available under these Conditions should deferral of delivery be for a period
sole discretion, a request for deferral. Notwithstanding any other remedies
the Delivery Date provided this request is in writing and made at the latest 6
accepted in Buyer's absence.

Where the Goods to be supplied are new, Buyer may request a deferral of
appropriate.

Supplier will use reasonable efforts to supply Goods and Services within

Prices quoted for (a) standard Goods and Services remain valid for 30 days

An additional charge will be made for tests or trial runs carried out at

Prices quoted are exclusive of all applicable taxes, including but not

In these Conditions: “Supply” means any supply by Supplier to Buyer

1.1 Purchase Orders are subject to acceptance by Supplier.

2.2 Prices quoted are exclusive of all applicable taxes, including but not

2.3 Unless otherwise agreed in writing all shipments shall be made FCA

2.4 Unless otherwise agreed in writing all shipments shall be made FCA

3.1 All Goods are inspected by Supplier before supply to Buyer and tested

3.2 An additional charge will be made for tests or trial runs carried out at

4.1 Supplier will make reasonable efforts to supply Goods and Services within

4.2 Unless otherwise agreed in writing all shipments shall be made FCA

Supplier has not received the product to be returned, with the non-return

4.8 Supplier’s obligation to deliver the Goods or Product will be deemed

4.9 Where the Goods to be supplied are not new, or where Supplier is to return

4.10 Buyer shall ensure and warrant that it shall comply with any applicable

4.11 Supplier will allow such time as is reasonable for Buyer to inspect and

Any damaged Goods or Services are not in compliance with the Contract. Any damaged

delivery of the Goods will be deemed satisfied and Buyer will be responsible for the risk of loss of,

month of delay, to be paid by Buyer within 30 days of issuance of the corresponding invoice. Deferral of the Delivery Date shall not in any case be for longer than 3 months from the initial Delivery Date. Without prejudice to Condition 12 at the expiry of the 3 month period Supplier shall be entitled to make arrangements for storage of the Goods at the price of the Goods at the price of the Goods or to charge Buyer compensation amounting to at least 2% of the Purchase Price per
4.14 Services, installation and commissioning are not included in the purchase price for the Goods.

4.15 Buyer shall be responsible for de-installing, de-commissioning and surrender of any Product. Supplier shall notify Buyer following discovery of any such Product as unsuitable for the performance of Services

5. PAYMENT

5.1 All amounts are stated and payments are to be made to Supplier within 30 days of the date of invoice unless otherwise agreed in writing. If Buyer specifies a different currency, Supplier reserves the right to amend the quoted price by any amount to cover movements in the exchange rate between the relevant currency and Japanese yen arising between the time of quotation and acceptance of the Purchase Order.

5.2 Full payment without any deduction whatsoever must be made to Supplier within 30 days of the date of invoice unless otherwise agreed in writing. Invoices will normally be issued on the date of delivery of the Goods (or the date of delivery of Service) or completion of the Services. Any invoice disputes must be raised by Buyer within 15 days from date of invoice, or the invoice shall be considered to be accepted by Buyer. Time for payment shall be of the essence.

5.3 All Purchase Orders are subject to credit approval before shipment. If, in Supplier's judgement, Buyer's financial condition does not at any time justify payment terms as previously specified, Supplier may cancel or suspend any unfulfilled Contract. Supplier may require Buyer to furnish Supplier with a confirmed irrevocable letter of credit drawn on a bank acceptable to Supplier.

5.4 If any payment is overdue Supplier shall be entitled, without prejudice to any other right or remedy, to suspend all further deliveries to Buyer without notice and/or to charge interest on any overdue amount at the applicable statutory default interest rate, or if none, at the rate of 10% per annum compounding daily.

5.5 Any sum due by Buyer may be offset by Supplier against any sums due by Supplier to Buyer under any Contract

6. RETENTION OF TITLE

6.1 Subject to clause 6.2 Goods shall remain Supplier’s property until Buyer has made full and unconditional payment to Supplier of all sums due to it in respect of the Goods

6.2 Title to Product remains with Supplier unless it becomes the subject of Service Exchange in which case title passes to Supplier upon receipt of the Product at the Service Centre.

6.3 Any consignment stock, inventory or materials held at Buyer’s site and owned by Buyer for the use of Supplier in carrying out the Services shall be at the risk of the Buyer.

6.4 Until payment in full by Buyer, Goods shall be held by Buyer as bailee for Supplier and will be kept, unaltered and in good condition (at no cost to Supplier) separately from all other goods of Buyer or any third party in such a way that they remain readily identifiable as Supplier’s property.

6.5 Ownership shall not pass to Buyer until the following conditions have been met: (a) any goods are at Buyer’s premises, or on the occurrence of any termination event referred to in Condition 12 below, Supplier may, where permitted by law, and after giving notice to Buyer, enter upon any premises where Supplier reasonably believes Goods to be, or otherwise take action, to recover Goods.

6.6 From delivery and prior to full payment of the Purchase Price, Buyer shall maintain the Goods in satisfactory condition and keep them insured under an insurance policy and practice. Unless otherwise agreed in writing, insurance policies with insurers of good reputation, covering the Purchase Price.

7. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

7.1 Supplier shall retain all right, title and interest in and to, and possession of, any know-how, technical information, drawings, specifications or documents, ideas, concepts, methods, processes, techniques and inventions developed or created by or on behalf of Supplier and supplied by Supplier under any Contract. All such information shall be kept confidential by Buyer and shall not be disclosed to any third party unless and until the same is or becomes public knowledge nor shall any such information be used by Buyer for any purpose other than for the purpose of using any Goods supplied under the Contract without Supplier’s prior written consent.

7.2 Ownership is retained by Supplier of any patent, copyright, trade secret, design right or other intellectual property right in or relating to the Supply and Buyer shall acquire no rights in or over such intellectual property rights save as expressly set out herein including, but not limited to, any technical information, know-how, drawings and specifications supplied by Supplier or relating to the Supply.

7.3 Supplier’s trademarks and names and those of its associated companies shall not be used by Buyer otherwise than as applied by Supplier to Goods, Services or associated documentation.

8. WARRANTY

8.1 In respect of supply of Goods comprising equipment and related components, spares and parts, if a Supplier’s item requires to replace or repair at Supplier’s option, or to arrange repair or replacement by Supplier’s representative of, any Goods supplied to Buyer if a defect in materials or workmanship arises under conditions of normal and proper use and maintenance (fair wear and tear, and consumables excepted) provided that (i) the Goods were purchased and used for a purpose for which they were suitable; (ii) were operated and maintained in accordance with the operating instructions; (iii) unless otherwise agreed by Supplier, in writing, the defect occurs within 12 months from the date of shipment of the Goods; and (iv) Condition 8.3 is satisfied.

8.2 A repaired or replaced Goods (including Goods the subject of Service Exchange) will continue to be warranted for the unexpired period of the warranty referred to in Condition 8.1 A above.

8.3 In respect of supply of Services:

A. Supplier warrants that Services shall be performed in a workmanlike manner using reasonable skill and care and in accordance with Supplier’s service policy and practice. Unless otherwise agreed in writing, Supplier shall provide such Services, including repair and replacement, as are in Supplier’s reasonable opinion necessary in order to provide the Service.

B. If subsequent to the performance of Services failure or breakdown (fair wear and tear and consumables excepted) occurs: (a) during the warranty period notified to Buyer at the time the Services are performed (or if no such period is notified to Buyer, and unless otherwise agreed, within 90 days of the date that the Services are completed); (b) during normal usage; and (c) shown by Buyer to Supplier’s reasonable satisfaction (after a reasonable opportunity for Supplier to inspect the allegedly defective Services and to review documentation pertinent to the failure or breakdown) to have been caused by Supplier’s failure to perform the Services in accordance with this Condition: Supplier at its option, shall correct or re-perform the Services and/or provide any such Product as unsuitable for the performance of Services, at no cost to the serviced product or refund the cost of the Services; provided that: (i) the failure or breakdown was not caused, or contributed to, by Buyer’s act or omission, breach of contract, negligence, process reactions, excessive process build ups or accidents or by Buyer’s failure to observe Supplier’s recommended maintenance schedules and activities; and (ii) Condition 8.3 is satisfied. For the avoidance of doubt any components of a Product not replaced in the course of the Product being serviced will not be covered by the Service warranty on the Product.

C. Buyer is responsible for shipping Products to the designated Supplier service centre at Buyer’s risk and cost. Supplier may charge Buyer for the cost of shipping Product from a Supplier service centre back to Buyer if the Product is located in a country in which Supplier does not have a service centre. If Buyer requires a more expensive method of freight than Supplier’s standard shipping then the extra cost shall be paid by the Buyer.

D. Warranty under this Condition does not cover the costs of installation or removal of the Product which shall be at Buyer’s cost.

E. Except as expressly warranted above, Services are provided “as is” and Buyer accepts the entire results of the Services. Nothing stated in these Conditions implies that the operation of any serviced Product will be uninterrupted or error-free or that errors will be corrected. Other written or oral statements by Supplier, its representatives, or others do not constitute warranties of Supplier.

F. The following provisions must be satisfied in respect of all claims under Conditions 8.1 and 8.2: the deficiency or defect must first be notified promptly in writing to Supplier; b) the Goods or any Product must not have been repaired or modified by anyone other than Supplier or at Supplier’s direction; c) in the case of equipment and related components, spares and parts not of Supplier’s own manufacture, unless otherwise required by law, Supplier’s responsibility shall be limited to passing on to Buyer the benefit of any guarantee or warranty given to Supplier by the manufacturer of such Goods or part; d) in the case of a replacement, Buyer returns at its cost the defective Goods to Supplier within 10 days of delivery of the replacement Goods by Supplier; e) the defect does not arise from Buyer’s specification or instructions; and g) Buyer has paid the purchase price in full or paid in accordance with agreed payment schedule.

G. Supplier may satisfy Supplier’s liability under this Condition 8 by reducing the purchase price for the Goods or services, refunding the purchase price and retaining the Goods or issuing a credit note.

H. Except as expressly warranted above, all warranties, conditions and other terms implied by applicable laws and regulations are to the fullest extent permitted by law, excluded.

9. LIABILITY AND INDEMNIFICATION

9.1 In Condition 8, the following provisions set out the entire liability of Supplier (including any liability for the acts or omissions of its employees, agents, or subcontractors) to Buyer in respect of: a) any breach of these Conditions; or (b) any representation, statement or tortious act or omission, including negligence, arising under or in connection with these Conditions.

9.2 Nothing in these Conditions excludes or limits the liability of Supplier for: (a) death or personal injury caused by Supplier’s negligence; (b) fraudulent misrepresentation or (c) any other liability that cannot be excluded or limited by law.

9.3 Subject to Condition 9.4 Supplier shall be liable for physical damage to property to the extent that it results from breach of Contract or Supplier’s...
negligence in connection with the performance of the Contract, subject to an overall limit of the amount received by Supplier from Buyer under the Contract.

9.2 Buyer shall not be liable to Buyer for pure economic loss, loss of profit, loss of business, depletion of goodwill, loss of anticipated savings, injury to reputation, loss of revenue, interruption of production, any damages claimed to Buyer by third parties, or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

9.5 If Buyer fails to perform any of its obligations pursuant to these Conditions, Buyer shall pay Supplier all costs and expenses incurred by Supplier, including all attorney’s fees, in enforcing Supplier’s rights relating to such obligation, whether by formal proceedings or otherwise, in addition to any other remedy available to Supplier.

9.6 For the avoidance of a doubt save as provided in this clause Supplier shall have no liability in contract, tort, misrepresentation, restitution, or otherwise arising as a result of the performance or contemplated performance of the Contract.

9.7 Buyer will indemnify and keep indemnified Supplier from and against any costs, claims, demands, liabilities, damages or losses and all interest, penalties and legal and other professional costs and expenses arising out of or in connection with Buyer’s use of Goods or Buyer supplying Goods to any party who is not a party to these Conditions and the Goods’ subsequent use. This indemnity shall cover (but is not limited to) Supplier’s liability to third parties arising out of the use or sale of the Goods, except to the extent caused by Supplier’s negligence.

10. FORCE MAJEURE

10.1 Neither Buyer nor Supplier shall be liable for failures in performance, including delay or non-shipment, resulting from acts or events beyond its reasonable control.

10.2 In the event of such delay, the date of shipment or performance shall, at the request of Supplier, be deferred for a period equal to the time lost by reason of the delay and otherwise for a reasonable time.

11. CANCELLATION

11.1 Buyer may request a cancellation of the Contract to the extent it relates to the sale of Goods, provided such request is given in writing and at the latest six (6) weeks prior to the due date of shipment. Supplier may accept or refuse, at its sole discretion, a request for cancellation. Without prejudice to any other rights Supplier may have, upon cancellation Buyer shall pay Supplier compensation equivalent to 15% of the Purchase Price for standard Goods and 30% of the Purchase Price for non-standard Goods within thirty (30) days from issuance of the corresponding invoice.

11.2 Unless agreed otherwise in writing by Supplier, should Buyer cancel any Contract to the extent it relates to the sale of Services, Buyer shall pay to Supplier the costs of all work done and materials purchased or provided in connection with the Contract up to the time of cancellation, plus compensation for all costs and losses equivalent to 15% of the Purchase Price.

11.3 The parties agree that such sums payable to Supplier under this clause are a genuine pre-estimate of the costs and losses which Supplier would suffer from Buyer cancelling all or part of the Contract.

12. TERMINATION

12.1 If Buyer is subject to any act of bankruptcy or, being a company, has bankruptcy, civil rehabilitation, corporate reorganization, or special proceedings filed against it, or if a petition for bankruptcy, civil rehabilitation, corporate reorganization, or special liquidation proceedings is filed by Buyer or the liquidation or dissolution of Buyer is approved by its shareholders meeting, or if a similar event occurs under applicable insolvency laws (except for the purpose of reconstruction or amalgamation) then all sums due to Supplier under the Contract shall immediately become due and payable and Supplier may, notwithstanding any previous waiver, terminate the Contract forthwith by written notice.

12.2 Supplier may terminate the Contract with immediate effect in the event of a failure by Buyer to comply with any material provision of these Conditions if the failure continues for more than 14 days after Buyer has been given written notice of such failure.

12.3 If Buyer fails to collect or take delivery of the Goods within 3 months of the Delivery Date, Supplier shall be entitled, without prejudice to its other rights, to terminate all or part of the Contract and to dispose of the Goods, and to charge Buyer a compensation of 15% of the Purchase Price (standard goods) or 30% of the Purchase Price (non-standard goods), to be paid by Buyer within 30 days of issuance of the corresponding invoice. The parties agree that such sums payable to Supplier under this clause are a genuine pre-estimate of the costs and losses which Supplier would suffer from Buyer not taking delivery of the Goods.

12.4 Termination shall be without prejudice to any prior right of either party or arising under this Contract and surviving but not limited to clauses 6, 7 and 9 which by nature shall survive termination.

13. BUYER’S DUTIES AND RESPONSIBILITIES WHEN SERVICES ARE PROVIDED

13.1 All Products and environments (whether at Supplier’s or Buyer’s or Buyer’s customer’s premises) must be free from risks to health and safety (save to the extent notified to, and specifically accepted by, Supplier in writing). Supplier may decline, without incurring any liability, to service any Product if work in any environment in which, in Supplier’s opinion, the risks to health and safety are not managed satisfactorily by Buyer.

13.2 Buyer will permit Supplier prior to commencement of any Services to assess the condition of the Products and the working environment. Supplier shall be under no obligation to service any Product which, in Supplier’s reasonable opinion, has been used in a way or for a purpose for which it was not suitable, has not been operated and maintained in accordance with the manufacturer’s operating instructions, is too old or in too poor a condition to be serviced economically or is in any way unsafe.

Supplier shall have the right and Buyer shall provide all necessary access and cooperation to enable Supplier to carry out a risk assessment.

13.3 Supplier will provide Supplier with all available operating documentation, drawings, test certificates and maintenance inspection reports relating to any Product.

13.4 Buyer will indemnify and hold Supplier harmless against any loss, claim or damage suffered by Supplier or its employees, agents or sub-contractors suffered on the Buyer’s site or Buyer’s customer’s site except to the extent caused by Supplier’s own negligence.

14. MISCELLANEOUS

14.1 Buyer may neither assign nor transfer nor deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Supplier.

14.2 Save as expressly provided, no term or provision of these Conditions shall be enforceable by a third party (being any person other than the parties and their permitted successors and assigns).

14.3 No waiver by either party of any breach of any of these Conditions by the other party shall be deemed to constitute a waiver of any other breach nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy hereunder operate as a waiver thereof. A waiver given by a party hereunder shall be binding upon such party only if in writing and signed by such party. In the event that any term or provision of the Contract is declared null and void or unenforceable by any court of competent jurisdiction, the remainder of the provisions of these Conditions shall remain in full force and effect to the fullest extent permitted by applicable law.

14.4 Nothing contained in these Sale Conditions shall be deemed to require Supplier to take any action that would constitute, directly or indirectly, a violation of any laws of any applicable jurisdiction, and Supplier’s failure to take any such action shall not be deemed a breach hereunder.

14.5 All drawings, descriptive matter, technical specifications, capacities, performance rates, descriptions and other particulars given in respect of Goods (whether in catalogues or advertisements or accompanying or referred to in the Contract or elsewhere) are stated by Supplier in good faith based on Supplier’s experience as being correct within acceptable tolerances but are not binding in detail and do not form part of the Contract unless specifically stated to do so. Unless agreed otherwise in writing, it is Buyer’s responsibility to ensure that Goods are suitable and suitable for Buyer’s purposes.

14.6 Buyer hereby acknowledges that relevant safety and training literature related to the Goods and Services will be supplied by Supplier free of charge and may be photocopied by Buyer as required. Buyer shall be fully responsible for the implementation of the contents of all safety and training literature provided by Supplier. Buyer shall ensure persons who use, maintain or otherwise handle Goods or receive Services receive adequate safety and training literature.

14.7 As Edwards is part of Atlas Copco, Buyer shall comply at all times with Atlas Copco’s Business Code of Conduct which can be found at https://www.atanatascopgroup.com/en/sustainability/our-sustainability-approach/our-business-code-of-practice and with all applicable laws, statutes and regulations, in particular those related to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act as amended from time to time (the “Requirements”), and Buyer shall have in place and shall maintain at all times its own policies and procedures to ensure compliance with the Requirements by Buyer’s employees, officers, representatives, subcontractors and customers and shall enforce them where appropriate. Supplier shall be entitled to terminate the Contract immediately upon written notice to Buyer if Buyer or any person employed by or acting on behalf of Buyer is suspected to have committed or intends to commit a breach of the Requirements. If Buyer suspects or knows that there is any breach or intended breach of the Requirements by Buyer or any person employed by it or acting on its behalf, Buyer will notify Supplier immediately.

14.8 Buyer shall have the option to (1) provide for the collection, treatment, recycling or disposal of the Goods or (2) to request Supplier in writing to do so at Buyer’s cost. In the event Buyer does not exercise its option, it shall be deemed to have chosen option (1)
15. GOVERNING LAW AND DISPUTE RESOLUTION
15.1 The Contract and any claim arising out of or in connection with it shall be governed by and construed in accordance with Japanese law.
15.2 Buyer and Supplier agree that the Tokyo District Court shall have the exclusive jurisdiction to settle any disputes, which may arise in connection with the Contract.
15.3 Supplier shall have the option to bring suit before the Courts of the domicile of Buyer when the claim is for or related to payments due from Buyer.