



238 S. Egret Bay Blvd
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Last updated: 1/01/2023
Peak Compressor LLC.
("Buyer")

GENERAL TERMS AND CONDITIONS OF PURCHASE ("Terms")

1. **Scope and Acceptance.** (a) These Terms apply to all written and oral Purchase Orders and amendments thereto (collectively referred to as "Order") issued by the Buyer. All goods and services (whether or not ancillary to a sale of goods) to be provided under an Order are included in the term "Goods." (b) An Order for which written confirmation is requested may be accepted only by returning a copy thereof signed by the Seller within 7 days of its date. However, Buyer may elect to consider Seller's oral quotation or acceptance of the Order, Seller's preparation to provide the Goods, or Seller's delivery of the Goods, as an acceptance of the Order and its terms (and of no other terms) and enforce the Order. Buyer objects to any additional or contrary terms in Seller's quotation or acceptance, and the terms herein shall be binding upon the parties. An Order is not a firm offer and may be revoked prior to acceptance. (c) An Order does not constitute an acceptance by Buyer of any offer to sell, any quotation, or any proposal. Reference in an Order to any such offer to sell, quotation, or proposal shall in no way constitute a modification of any of the terms and conditions of the Order. A reference to Seller's proposal or quotation in an Order is not an acceptance to Buyer of terms which conflict with forms and documents provided by Buyer and a part of this Order. **AN ATTEMPTED ACKNOWLEDGEMENT OF AN ORDER CONTAINING TERMS AND CONDITIONS INCONSISTENT WITH OR IN ADDITION TO THE TERMS AND CONDITIONS OF THE ORDER, INCLUDING ANY CONTRARY TERMS AND CONDITIONS POSTED ELECTRONICALLY ON SELLER'S WEBSITE, IS NOT BINDING UPON BUYER UNLESS SPECIFICALLY ACCEPTED BY BUYER IN WRITING, AND BUYER HEREBY OBJECTS THERETO.** No course of performance or conduct by Buyer shall be construed to waive, modify or otherwise adversely affect Buyer's rights.

2. **Prices.** All prices shall be FOB Seller's plant. Seller warrants that: (a) the price for the goods is no less favorable than those currently extended to any other customer for the same or similar goods in similar quantities; (b) Buyer shall receive the full benefit of all discounts, premiums and other favorable terms of payment customarily offered by Seller; and (c) the prices in this Order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent, including but not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating. All cash discounts shall be computed from the date of receipt by Buyer of a final invoice, which must be received by Buyer 10 days prior to the cash discount payment date, or receipt of the Goods, whichever occurs later. Cash discounts shall be based on the full amount of invoice, less freight charges and taxes if itemized separately on the invoice. Delay in receiving invoices or Goods will be considered good cause for withholding payment.

3. **Delivery.** (a) Delivery must be on or before the date indicated, if any, and otherwise as requested by Buyer. If this Order is identified as a "Blanket" Order, deliveries are to be made only in quantities and at times specified in the delivery schedule set forth herein or as otherwise specified by Buyer. Buyer shall have no liability for payment of Goods delivered to Buyer which are in excess of quantities specified in the Order or in the delivery schedules. Buyer may change delivery schedules or direct temporary suspension of scheduled shipments. Time is of the essence as to delivery. (b) If this Order is identified as a "Blanket" order the quantities specified and delivery dates listed are estimated quantities and delivery dates. The purchase of the Goods specified is expressly contingent upon the issuance of a release by Buyer identifying the Goods to be purchased and providing delivery directions. When this Order is identified as a Blanket Order or deliveries are otherwise specified to be in accordance with Buyer's written releases, Seller shall not fabricate or assemble any Goods nor procure required materials, nor ship any Goods except to the extent authorized by such written releases or provisions of this Order specifying minimum fabrication and delivery quantities. Buyer may return overshipments to Seller at Seller's expense for all packing, handling, sorting and transportation charges. Releases are included in the term "Order." (c) Unless otherwise provided in an Order, all shipping, drayage, demurrage, storage, insurance, packing, and related charges shall be prepaid by Seller, and then billed to Buyer if Buyer is responsible for such charges according to the terms of the Order. Seller shall pay all express and other charges necessary to enable Seller to meet the delivery schedule.

4. **Marking.** Unless otherwise provided in an Order: (a) All Goods shall be suitably packed, marked and shipped in accordance with the requirements of common carriers in a manner to secure the lowest transportation costs consistent with the requirements hereof. Packing slips identifying the Order, release, and part numbers must accompany each shipment. (b) Seller shall mark each package as instructed by Buyer and otherwise in accordance with the standards of the Automotive Industry Action Group. Markings shall be in English, bar code, or other form as determined by Buyer.

5. **Risk of Loss and Title to Goods.** All shipments are at the risk of the Seller, regardless of the F.O.B. point. If risk of loss is assumed by Buyer in writing, Seller must provide risk casualty insurance for the benefit of Buyer before risk of loss is assumed by the Buyer. The cost of any insurance must be paid by the Seller unless otherwise agreed to in writing by Buyer. Risk of loss shall not be governed by transfer of title. (b) Title to all Goods shall vest in Buyer the earlier of the date of the Order and their identification to the Order. Identification shall occur not later than the date the Seller acquires or begins manufacture of the Goods.

6. **Specification Changes.** Buyer reserves the right at any time to make changes in quantities, drawings, specifications, packing, shipment, and other terms of an Order. Any purported change shall be binding on Buyer only if made in a writing signed by Buyer. Any difference in price or time for performance necessarily resulting from such changes shall be adjusted equitably and the Order or delivery schedule shall be in writing accordingly, provided Seller makes demand for such adjustments within 10 days of receipt of Buyer's change. Time is of the essence for such demand. The price shall be adjusted to compensate Seller for increased costs



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necessarily incurred as a result of the changes. Seller may not substitute materials or change the specifications of the Goods in any way without written authorization from Buyer.

7. Seller's Quality and Inspection. (a) Seller shall participate in any supplier quality and development programs at Seller's cost and comply with all quality requirements and procedures specified by Buyer from time to time, including ISO-9001 and QS-9000. Buyer may inspect the Goods in process and Seller's facilities at reasonable times, but such inspection shall not constitute acceptance of the Goods or a waiver of strict performance. (b) Buyer and Customer shall have a reasonable time, but not less than 30 days after delivery, to inspect delivered Goods prior to accepting Goods. Defective and nonconforming Goods will be held pending Seller's instructions at Seller's risk and expense and, if Seller so directs, may be returned at Seller's expense. If Seller fails to provide written instructions within 7 days of notice, Buyer may return the Goods at Seller's expense. Goods returned as defective or nonconforming shall not be returned to Buyer or replaced without Buyer's approval. Payment for the Goods prior to inspection shall not constitute an acceptance. Acceptance, whether or not it has been revoked, shall not release Seller's responsibility for latent defects, nonconformities, warranty, or other claims. (c) All Goods (including, without limitation, raw materials, components, intermediate assemblies, end products, tooling and accessories) shall be subject to inspection and test by Buyer, its "Customer" (including, without limitation, Buyer's immediate customers, subsequent original equipment manufacturers and end-users) at all times and places to the extent practicable, including prior to final acceptance. Records of all inspection work as to a particular Good shall be kept complete, separate and available to Buyer and its Customer during the performance of an Order and for such longer periods as may be specified in an Order, but not less than 3 years after the last delivery of the particular Good to Buyer.

8. Electronic Data Interchange. Seller shall, at Buyer's request, connect to Buyer's electronic data interchange. All transactions initiated under EDI shall be governed by the terms contained in Buyer's transmissions, except that standard terms and conditions which may be a part of Buyer's EDI system shall be superseded by the terms of this Agreement. A transmission shall be deemed signed if it contains the name of the individual authorizing the transaction.

9. Intellectual Property. (a) Seller shall keep confidential any technical, process or economic information derived from drawings, specifications and other data furnished by Buyer in connection with an Order and shall not divulge, directly or indirectly, such information for the benefit of any other party without obtaining Buyer's prior written consent. Except as required for the efficient performance of an Order, Seller shall not use such information or make copies or permit copies to be made of such drawings, specifications, or other data without the prior written consent of Buyer. Upon completion or termination of the Order, Seller shall immediately return to Buyer all information contemplated in this Section. (b) Seller shall defend and indemnify Buyer, its successors, assigns, Customers and users of its products, against all suits at law or in equity and from all damages, claims and demands for actual or alleged infringement of any domestic or foreign patent, copyright or other property right by reason of the use or sale of the Goods. Seller grants to Buyer, its subsidiaries and affiliates an irrevocable, paid-up worldwide license to use each copyright of Seller that is applicable to any intellectual property whatsoever furnished to Buyer in connection with the Goods. (c) Any developments or copyrightable materials created during the performance of an Order shall be work for hire and be the exclusive property of Buyer.

10. Service and Replacement Parts. Seller shall sell Goods as ordered by Buyer for use as service and replacement parts, at the price set forth in the Order. If the Goods are systems or modules, Seller shall sell to Buyer as ordered by Buyer the system or module (and the components or parts comprising the same). The prices for the components or parts shall not, in the aggregate, exceed the price of the system or module less assembly costs. During the 7 year period after Buyer completes current model purchases, Seller shall sell Goods to Buyer as ordered to fulfill Buyer's past model service and replacement parts requirements. Unless otherwise agreed to by Buyer, the prices during the 7 year period shall be those in effect at the conclusion of purchases for production by the original equipment manufacturer. When requested by Buyer, Seller shall make service literature and other materials available at no additional charge to support Buyer's service part sales activities. Notwithstanding the foregoing, this is not a requirements contract, and Buyer is only obligated to purchase Goods as stated in an Order.

11. Warranties. (a) Seller warrants and represents to Buyer and its Customer that all Goods shall be: (i) merchantable; (ii) free from failure for the period of Buyer's express warranty; (iii) free from all defects in design, workmanship and materials; (iv) fit for the particular purposes for which they are purchased; (v) in strict compliance with the specifications, samples, drawings, designs or other requirements (including performance specifications) approved or adopted by Buyer; (vi) composed of all new materials and components; and (vii) provided with due care. Any attempt by Seller to limit, disclaim, or restrict any such warranties or any remedies of Buyer, by acknowledgement or otherwise, in accepting or performing an Order, shall be null, void, and ineffective without Buyer's prior written consent. (b) Seller warrants that its performance of an Order shall be in compliance with the provisions of those sections of ISO-9000 (e.g., 9001, 9002, or 9003) applicable to the obligations of the Seller under the Order, whether or not Seller is certified or registered under such standards. (c) Seller warrants that no lien shall be filed by Seller or anyone claiming under or through Seller against the Buyer, the site for delivery of the Goods, or Buyer's Customer for materials, labor, services, equipment, goods furnished as part of the Goods. Seller shall defend and indemnify the Buyer and its Customer from and against all liens, losses, damages, claims, debts and actions of any kind whatsoever, which might be asserted at any time whatsoever, arising in any way out of the recording of a lien by subcontractor or any lower tier subcontractor under it, including without limitation all costs, reasonable attorney fees and expenses incurred by the Buyer or its Customer in the releasing, satisfying and discharging of such liens and enforcement of this



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clause. Further, Seller shall secure and furnish to the Buyer and its Customer, upon request, a waiver of lien from each lower tier subcontractor under it.

12. Liability, Indemnity, and Insurance. Seller shall defend, indemnify and hold harmless Buyer, its affiliates, subsidiaries, directors, officers, employees and agents from and against all liabilities, claims or demands for injuries or damages to any person or property, including all reasonable expenses and costs associated with any recall involving the Goods, arising out of the performance of the Order or breach of Seller's warranties, by Seller, its servants, employees, contractors, agents, or representatives. (b) Seller shall furnish an insurance carrier's certificate showing that Seller has adequate insurance coverage in the following minimum amounts: workmen's compensation – statutory limits for jurisdictions in which work is to be performed; employer's liability – \$1,000,000.00; general liability – bodily injury \$1,000,000.00; automobile liability – bodily injury \$1,000,000.00 per person and \$500,000.00 per occurrence and property damage \$1,000,000.00. Liability coverage shall include completed products and operations coverage. The certificate must certify that the required insurance coverages are in effect and will not be canceled or materially changed until 30 days after prior written notice has been delivered to the Buyer. If Seller is a self-insurer, the certificate of the department of labor of the jurisdiction in which any labor is to be performed must be furnished to Buyer by Seller. The purchase of such insurance coverage or the furnishing of said certificate shall not be a satisfaction of Seller's liability hereunder, or in any way modify Seller's obligation to indemnify Buyer. (c) If Seller's work under the Order involves operations by Seller on the premises of Buyer or one of its Customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or damage to property during the progress of such work, and except to the extent that any such injury or damage is due solely and directly to Buyer's negligence, shall defend and indemnify Buyer against any claim which may result in any way from any act or omission of the Seller, its agents, employees or subcontractors. (d) The Seller shall indemnify Buyer and its employees for any and all damages and reasonable expenses (including reasonable attorney fees) incurred because of property damages, personal injury, or other claims arising out of the condition, labeling, engineering, use, sale, storage, design, safety, etc. of the Goods whether or not incorporated in another product, if the damages claimed were not caused solely by Buyer. Seller waives the application of the doctrine of comparative negligence.

13. Termination for Convenience. Buyer may immediately terminate all of any part of this Order or any releases issued pursuant to this Order for Buyer's convenience, at any time and for any or no reason by giving written notice to Seller. Upon such termination, Buyer shall pay to Seller the following amounts without duplication: (i) the Order price for all conforming Goods which have been completed in accordance with this Order and not previously paid for; and (ii) the actual direct costs of work in process and raw materials incurred by Seller in furnishing the Goods under this Order or any releases issued pursuant to this Order to the extent such costs are reasonable in amount and are properly allowable under generally accepted accounting principles, to the terminated portion of this Order or any releases issued pursuant to this Order; less, however, the reasonable value or cost (whichever is higher) of any Goods or materials subsequently used or sold by Seller with Buyer's written consent and the cost of any damaged or destroyed Goods or materials. Notwithstanding the foregoing, Buyer shall not be liable to pay for finished Goods, work in process or raw materials fabricated or processed by Seller in amounts in excess of those authorized in delivery releases, for any undelivered Goods which are Seller's standard stock or readily marketable, or for any finished Goods which remain undelivered after request by Buyer. Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment, rearrangement cost or rental, unamortized depreciation costs, and general and administrative burden charges arising from termination of this Order. Buyer or its agent shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any termination claim of Seller. Buyer shall have no obligation to Seller if Buyer terminates its purchase obligations under this Order or any releases because of default by Seller.

14. Default and Remedies. Seller shall be in default: (1) if Seller fails to perform any obligation within the time specified herein or any extension thereof or upon Buyer's demand if no time has been specified; or (2) if Seller is insolvent or fails to perform any of the other provisions of the Order, or so fails to make progress as to make Buyer reasonably apprehensive about Seller's ability or willingness to perform its obligations; and if in either of these two circumstances Seller does not cure such failure within a period of 5 days or such longer period as Buyer may authorize in writing after receipt of notice from Buyer specifying such failure. Upon such default, Buyer may by written notice of default to Seller (i) terminate the whole or any part of the Order; and (ii) procure alternative goods or services upon such terms as it shall deem appropriate. Seller shall continue performance of the Order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar supplies or services and other direct, incidental, and consequential damages. As an alternative remedy, and in lieu of termination for default, Buyer, at its sole discretion, may elect (x) to extend the delivery schedule; and/or (y) to waive other deficiencies in Seller's performance in which case an equitable reduction in the Order price shall be established by Buyer to compensate Buyer for its damages. If Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of the Order, Seller shall promptly notify Buyer in writing. (b) If any of the Goods ordered are found at any time to be defective in design, material or workmanship, or otherwise not in conformity with the requirements of the Order, Buyer, in addition to such other rights, remedies and choices as it may have under the Order or by law, at its option and sole discretion may: (i) reject and return such Goods at Seller's expense; or (ii) require Seller to inspect the Goods and remove and replace nonconforming Goods with Goods that conform to the Order. If Buyer elects option (ii) and Seller fails to promptly make the necessary inspection, removal and replacement, Buyer may at its option and Seller's cost, inspect and repair or replace the Goods. (c) Seller grants Buyer a security interest in the Goods to secure Seller's performance and return of any deposits, and grants Buyer an irrevocable power of attorney to execute and file appropriate financing statements evidencing. (d) Seller's continued holding of the Goods and Furnished Property (as defined below), after demand has been made by Buyer for delivery, will



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substantially impair the value of the Goods and Furnished Property, and Buyer shall be entitled to a court order for possession. (e) Buyer's remedies herein provided shall be cumulative and additional to any other or further remedies provided in law or equity, including, but not limited to, the recovery of direct, incidental and consequential damages and the entry of injunctive relief.

15. Property Furnished by Buyer and Its Customer. Unless otherwise agreed in writing, all tooling, equipment or material of every description furnished to Seller by Buyer or its Customer, paid or to be paid for by Buyer, and any replacement thereof, or any materials affixed or attached thereto ("Furnished Property"), shall be and remain the personal property of Buyer or its Customer. Furnished Property shall be plainly marked or otherwise adequately identified by Seller as the property of Buyer or its Customer and shall be safely stored separate and apart from Seller's property. Buyer may enter Seller's premises and inspect Furnished Property and all related records during normal business hours. Seller shall not substitute any of its own property for Furnished Property and shall not use such property except in filling the Orders. Furnished Property while in Seller's custody or control shall be held at Seller's risk and shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer or its Customer. All additions, attachments, accessories, and repairs to the Furnished Property shall be deemed part of the Furnished Property and shall become the exclusive property of Buyer. Seller shall use Furnished Property in a careful and safe manner and shall defend and indemnify Buyer from any claims, liabilities, expenses, and damages arising from or related to the installation use, storage, or repair of the Furnished Property. Furnished Property may be removed at any time by Buyer, at Buyer's written request, in which event Seller shall prepare Furnished Property for shipment and shall deliver it to Buyer or its Customer in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense. Seller shall not retain possession of Furnished Property or Required Tooling (as defined below) to secure payment of amounts owed or for any other reason, as a claim for damages is an adequate remedy.

16. Required Tooling. Seller, at its own expense, shall furnish, keep in good condition, and replace when necessary all tooling, jigs, dies, gages, fixtures, molds, and patterns ("Required Tooling") necessary for the production of the Goods. The cost of changes to Required Tooling necessary to make design and specification changes authorized by Buyer shall be paid for by Seller. Seller shall fully insure the Required Tooling for the replacement thereof and allow Buyer to inspect the Required Tooling during normal working hours. Seller grants Buyer an irrevocable option to take possession of and title to the Required Tooling that is special for the production of Goods upon payment to Seller of the book value thereof less any amounts the Buyer has previously paid to Seller for the cost of the Required Tooling; provided, however, that this option shall not apply if the Required Tooling is used to produce goods that are standard stock of Seller. Seller grants Buyer a security interest in Required Tooling to secure Buyer's rights in Required Tooling.

17. Compliance With Laws. (a) Seller shall provide to Buyer appropriate installation, operation and maintenance manuals, including all specific warnings or instructions, in English to maximize the useful life and performance of the Goods. Seller shall provide Material Safety Data Sheets as appropriate for the Goods. (b) Seller warrants that each chemical substance constituting or contained in the Goods sold is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et. seq.) as amended, and that the Goods are not hazardous under any state or federal law except as clearly stated on the shipping and storage containers. Seller shall defend and indemnify Buyer from any claim alleging improper or illegal dispositions of the Goods except for grossly negligent dispositions. (c) Seller warrants that the Goods shall be in compliance with applicable sections of the Federal Consumer Product Safety Act (15 U.S.C. Sec. 2051 et seq.) as amended, and the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) as amended, and lawful standards and regulations thereunder. (d) Seller warrants that the Goods shall be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, including Section 12(a) and Seller shall insert a certificate to that effect on all invoices submitted in connection with an Order. (e) Seller warrants that it shall comply with all applicable industry, federal, state or local laws, rules, regulations or ordinances and standards as to the Goods and otherwise in the performance of an Order. 18. Non-Assignment. Seller may not assign or subcontract any right or obligation under an Order without the prior written consent of Buyer.

19. Set-Off. Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer, or any of its affiliated companies, against any amount payable at any time by Buyer in connection with the Order.

20. Foreign Purchases. The following applies to all transactions involving imported Goods: (a) Seller warrants that all sales made hereunder are or will be made at not less than fair value under the United States Anti-Dumping Law (19 U.S.C. Sec. 160 et. seq.) and Seller will indemnify, defend and hold Buyer harmless from and against any costs or expenses (including but not limited to any anti-dumping duties which may be imposed) arising out of or in connection with any breach of this warranty. (b) Seller agrees that Buyer will not be a party to the importation of the Goods, that the transaction(s) represented by the Order will be consummated subsequent to importation, and that Seller will neither cause nor permit Buyer's name to be shown as "Importer of Record" on any customs declaration. (c) Upon request and where applicable, Seller shall provide Buyer Customs Form 7543 entitled "Certificate of Delivery" properly executed. Upon request, Seller shall furnish promptly all documents required for customs drawback purposes, properly completed in accordance with government regulations applicable thereto. Unless otherwise stated herein, all customs

Changes

We reserve the right, at our sole discretion, to modify or replace these Terms at any time.

If you have any questions about these Terms, please contact us at (832) 400-0247.