



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item:	Surplus Declaration and Purchase		
Presenter & Title:	Bob Van Gyseghem, Superintendent of Water & Wastewater		
Date:	August 18, 2025		
Please Check Appropriate Box:			
<input checked="" type="checkbox"/>	Committee of the Whole Meeting	<input type="checkbox"/>	Special Committee of the Whole Meeting
<input checked="" type="checkbox"/>	City Council Meeting	<input type="checkbox"/>	Special City Council Meeting
<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>	Other -
Associated Strategic Plan Goal/Objective: QISIII			
Estimated Cost: \$37,211.00		Budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Other Funding? <input type="checkbox"/> Yes <input type="checkbox"/> No
Executive Summary:			
<p>FY26 budget has funds allocated for the replacement of two Atlas Copco air compressors & air dryer at the Water Treatment Plant. The air compressors provide air to operate the pneumatic valves that control the water flow to the sand filters, chemical feed system, shop tools, chemical deliveries, and other critical processes. Both air compressors are original from when the Water Treatment Plant was constructed in 2007 and have reached the end of their useful life with each compressor having nearly 300,000 motor starts and over 60,000 running hours on each. Atlas Copco was specified in the construction bid documents when the Water Plant was built. Several pieces of equipment were engineered based on the Atlas Copco specifications. Switching manufacturers would have a ripple effect on other equipment at the plant and would require additional engineering. Staff is recommending that competitive bidding be waived to avoid additional engineering costs. The existing compressors and air dryer will be declared surplus and sold on Ibid or similar.</p>			
Attachments: <i>(please list)</i>			
<ul style="list-style-type: none"> • Resolution • Proposal 			
Voting Requirements:			
<p><i>This motion requires 7 affirmative votes for passage. (City Council Only)</i></p> <p><i>The Mayor may vote on three occasions: (a) when the vote of the alderpersons has resulted in a tie; (b) when one half of the alderpersons elected have voted in favor of an ordinance, resolution, or motion even though there is no tie vote; or (c) when a vote greater than a majority of the corporate authorities is required by state statute or local ordinance to adopt an ordinance, resolution, or motion.</i></p>			
Recommendation / Suggested Action: <i>(how the item should be listed on agenda)</i>			
<p>Recommend Approval of Resolution Waiving Competitive Bidding and Authorizing Purchase and Installation of Air Compressors & Air Dryer from Atlas Copco in the amount of \$37,211.00 and Declaring Existing Equipment Surplus.</p>			

RESOLUTION NO. 2025-99

**RESOLUTION AUTHORIZING PURCHASE OF
Atlas Copco Air Compressors and Air Dryer and Declaring
Existing Equipment Surplus**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GENEVA, KANE COUNTY, ILLINOIS, as follows:

SECTION 1: That the City Administrator is hereby authorized to purchase, on behalf of the City of Geneva, air compressors and air dryer from Atlas Copco, Elk Grove Village, IL. As per the attached quote (Exhibit A).

SECTION 2: That the existing air compressors and air dryer is hereby declared surplus, and may be sold or otherwise disposed.

SECTION 3: This Resolution shall become effective from and after its passage as in accordance with law.

PASSED by the City Council of the City of Geneva, Kane County, Illinois, this ____ day of _____, 2025

AYES: __ NAYS: __ ABSENT: __ ABSTAINING: __ HOLDING OFFICE: __

Approved by me this ____ day of _____, 2025.

Mayor

ATTEST:

City Clerk



CITY OF GENEVA

Mike Anderson

Quote no 6189513

07/07/2025

Price Summary

Product #	Description	Total Price
8153653913	<p>GA15P</p> <p>Atlas Copco 20 HP Rotary Screw Compressor</p> <p>-Capacity: 71 CFM @ 175 PSI -181 PSI Maximum Operating Pressure</p> <p>-Voltage: 208-230/460V/3ph/60Hz -Motor: 20HP, IE3 TEFC Motor</p> <p>-Advanced Microprocessor Control: Elektronikon Touch</p> <p>-Long Life RDX (Roto Duty Extend) Synthetic Oil -Oil Injected -Air Cooled</p> <p style="margin-left: 40px;">-Footprint: 51"L x 33"W x 48"H</p> <p style="margin-left: 40px;">12 – 16 Week Lead Time</p> <p style="margin-left: 40px;">\$ 12,858.00 Each</p>	\$ 25,716.00
8102229363	<p>FX61N</p> <p>Atlas Copco Refrigerated Dryer</p>	\$ 3,645.00
Install	<p>Installation including removal of the old equipment using customers' lifting equipment to position the equipment upstairs. No new electrical work has been included.</p> <p>Atlas Copco will do the final electrical hook-ups during the included start up service.</p>	\$ 6,900.00
Freight	<p>Freight</p>	\$ 950.00
<p>Grand Total: \$ 37,211.00</p> <p>Pricing includes Equipment, Freight, Installation, Start Up, Training with Factory Certified Tech and warranty registration at customers Geneva Facility.</p>		

Payment & delivery conditions

Quote valid to:	7 / 29 / 2025
Commissioning:	Included
Installation:	Included
Warranty:	See Standard Conditions of Sale
Payment terms:	30 days net
Incoterms & location:	DAP - Delivery at Place
Freight:	Delivery Freight Charges

Delivery Terms Equipment will be delivered in our standard packaging unless otherwise stated (off-loading and positioning to be done by others). Optional items may impact delivery. Delivery time can be confirmed upon acceptance of your order/final instructions to proceed.

Credit Card Payments All credit card payments will be assessed a surcharge not to exceed 3%.

GA15P 20 HP Compressor

Oil-Injected Rotary Screw Compressor



Product

8153653913

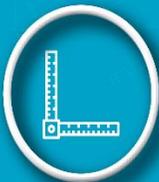
Links



Brochure



Technical Data



Dimensional
Drawing



Installation
Guide

Technical Specifications

Horsepower: 20
Motor (v/ph/hz): 208-230/460
Pressure (PSI): 175
Capacity (acfm): 71
Air Outlet: 1"
L x W x H (in): 51x33x48
Weight (lbs): 1003

FX61N Air Dryer

Quality Air



Product

8102229363

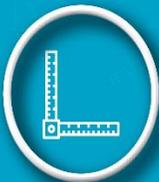
Links



Brochure



Technical Data



Dimensional
Drawing



Installation
Guide

Technical Specifications

Motor (v/ph/hz): 115/1/60

100psi CFM: 130.0

125psi CFM: 139.8

150psi CFM: 149.4

Air Outlet: 1 1/2" NPT

L x W x H (in): 22x19x32

Weight (lbs): 132.0

Standard Terms and Conditions of Sale

1. GENERAL – As used herein, “Atlas Copco” means Atlas Copco Compressors LLC, or its applicable division, which is offering or supplying the Goods. “Purchaser” means the entity to which Atlas Copco’s offer is made or the entity purchasing the Goods from Atlas Copco. “Equipment” means equipment, product, furnished to Purchaser by Atlas Copco. “Component” shall mean spare part, equipment component, accessory and similar items furnished by Atlas Copco. Equipment and Component and associated services shall be collectively referred to as “Goods”. “Affiliates” shall mean Atlas Copco AB and its wholly-owned subsidiaries. Atlas Copco’s sale of any Goods is expressly conditioned on Purchaser’s assent to these Standard Terms and Conditions of Sale (“Terms”). Any acceptance of Atlas Copco’s offer is expressly limited to acceptance of these Terms. Any terms or conditions (previously, contemporaneously, or hereafter) provided by Purchaser which add to, vary from, or conflict with these Terms are hereby expressly objected to. Unless otherwise expressly agreed in writing by a duly authorized representative of Atlas Copco these Terms supersede all other communications and agreements and notwithstanding any conflicting or different terms and conditions in any order or acceptance of Purchaser. Orders shall be subject to acceptance at Atlas Copco Compressors LLC’s principal corporate offices in Rock Hill, South Carolina.

2. DELIVERY – Unless otherwise agreed in writing, Goods manufactured, assembled or warehoused in the continental United States are delivered F.O.B. shipping point, and Goods shipped from outside the continental United States are delivered F.O.B. point of entry. Where the scheduled delivery of Goods is delayed by Purchaser or by reason of any of the events of force majeure referred to in Section 6, Atlas Copco may move such Goods to storage for the account of and at the risk of Purchaser. Shipping dates are approximate and are based upon prompt receipt of all necessary information and approvals from Purchaser. Atlas Copco reserves the right to make delivery in installments. Claims for damage, shortage or errors in shipping must be reported to Atlas Copco within three (3) business days following delivery to Purchaser along with photo and documentary evidence. The burden of proof is on the Purchaser to clearly establish the extent of the damage or shortage. If no claim is received within three (3) business days, Purchaser shall be deemed to have irrevocably accepted the Goods.

3. SECURITY AND RISK OF LOSS – Upon request from Atlas Copco, Purchaser agrees to execute a security agreement covering the Goods sold or other assets and to perform all acts which may be necessary to perfect and assure a security position of Atlas Copco. Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, the risk of loss or damage shall pass to Purchaser and delivery shall be deemed to be complete upon delivery to a private or common carrier or upon moving into storage upon receiving inspection, whichever occurs first.

4. PRICES –

- a. Prices shall be as stated on Atlas Copco’s quotation, which shall be valid for thirty (30) days unless otherwise specified. The price does not include any taxes or any other governmental charges, unless specifically listed as separate line items. Purchaser is responsible for all applicable taxes and governmental charges (except any taxes on Atlas Copco’s income). Atlas Copco will accept a valid exemption certificate from Purchaser, if applicable.
- b. Quoted prices are firm for shipments scheduled not more than 360 days from an acknowledged purchase order date. If shipments are scheduled beyond 360 days from the purchase order date or if shipments are delayed for the convenience of Purchaser beyond 360 days from the purchase order date, the quoted price are subject to an adjustment at Atlas Copco’s sole discretion.
- c. In the event when purchase order is issued by Purchaser, there is substantial impact on the previously quoted price due to new tariffs, taxes, duties or charges imposed by any governmental authority on the importation of Goods and/or sub-components of Goods (collectively “tariffs”), the parties will negotiate in good faith any resulting price increase. In the event that new tariffs are imposed after Atlas Copco’s acceptance of purchase order, Atlas Copco shall have the right to adjust the prices of such Goods to reflect the additional costs incurred due to the new tariffs. Atlas Copco shall notify Purchaser in writing of any new tariffs imposed and the corresponding price adjustment within thirty (30) days of the imposition of such tariffs. Both parties agree to act in good faith and cooperate fully to implement the price adjustment in a fair and equitable manner, consistent with the terms of this agreement and applicable laws and regulations.
- d. This agreement applies to new Goods only. Purchases of used equipment shall be on terms to be agreed upon at time of sale to Purchaser.

5. PAYMENT – Unless otherwise specified, payment terms shall be due thirty (30) days upon receipt of invoice. Orders with shipping location outside the U.S. require advance payment in full prior shipping. Progress payments shall be defined by Atlas Copco in a written quotation. All credit card payments will be assessed a surcharge not to exceed 3%. If Purchaser fails to pay any invoice when due, Atlas Copco may defer deliveries under this or any other agreement with Purchaser, except upon receipt of satisfactory security for or cash in payment of any such invoice. A service charge of the lesser of 12% per annum calculated monthly or the highest rate permitted by applicable law shall be charged on all overdue accounts. Failure to pay invoices when due shall, at the option of Atlas Copco, constitute a default. In addition to all other remedies Atlas Copco may have under these conditions of sale or applicable law, Atlas Copco shall be entitled to suspend delivery of any Goods. Purchaser shall reimburse Atlas Copco for all costs incurred in collecting any late payments, including, without limitation, attorney’s fees. If, in the reasonable judgment of Atlas Copco, the financial condition of Purchaser at any time prior to delivery does not justify the terms of payment specified, Atlas Copco may require payment in advance or cancel any outstanding order, whereupon Atlas Copco shall be entitled to receive reasonable cancellation charges. In the event Purchaser changes the shipping location to one outside the U.S., payment must be received in full prior to shipping. If delivery is delayed by Purchaser, payment shall become due on the date Atlas Copco is prepared to make delivery. Should manufacture be delayed by Purchaser, pro rata payments shall become due if and to the extent required at Atlas Copco by its contracts with the manufacturer. All installment deliveries shall be separately invoiced and paid for without regard to subsequent deliveries. Delays in delivery or non-conformities in any installment shall not relieve Purchaser of its obligations to accept any pay for remaining installments. In the event Purchaser directs Atlas Copco to submit invoices and makes payments via an on-line portal, invoices may include an administrative fee.

6. FORCE MAJEURE – Except of Purchaser’s payment obligations hereunder, neither party is liable for loss, damage, detention, or delay, or be deemed to be in default from causes beyond its reasonable control including but not limited to acts of God, fire, flood, strike or other concerted action of workmen, acts of terrorism, act or omission of any governmental authority, changes in import or export regulations, insurrection or riot, embargoes, sanctions, epidemics, pandemics, materials shortages or substantial increases in

materials costs. The affected party shall provide prompt notice of a force majeure event and shall use commercially reasonable efforts to mitigate its effects. In the event of delay due to any such cause, the date of delivery will be postponed by such length of time as may be reasonably necessary to make for the period caused by a force majeure event.

7. WARRANTY –

- a. **Equipment:** Atlas Copco warrants that all stationary compressors, compressed air dryers, and other equipment manufactured by Atlas Copco and Affiliates shall be free of defects in design, material and workmanship for a period of fifteen (15) months from date of shipment to Purchaser, or twelve (12) months from date of initial start-up, whichever occurs first, except as otherwise set out in the quotation. In the event Goods are put into storage due to Purchaser's inability to take delivery, the above warranty starts on the day of delivery into storage.
- b. **Component:** Atlas Copco warrants that all Components shall be free from defects in design, material and workmanship for a period of six (6) months from the date of shipment to Purchaser or the date it is mounted.
- c. **Service:**
 - I. **Labor:** Atlas Copco warrants that any services performed by Atlas Copco in connection with the sale, installation, servicing or repair of a Good shall be performed in a workmanlike manner. If any nonconformity with this warranty appears within thirty (30) days after the services are performed, the exclusive obligation of Atlas Copco shall be to re-perform the services in a conforming manner.
 - II. **Repairs:** Atlas Copco warrants Goods repaired or replaced pursuant to the above warranty against defects in design, workmanship and material for a period of ninety (90) days from date of start-up of such repaired or replaced Goods or the expiration of the original warranty, whichever is longer.
- d. Should any failure to conform with this warranty appear prior to or after shipment of the Good to Purchaser during the specified periods under normal and proper use and provided the Good has been properly stored, installed, handled and maintained by the Purchaser, Atlas Copco shall, if given prompt written notice by Purchaser, repair or replace, the non-conforming Good or authorize repair or replacement by the Purchaser at Atlas Copco's expense. Replaced Goods become the property of Atlas Copco.
- e. When the nature of the defect is such that it is appropriate in the judgment of Atlas Copco to do so, repairs will be made at the site where the Good is located. Repair or replacement under applicable warranty shall be made at no charge for replacement parts (F.O.B. Atlas Copco Warehouse), warranty labor, serviceman transportation and living costs, when work is performed during normal working hours (8 a.m. to 4:30 p.m. Monday through Friday, exclusive of holidays). Labor performed at other times will be billed at the overtime rate then prevailing for services of Atlas Copco personnel.
- f. The Atlas Copco warranty does not extend to Goods not manufactured by Atlas Copco or Affiliates. As to such Goods, Purchaser shall be entitled to proceed only upon the terms of that particular manufacturer's warranty. The Atlas Copco warranty does not apply to defects in material provided by Purchaser or to design stipulated by Purchaser. The above warranties do not cover (a) normal wear and tear of the Goods; (b) damage or accidents resulting from abuse, misuse, or the negligent acts of persons not under the reasonable control of Atlas Copco; (c) damage to equipment caused by the failure of the Purchaser to follow Atlas Copco's written storage and maintenance instructions; and (d) failure of the Purchaser to have the startup performed by an Atlas Copco authorized service provider for Goods that require such start-up.
- g. Used Goods, Goods not manufactured by Atlas Copco or Affiliates and Goods excluded from the above warranties are sold AS IS with no representation or warranty.
- h. **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS ARE HEREBY DISCLAIMED. Correction of nonconformities as provided above shall be Purchaser's exclusive remedy and shall constitute fulfillment of all liabilities of Atlas Copco (including any liability for direct, indirect, special, incidental or consequential damage) whether in warranty, strict liability, contract, tort, negligence, or otherwise with respect to the quality of or any defect in Goods or associated services delivered or performed hereunder.**

8. ORDER HOLDS – In the event that: (a) the Purchaser places an order on hold for a period of up to sixty (60) calendar days from the hold notification; or (b) Atlas Copco places an order on hold due to failure by Purchaser to pay any "milestone payment" when due and such failure remains un-remedied for a period of five (5) business days; then the Purchaser agrees to pay a storage fee of two percent (2%) of the total order value per week until the hold is removed. If the length of such hold exceeds sixty (60) calendar days, Atlas Copco may, at its option and at any time thereafter, terminate the contract and recover cancellation charges set forth below ("Cancellation Schedule"). Any fees, charges, and assessments due under this Section 8 are liquidated damages intended to be a reasonable advance estimate of costs resulting from an order placed on hold and not a penalty. Additionally, Atlas Copco is not liable for delays in performance of the work due to orders placed on hold, and Atlas Copco's time for performance of the work will be extended for a period equal to the time lost by reason of such delay.

9. STORAGE FEE – If Purchaser is not able to accept delivery on the date agreed to by the parties, Purchaser will pay Atlas Copco a storage fee equivalent to one and one half percent (1.5%) of the total order value per calendar month or fraction thereof (calculated and charged on a per day basis) until the date of delivery ("Storage Fee"). Additionally, if Atlas Copco is performing installation services and at the time of delivery Buyer's location is not ready or is unsafe for installation, Atlas Copco reserves the right to postpone or to discontinue work. In such event, Atlas Copco may charge Purchaser an amount equivalent to the Storage Fee until such time that the location is ready and safe for installation, as determined by Atlas Copco.

10. LIMITATION OF LIABILITY – IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING, WHETHER IN WARRANTY, STRICT LIABILITY, CONTRACT, TORT, NEGLIGENCE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE GOODS OR FACILITIES, DOWNTIME COST, OR DELAY COSTS. EXCEPT AS PROVIDED IN SECTION 14, PATENT INDEMNITY AND LIABILITIES WHICH CANNOT BE LIMITED OR EXCLUDED BY APPLICABLE LAW, ATLAS COPCO'S LIABILITY ON ANY CLAIM WHETHER IN WARRANTY, STRICT LIABILITY, CONTRACT, TORT, NEGLIGENCE OR OTHERWISE FOR ANY LOSS OR DAMAGE ARISING OUT OF, OR RELATED TO THIS CONTRACT OR THE PERFORMANCE OR BREACH THEREOF, SHALL IN NO CASE EXCEED THE PURCHASE PRICE ALLOCABLE TO THE SERVICE, GOOD OR PART THEREOF

WHICH GIVES RISE TO THE CLAIM. All causes of action against Atlas Copco arising out of or relating to this contract or the performance hereof shall expire unless brought within one year of time of accrual thereof.

11. CONFIDENTIALITY – Atlas Copco and Purchaser (as to information disclosed, the “Disclosing Party”) may each disclose Confidential Information to the other party hereto (the “Receiving Party”). “Confidential Information” shall mean all information related to the business, products, or services of the Disclosing Party that is not generally known to the public, and all pricing and terms of the contract, provided that the obligations of this Section shall not apply as to any portion of the Confidential Information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its representatives or its affiliates, or (ii) has been or is subsequently independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information, or (iii) is required to be disclosed by law or valid legal process provided that the Receiving Party who intends to make such disclosure shall promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information. The Receiving Party agrees, except as otherwise required by law: (i) to use the Confidential Information only as the Disclosing Party intended it to be used by the Receiving Party in connection with providing or receiving the Good, and (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except disclosure to its employees to the extent necessary to facilitate providing or receiving Goods. Upon the Disclosing Party’s request, the Receiving Party shall destroy or return to Disclosing Party all copies of Confidential Information. If either party or any of their respective affiliates or representatives is required or requested by subpoena, interrogatories, or similar legal process to disclose any Confidential Information, such party agrees to provide the Disclosing Party with prompt written notice of such request, so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions herein. It is understood and agreed that this Section 9 survives any expiration/termination of the contract.

12. INTELLECTUAL PROPERTY – As between Atlas Copco and Purchaser, Atlas Copco shall retain and own all patents, copyright, trademarks, trade secrets, and other intellectual property embodied in or associated with the Good. Without limiting the generality of the foregoing, Atlas Copco shall retain and own all right, title and interest in and to all inventions, discoveries, know-how, works of authorship, drawings, designs, processes, and ideas developed, discovered or conceived by Atlas Copco or its employees in connection with the manufacture of the ordered Goods. No drawings, designs, or anything else provided by Atlas Copco shall be deemed to be “work made for hire” as that term is used in connection with the U.S. Copyright Act.

13. SOFTWARE – In the event the Good contains or otherwise includes software, the software shall remain the proprietary property of Atlas Copco (and/or its Affiliates or licensors, if applicable), and in no event shall title thereto be sold or transferred to Purchaser. Subject to Purchaser complying with these Terms, Purchaser is granted a non-exclusive, non-transferable license to properly use the software in machine readable object code form only. Any license so granted is limited to the proper use of the Good containing the software only in the manner authorized by Atlas Copco. Purchaser shall not sublicense the software to any other entity nor assign its license rights. Notwithstanding the above, in the event Purchaser transfers (in compliance with all applicable laws and regulations) title to any Good containing the software, the license granted hereby shall transfer to Purchaser’s transferee. Any license granted hereunder shall continue: (i) until terminated in accordance with this contract, or (ii) for the useful life of the Good in which the software is embedded or is otherwise an integral part, or (iii) for the useful life of the software, whichever is shorter. Any modification, alteration, or removal or unauthorized use of the software constitute a breach of this contract and shall automatically terminate any license granted hereby. Purchaser shall not (and shall not permit any third party to) create derivative works based on the software, or reverse engineer, or disassemble or decompile the software, or transfer, copy, or modify, the software. In the event a separate written applicable Atlas Copco-provided Software License is provided with the Good, specified in Atlas Copco’s quotation, and/or otherwise communicated to Purchaser, then the software shall be governed, in order of precedence, by the terms of the separate Software License and then by any non-conflicting terms hereof.

14. PATENT INDEMNITY – Atlas Copco agrees to defend, indemnify and hold harmless Purchaser for a claim by any third party alleging that any Good or service furnishes by Atlas Copco hereunder infringes any United States patent, trademark, or copyright. Atlas Copco’s obligations in this Section are conditioned upon Purchaser promptly (i) notifying Atlas Copco in writing of the third party’s claim; (ii) giving Atlas Copco full authority to control the defense and settlement of the suit or proceeding; and (iii) providing Atlas Copco with full information and reasonable assistance at Atlas Copco’s expense. Atlas Copco shall ensure that no such settlement intending to bind Purchaser shall be entered into without Purchaser’s prior written consent, which consent shall not be unreasonably withheld or delayed. In case the Good (or any portion thereof) as a result of any suit or proceeding so defended is held to constitute infringement or its use by Purchaser is enjoined, Atlas Copco will, at Atlas Copco’s option and expense: (i) procure for Purchaser the right to continue using the Good; (ii) replace the Good with substantially equivalent non-infringing Good; (iii) modify the Good so it becomes non-infringing; or (iv) take back the Good and refund or credit monies paid by Purchaser to Atlas Copco for such Good less a reasonable allowance for use. Atlas Copco will have no duty or obligation to Purchaser under this Section to the extent that the Good is (i) supplied according to Purchaser’s design or instructions wherein compliance therewith has caused Atlas Copco to deviate from Atlas Copco’s normal designs or specifications, (ii) modified, (iii) combined with items, systems, methods, or processes not furnished by Atlas Copco and by reason of said design, instruction, modification, or combination a claim is brought against Purchaser. If by reason of such design, instruction, modification or combination, a claim is brought against Atlas Copco or its Affiliate, Purchaser shall protect Atlas Copco and its Affiliate in the same manner and to the same extent that Atlas Copco has agreed to protect Purchaser under the provisions above in this Section. THIS SECTION 14 STATES ATLAS COPCO’S AND ITS AFFILIATES’ EXCLUSIVE LIABILITY FOR INFRINGEMENT OF ANY THIRD PARTY’S PATENT, COPYRIGHT AND/OR TRADEMARK.

15. SMARTLINK – Equipment may include a data monitoring service called SMARTLINK. If Equipment includes the SMARTLINK service, the transmission of data to Atlas Copco is intended to start when Equipment has been properly installed, regardless of whether Purchaser registers to use the SMARTLINK service. Atlas Copco shall own all data related to the SMARTLINK service, and the data received by Atlas Copco may be used by Atlas Copco and certain third party distributors and contractors for the purpose of potentially increasing overall customer service and for other commercial purposes. Purchaser acknowledges that the use of the SMARTLINK service is provided “as is”, that use of the service is entirely at Purchaser’s risk, and that Atlas Copco may discontinue the SMARTLINK service at any time. Purchaser may request discontinuance of the SMARTLINK service at any time. The use of the SMARTLINK service by Purchaser may require registration by Purchaser as requested by Atlas Copco.

16. TERMINATION – Any order or contract may be cancelled by Purchaser only upon payment of reasonable charges (including an allowance for profit) based upon costs and expenses incurred, and commitments made by Atlas Copco, which are further set out in the Cancellation Schedule below.

17. COMPLIANCE WITH LAWS – Both parties shall comply with all applicable local, state and federal and international laws and regulations, including foreign trade and customs requirements or any embargos or other sanctions. Goods, technical data, technology, software, and services provided by Atlas Copco to Purchaser shall at all times be subject to all applicable export control laws and regulations, including but not limited to applicable U.S. Export Administration Regulations, United Nations resolutions and European Union directives relating to trade embargoes and restrictions. Purchaser agrees and warrants that no Goods, parts, materials, services, technical data, technology, software or other technical information or assistance furnished by Atlas Copco, or any good or product resulting therefrom, shall be used for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons or exported or re-exported by Purchaser or its authorized transferees, if any, directly or indirectly, in violation of any law or regulation. Purchaser agrees and warrants that Purchaser shall not violate or cause Atlas Copco to violate the U.S. Foreign Corrupt Practices Act of 1977 (as amended), in connection with any sale of the Goods. In the event Atlas Copco's performance under the order or any part thereof or related to it, is prevented by any impediments arising out of applicable local and/or international foreign trade and customs requirements or any embargos or other sanctions, Atlas Copco shall have the right to terminate the order or any part thereof or related to it, without any further liability, with immediate effect and without prior notice to Purchaser.

18. U.S. GOVERNMENT CONTRACTS – If the Goods are to be used in the performance of a U.S. Government contract or subcontract, Purchaser expressly agrees to notify Atlas Copco in writing in connection with Purchaser's order. Further, if the Goods are to be used in the performance of a U.S. Government contract or subcontract, only those clauses of the applicable U.S. Government procurement regulations which are mandatorily required by federal statute to be included in this contract shall be incorporated herein by reference.

19. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS – If applicable to this contract, Atlas Copco and Purchaser shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, veteran status or disability.

20. REMEDIES – The remedies expressly provided for in these Terms shall be in addition to any other remedies, which Atlas Copco may have under the Uniform Commercial Code or other applicable law.

21. CHOICE OF LAW – The validity, performance, and all other matters arising out of or relating to the interpretation and effect of these Terms and/or the contract shall be governed by and construed in accordance with the internal laws of the U.S. state in which Atlas Copco's applicable sales or service facility is located without giving effect to any choice or conflict of law provision or rule (whether in such State or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of such State. Atlas Copco and Purchaser expressly agree that the United Nations Convention on International Sale of Goods shall not apply.

22. MISCELLANEOUS –

a. Typographical and/or clerical errors in Atlas Copco's quotations are subject to Atlas Copco's correction.

b. Purchaser's issuance of an order or Purchaser's receipt of the Goods from Atlas Copco shall constitute full acceptance of these Terms without prejudice to any other manner in which acceptance of these Terms may be evidenced.

c. **THESE TERMS CONTAIN THE ENTIRE AGREEMENT BETWEEN ATLAS COPCO AND PURCHASER WITH RESPECT TO TERMS AND CONDITIONS AND SUPERSEDE ALL PREVIOUS OR CONTEMPORANEOUS STATEMENTS, AGREEMENTS, AND REPRESENTATIONS WITH RESPECT TO TERMS AND CONDITIONS.**

These Terms cannot be superseded, amended, or modified except by an applicable negotiated agreement signed in handwriting by an authorized sales manager of Atlas Copco and an authorized representative of Purchaser containing terms and conditions substantially similar to the terms and conditions of these Terms. Any order issued by Purchaser to Atlas Copco is for Purchaser's internal purposes and no term or condition stated in such document shall modify these Terms. Atlas Copco's execution of any document issued by Purchaser shall constitute only an acknowledgment of receipt thereof, and shall not be construed as an acceptance of any of the terms or conditions therein that differ from, conflict with, or add to these Terms.

d. Neither party shall assign or transfer the contract without the prior written consent of the other party (which consent shall not be unreasonably withheld); any purported assignment in violation of this sentence shall be void. Irrespective of the foregoing, Atlas Copco may without consent assign the contract (or any of rights or obligations hereunder) to any of its affiliates and/or use sub-contractors.

e. The provisions of these Terms are severable and the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision.

f. Neither party's failure to enforce, or its waiver of a breach of, any provision contained in these Terms shall constitute a waiver of any other breach or of such provision.

g. All headings, captions and numbering in this document are for convenience of reference only and shall not be used to interpret any meaning of any terms or condition.

h. The parties are independent contractors under this contract and no other relationship is intended including, without limitation, any partnership, franchise, joint venture, agency, employer/employee, fiduciary, master/servant relationship, or any other special relationship.

i. All rights and obligations contained in these Terms, which by their nature or effect are required or intended to be kept, observed, or performed after the termination or expiration of the order/contract will survive and remain binding upon and for the benefit of the parties, their successors, and permitted assigns.

PAYMENT TERMS

Unless expressly agreed to in writing on a specific contract or order, subject to credit approval, our standard payment terms are:

For orders under \$150,000 the payment terms shall be **Net 30 days** from date of shipment.

For orders over \$150,000 or with lead times greater than six months the following terms shall apply:

1. Domestic Shipments

- A. 30% of order value 30 Days from date of customer's purchase order.
- B. 30% of order value after passage of 1/3 of the time from date of customer's order to the originally scheduled shipment date.
- C. 30% of order value after passage of 2/3 of the time from date of customer's order to the originally scheduled shipment date.
- D. 10% of order value, net 30 days from date of shipment.

In those cases where progress payments are required, all work on the order will cease if payment is not received in accordance with the payment schedule.

2. Export Shipments

All export shipments shall be paid in full prior to shipment except when purchaser procures an irrevocable letter of credit in favor of Atlas Copco Compressors LLC, from a U.S. federally insured bank or lending institution.

Should the order fall in a category that requires progress payments, the letter of credit shall be arranged to release payment in accordance with the agreed payment schedule.

3. Payment Retention

Payment retention will not be allowed. If required, a bank guarantee can be furnished at Atlas Copco's expense in lieu of retention.

4. Credit Approval

All terms are subject to credit approval by Atlas Copco Compressors LLC.

CANCELLATION SCHEDULE

Definitions:

Standard Stocked Equipment - equipment as shown in the current catalog and available for shipment from the US Distribution Center.

Standard Non-Stocked Equipment - equipment as shown in the current catalog but not currently stocked at the US Distribution Center.

Engineered Equipment - equipment requiring customized features not shown in the current catalog.

Orders for Standard Stocked Equipment

* 20% of equipment price

Orders for Standard Non-Stocked Equipment

A) Prior to release for manufacturing:

* 20% of equipment price

B) After production has started:

* 40% of equipment price

C) After production has been completed:

* 60% of equipment price

Orders for Engineered Equipment

A) Prior to release for manufacturing:

* 20% of the purchase price

B) After production has started

* 40% of the base compressor price

* 40% of optional equipment of purchased materials will be charged

C) After production has completed

* 60% of the base compressor price

* 100% of optional equipment

The parties acknowledge and agree that in the event of early termination Atlas Copco will suffer a substantial injury for which it is impracticable and extremely difficult to establish actual damages. The recovery of termination charges is not a penalty and is reasonable in light of the difficulty and non-feasibility of obtaining the actual costs.