-up and test costs may be invoiced separately at Buyer’s request, but subject to Seller partial invoicing policy in payment policy herein.
Storage fees may be assessed if job site is not able to accept delivery on the requested date. Seller will charge Buyer for time and costs at our normal service rates for required online portal entry system and specific training Seller’s employee may be required to receive to do business with the Buyer.
Permit and license costs (AQMD, Fire, Building, etc.) are not included. Seller will provide information, if necessary, for the acquisition of permits and licenses, but does not assume any responsibility for obtaining any permits or licenses which may be required.
- 6. Taxes** – The price does not include any present or future federal, state, or local property, license, privilege, sales, use, excise, gross receipts or other like taxes or assessments applicable to this transaction or any services performed hereunder. Such taxes will be itemized separately to Buyer. The Seller will accept a valid exemption certificate from Buyer. If exemption certificate is not recognized by the governmental taxing authority, Buyer agrees to promptly reimburse the Seller for any taxes which the Seller is required to pay.
- 7. Delivery** – Seller will not accept purchase orders which specify delivery dates that are not subject to manufacturer’s lead-times, contain penalty clauses, liquidated damage clauses, time is of the essence clause, require Seller to pay any legal expenses of the Buyer in the event of a dispute, require Seller to be responsible for system design work and/or guarantee that a performance standard for a system will be met, require completion and acceptance of the project by the owner before payment. Offloading, placement and anchoring of the goods shall be the Buyer’s sole responsibility unless specified in the quotation. Deliveries outside normal business hours will be invoiced at additional charges.
- 8. Long Term Storage** – If equipment sold by Seller is not installed and ready for startup within 6 months of shipment, it will require long term storage maintenance procedures. Please refer to the Operation and Maintenance Manual for such requirements. Failure to follow these procedures may void warranty and affect equipment operation. All costs related to long term storage is the responsibility of the Buyer of the equipment. Buyer will be invoiced per the dollar value of the items and/or services performed and Buyer agrees to pay the invoice as outlined in the payment policy herein.
- 9. Cancellation and Return Policy** – Buyer cancellation charges for standard orders is 25%. Orders for non-standard equipment and parts are subject to the manufacturers cancellation policy if charges are greater than 25% of the sale up to 100% of the sale.
- 10. Assignment** – Neither party shall assign or transfer this contract without the prior written consent of the other parties.
- 11. Classification** – Seller is a supplier of equipment, parts and related service and is not a contractor.
- 12. Title and Risk of Loss** – Title and risk of loss or damage to the Equipment shall pass to the Buyer upon tender of delivery F.O.B. Point of Shipment unless otherwise agreed upon by the parties, except that a security interest in the Equipment shall remain in the Seller, regardless of mode of attachment to realty or other property, until full payment has been made. Buyer shall adequately insure the Equipment against loss or damage from any cause wherein the Seller shall be named as an additional insured.
- 13. Governing Law and Jurisdiction** – The rights and obligations of the parties shall be governed by the laws of the State of Florida excluding any conflicts of law provisions. The United Nations convention on contracts for the international sale of goods shall not apply to this agreement.
Venue for any litigation (and depositions) between the parties for any claims relating to debt collection for merchandise, supplies, or equipment purchased hereunder, or hereafter, shall only be in Hillsborough County Florida. The parties do hereby waive their right to trial by jury for any litigation arising between the parties and any claims relating to debt collection for merchandise, supplies, or equipment purchased hereunder, or hereafter. The Seller will comply with applicable laws and regulations in effect on the date of the Seller’s proposal as they may apply to the manufacture of the Equipment. Compliance with any local governmental laws or regulations relating to the location, use or operation of the Equipment, or its use in conjunction with other equipment, shall be the sole responsibility of the Buyer. If legal action is instituted to collect amounts owed or to recover materials or supplies purchased, the Buyer agrees to pay all reasonable attorney’s fees and appellate attorney’s fees and costs incurred by Seller.
- 14. Patents** –The Seller does not accept any liability whatsoever with respect to patents claiming more than the Equipment furnished hereunder, or claiming methods and processes to be carried out with the aid of said Equipment. The foregoing states the entire liability of the Seller with regards to patent infringement.
- 15. Warranty** – The Seller warrants that the Equipment sold and delivered hereunder will be free of defects in material and workmanship for a period of twelve months from the date of placing the Equipment in operation or eighteen months from the date of shipment, whichever shall occur first unless otherwise stated by the manufacturer. Warranty for parts is 6 months and equipment warranty is 12 months.
The Buyer shall be obligated to promptly report any failure to conform to this warranty, in writing to the Seller within said period, whereupon the Seller shall, at its option, correct such nonconformity, by suitable repair to such Equipment or, furnish a replacement part provided the Buyer has stored, installed, maintained, and operated such Equipment in accordance with good industry practices and has complied with specific recommendations of the Seller. Seller reserves the right to take possession of or direct Buyer to return any replaced parts, which shall become Seller property. Accessories or equipment furnished by the Seller, but manufactured by others, shall carry whatever warranty the manufacturers have conveyed to the Seller and which can be passed on to the Buyer. This warranty shall not apply to any component which Buyer directs Seller to use in or add to the Equipment, and which would not otherwise be used or added by the Seller. The Seller shall not be liable for any repairs, replacements, or adjustments to the Equipment or any costs of labor performed by the Buyer or others without the Seller’s prior written approval.
The effects of corrosion, erosion, and normal wear and tear are specifically excluded. Performance warranties are limited to those specifically stated within the Seller’s proposal, and the Seller’s obligation for meeting such performance warranties shall be to correct in the manner, and for the period outlined herein.
THE SELLER MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, EXCEPT THAT OF TITLE, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.
- 16. Liability** – Correction by the Seller of nonconformities whether patent or latent, in the manner and for the period provided herein, shall constitute fulfillment of all liabilities of the Seller for such nonconformities, with respect to or arising out of such Equipment.
The Buyer shall not operate Equipment which is considered defective, and any such use of Equipment will be at the Buyer’s sole risk and liability.
The remedies of the Buyer set forth herein are exclusive, and the total liability of the Seller with respect to this contract, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall not exceed the purchase price of the unit of Equipment upon which such liability is based.
The Seller and its suppliers shall in no event be liable to the Buyer, any successors in interest or any beneficiary or assignee of this contract for any consequential, incidental, indirect, special, or punitive damages arising out of this contract or any breach thereof, or any defect in, or failure of, or malfunction of the Equipment hereunder, whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise.
- 17. Revisions** – The Seller shall not be bound by any contract or any modification thereto until approved in writing by an officer of the Seller. The contract, when so approved, shall supersede all previous communications, either oral or written.