



## **BOGE Compressed Air Systems GmbH & Co. KG**

Otto-Boge-Str. 1-7 • 33739 Bielefeld  
Telephone +49 5206 601-0 • Telefax +49 5206 601-200

Commercial Register: Bielefeld HRA 16039 • P.L.C.: BOGE Compressed Air Systems Verwaltungs GmbH  
Commercial Register: Bielefeld HRB 41192 • Managing Directors: Steven Brightwell, Olaf Hoppe, Michael Rommelmann

**IMPORTANT NOTICE:** THIS IS A TRANSLATION OF THE GERMAN VERSION OF THE BOGE GENERAL TERMS AND CONDITIONS OF BUSINESS. IT MIRRORS THE SEMANTIC CONCEPTS OF THE ORIGINAL TEXT, WHICH, DUE TO BASIC DIFFERENCES IN BOTH LANGUAGES, IMPLIES A LACK OF READABILITY OF THE ENGLISH VERSION. THE GERMAN VERSION OF THESE TERMS AND CONDITIONS SHALL BE AUTHORITATIVE FOR THE INTERPRETATION.

### **General terms and conditions of business**

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**A. Scope of terms and conditions of business of BOGE,  
Place of Jurisdiction, Applicable Law, Dispute Resolution**

**A.1.**

These General terms and conditions of business Part A - N shall always and exclusively apply to the contractual relationship between BOGE and its business partners. Part A and B apply if Boge act as Buyer and its business partner as Seller. Part A and C apply if Boge act as Provider of Service and its business partner as Recipient of Service or customer.

In supplement to the above General terms and conditions of business Part A and C the following, insofar as relevant, shall apply

- for consignment deliveries,
- for assembly work,
- for repair work,
- for inspection agreements,
- for maintenance agreements,
- for full service agreements,
- for try and buy agreements,
- for compressed air contracting,
- for compressed air delivery at a fixed price,
- for damage agreements
- to contracts subject to export control
- and for sales partner relationships

the respective special terms and conditions part D - N of BOGE produced in each case for this purpose.

The terms and conditions of business of the business partners of BOGE shall not be applicable, even if they were not rejected explicitly in any individual case.

**A.2.**

The place of jurisdiction shall be Bielefeld. German law shall apply exclusively to the exclusion of the UN Sales Convention and other uniform law.

The European Commission provides a platform for dispute resolution in case of online business. This is available at the following link: Online Dispute Resolution

Note: <http://ec.europa.eu/consumers/odr/>.

## **B. Terms and conditions for purchase orders**

### **B.1.**

The terms and conditions of payment below shall apply in supplement to the statutory provisions and the above mentioned Scope of terms and conditions of business of BOGE.

#### **B.1.01.**

In the event of invoice receipt up to the 10th of a month, BOGE shall pay on the 20th of the month, claiming 3% discount or on the 10th of the following month net.

#### **B.1.02.**

In the event of invoice receipt from the 11th to 20th of a month, BOGE shall pay on the 30th of the month, claiming 3% discount or on the 20th of the following month net.

#### **B.1.03.**

In the event of invoice receipt from the 21st to the last day of a month, BOGE shall pay on the 10th of the month, claiming 3% discount or on the 30th of the following month net.

### **B.2.**

In the event of goods in deliveries of the contractual partner arriving prematurely, the value date of the invoice shall be fixed as the delivery date contractually agreed with BOGE. The value date shall be regarded as the date of invoice receipt.

### **B.3.**

In the event of defective goods or service or partial delivery by the contractual partner in contravention of the agreement, the value date of the invoice shall be set as the date of freedom from defects or complete delivery. The value date shall be regarded as the date of invoice receipt.

### **B.4.**

Our contractual partner must provide a guarantee and damages to the statutory extent and for the statutory duration.

### **B.5.**

When purchasing energy services, products or equipment, energy efficiency and improved environmental performance is a key decision factor for BOGE.

This means that energy services, products or equipment are always preferred over other similar factors, provided that their energy efficiency and environmental impact can be better assessed within their life cycle.

## C. General terms and conditions of service

### C.1. Order confirmation / minimum order amounts

#### C.1.01

The written order confirmation of BOGE in combination, if applicable with the bill of quantities produced by BOGE, shall be authoritative for the content of the respect agreement. Oral arrangements in connection with the conclusion of agreements made with employees of BOGE who are not authorised representatives, shall likewise require written confirmation by BOGE in order to be valid.

#### C.1.02

Information on characteristics relating to products and services of BOGE is only to be assigned to BOGE if this information

- derives from BOGE or was provided expressly on behalf of BOGE or
- was expressly authorised by BOGE or
- are public statements and BOGE knew of this information for four weeks or should have been aware of it and failed to distance itself there from.

Authorised dealers and customers of BOGE, who act as resellers, shall not be regarded as agents of BOGE in the meaning of § 434 (1) BGB [German Civil Code]. A sufficient correction of information on characteristics in the meaning of § 434 (1) BGB can at all events occur on the homepage of BOGE under the address [www.boge.de](http://www.boge.de).

#### C.1.03

Information on characteristics attributable to BOGE containing measurable values are to be understood with a tolerance of  $\pm 3\%$ .

Exceeding the tolerance of  $\pm 3\%$  shall not automatically lead to assumption of a defect.

#### C.1.04

- a.] BOGE shall only accept orders if minimum order amounts are reached in view of the considerable handling expense for each individual order.
- b.] The minimum order amounts shall be 100.00 € plus VAT, but in online sales via the Internet only 50.00 € plus VAT.
- c.] The minimum order amounts shall not apply to brochures and marketing articles from the BOGE shop.
- d.] With regard to BOGE shop orders, no minimum order quantities shall apply to any end customers, either. The term "end customers" means companies using the contract products for their own commercial requirements (no resellers).

## C. 2. Permanent rights / copyright

#### C.2.01

The designs, models, installation plans, arrangement- and other drawings, original documents, etc produced by BOGE shall remain the intellectual property of BOGE, even if the customer has remunerated the work. The right to exploit these objects and the intellectual work embodied in them shall remain exclusively reserved for BOGE.

#### C.2.02

BOGE shall be entitled to attach its own company symbols and trademarks. The customer shall be prohibited from removing such signs attached by BOGE.

#### C.2.03

The customer shall be responsible vis-à-vis BOGE for ensuring that the patterns, designs, plans, texts, trademarks etc transferred by it may be rightfully used.

#### C.2.04

BOGE shall have the sole copyright to the control software and other software supplied with the systems. Only the simple licence to the software shall be transferred, namely, in the form that the software may be used solely to operate the individual contractual system.

#### C.2.05

Duplication and other use of the software shall be unlawful.

#### C.2.06

Decompiling of the software is not permitted. Insofar as the customer requires interface information, BOGE shall disclose the interfaces of the software upon request. Only if BOGE does not comply with this request within an appropriate period, shall the customer be permitted for the purpose of interface analysis to decompile the software sections required for this analysis. A period of two weeks shall be regarded as appropriate.

#### C.2.07

With regard to the use and licensing of so-called third-party software, the licensing provisions of the respective manufacturer of the software shall apply exclusively, compliance with which shall be ensured by the customer on his own responsibility.

#### C.2.08 Rights to data

The customer shall acknowledge that certain operating data shall be generated by BOGE in connection with the use of a product. Operating data shall be all data and information generated and produced by the products. BOGE shall have access to the operating data via the "Connect" monitoring system. Primarily this shall only be technical data which BOGE requires to ensure smooth operation and monitoring of the functionality of the product as well as in the event of problems for rapid and sustainable troubleshooting and quality assurance as well as improvement of the product.

The customer may also use the functions of Connect itself insofar as it orders this either when acquiring the product or later from BOGE. A monthly usage fee shall be charged for the use of the functionalities made possible by Connect. In principle, the retrofitting of a product from BOGE with Connect may also take place against payment of an increased set-up fee. BOGE shall be entitled to also equip such products with Connect for which the customer decides against using the functionalities, in particular in order to keep the expenditure associated with a technical retrofitting of the product low.

The operating data shall be automatically transmitted to BOGE by the respective product without any costs or additional effort arising for the customer as a result.

BOGE shall be exclusively entitled in the relationship with the customer to use the operating data subject to data protection law or other mandatory statutory provisions at its own discretion and unlimited in terms of time, space and content, in particular to process and edit these in any form, to duplicate, to utilize and to hand over to third parties for these purposes and to transfer corresponding rights of use thereto to third parties.

The customer shall further acknowledge that, insofar as it concerns personal data, these may be used in anonymized form for commercial purposes by BOGE. In this form data may in particular also be transmitted to third parties and may be included in statistics.

### **C. 3 Despatch / bearing of risk**

#### C.3.01

The nature of despatch shall be at the discretion of BOGE unless a particular despatch mode is stipulated.

#### C.3.02

Once the goods have left the works or warehouse of BOGE, the customer shall assume all risk. Insurance of the consignment shall occur on request of the customer and at its expense.

#### C.3.03

The risk shall pass according to agreed Incoterm with the transfer of the goods to the transporter, with notification of the readiness to despatch or provision on the agreed delivery date, to the customer.

### **C.4 Delivery time / periods in the case of repairs and similar circumstances**

#### C.4.01

Any delivery periods agreed shall apply ex works, provided nothing else was expressly agreed.

Such delivery periods shall begin at the time provided for in the order confirmation, at the earliest though once the documents, approvals, retrievals and despatch addresses to be obtained by the customer are

available, all details of the order have been clarified and the customer has made the down payments or securities agreed.

If a delivery period has been agreed, this shall be extended by the period which the customer is in arrears with the documents, approvals, despatch address - communications, down payments or securities to be provided by it plus 2 working days.

If a delivery date has been agreed, this shall be extended by the days which the customer is in arrears with the documents, approvals, despatch address - communications, down payments or securities to be provided by it plus 2 working days.

A corresponding postponement of delivery dates or extension of delivery times shall also occur if the conditions for services to be rendered by BOGE, which the customer itself or a third party must render, are not available on time.

#### C.4.02

Should permissions to be obtained by BOGE which are a precondition for a lawful delivery be delayed or fail to be granted at all, for reasons for which BOGE does not bear responsibility, BOGE shall not be liable in this regard.

#### C.4.03

Should changes to the order be desired by the customer after order confirmation, the delivery period shall only begin upon confirmation of the change by BOGE. An agreed delivery date shall be correspondingly postponed.

#### C.4.04

The performance period shall be extended appropriately upon occurrence of unforeseen obstacles, which BOGE cannot avert despite reasonable care according to the circumstances of the case, such as a total or partial failure of subcontractors, for which BOGE is not responsible.

C.4.05

In cases in which, in the context of repairs, warranty work, subsequent deliveries and similar matters recourse cannot be had to standard components, because in compliance with the agreement, a customized design is involved or because special components were installed, the corresponding performance time to be accorded to BOGE shall be extended by the time required for procurement of the corresponding components in the event of order in good time.

C.4.06

A claim to damages, instead of performance or to damages due to delay, shall be excluded in the case of Section C.4.04 if BOGE immediately informed the customer of the performance hindrances.

C.4.07

The same shall apply to fixed date transactions.

C.4.08

Any damages to be paid by BOGE on account of delay shall be limited to the contractually typical damage, caused at least by gross negligence.

### **C.5. Partial deliveries / higher and reduced quantities**

C.5.01

In the case of deliveries of uncountable goods BOGE shall be entitled to supply up to 10% more or less without this being regarded as a breach of obligation. Partial deliveries shall also be permissible if the customer does not reject partial deliveries or the customer's interests are not adversely affected, no additional fee will be charged and a partial delivery is usable for the customer.

C.5.02

Should BOGE make use of the right to partial delivery or delivery of reduced or increased quantities, the customer may not engage in retention of payments for this reason.

### **C.6. Prices**

C.6.01

The prices shall apply if nothing else was agreed, ex works or ex warehouse, excluding packaging.

C.6.02

If packaging is involved, BOGE shall package in accordance with the existing regulations, and proceed according to § 4 VerpackV [Packaging Ordinance].

C.6.03

The prices exclude the respective VAT applicable, with the same applying to costs.

C.6.04

Should the cost factors change after the order confirmation, especially the prices for raw or auxiliary materials and wages and transport costs, BOGE may carry out a corresponding modification of the prices should a period greater than four months lie between the order confirmation and delivery.



#### C.6.05

The BOGE hourly rates, surcharges, etc shall apply to every normal travel-, waiting and working hour on the basis of the particular standard wage weekly working time.

Travel time shall be invoiced without overtime surcharges.

Travelling times with motor vehicles by contrast shall be regarded as working time with overtime surcharges. BOGE shall invoice the allowance (domestic refreshments and accommodation) for every travel and working day. Should assembly or other customer service be continued after a weekend, an allowance or travel costs are to be paid at the discretion of BOGE provided nothing else has been expressly agreed.

Holiday surcharges and allowance shall be levied on local holidays.

Travel costs shall be invoiced as follows:

- Air travel: economy class
- Rail travel: 1st class
- Local traffic: taxi and if necessary porter
- Company car: kilometre flat-rate pursuant to our currently valid charging rates.

#### C.6.06

Travel time and travel expenses for the return journey can only be entered after completion on the employee certificates or time sheets.

#### C.6.07

The rates charged by BOGE as given under C.6.05 shall be based on the currently valid standard wage, salary and working time rates. In the event that the latter are changed, BOGE shall reserve the right to a corresponding change of charging rates. On request, the currently valid charging rates shall be communicated to the customer.

#### C.6.08

Should an assembly, start-up, maintenance, repair or other work be delayed for reasons which are not under the control of BOGE, the customer must bear all costs arising there from, especially waiting times and additional travel costs and expenses caused by the delay of the employees deployed by BOGE and subcontractors commissioned by BOGE.

#### C.6.09

The legal consequence mentioned in Section C.6.08 shall occur if the customer is responsible for the delay grounds.

### **C.7. Terms of payment**

#### C.7.01

The provisions of the VAT Act shall apply to down payments.

#### C.7.02

Provided nothing else has been agreed, payments shall be due immediately.

#### C.7.03

Payments to be made to BOGE shall be due at the latest ten days after the date of invoice. Upon overrunning this date, the financial debtor shall be in default of payment.

#### C.7.04

In the event of customer payment default, BOGE may demand default interest of 9 percentage point above the current applicable base rate. This shall not affect demonstration and assertion of further damage.

#### C.7.05

The place of performance for payments shall be the registered office of BOGE.

#### C.7.06

The customer may only offset claims that are undisputed or have been established as legally binding.



**C.7.07**

Except in the cases of C.7.06 the customer shall have no right of retention. The rights pursuant to § 320 BGB shall in addition remain preserved, for as long as and to the extent that BOGE has not complied with its warranty obligations.

**C.7.08**

If BOGE accepts cheques in payment, this shall only occur on account of performance.

**C.7.09**

Payment by bill of exchange shall be ruled out; bills of exchange shall not be accepted by BOGE in payment. Should BOGE accept bills of payment due to a special agreement to the contrary, this shall only occur on account of performance.

**C.7.10**

Bills of exchange accepted as an exception must be discountable. Discount expenses and other costs shall be at the expense of the customer and shall be due immediately upon invoicing without deductions.

**C.7.11**

In the event of settlement exceptionally agreed by means of a bill of exchange, BOGE may demand the immediate payment of all outstanding, not yet due, otherwise uncontested delivery claims without this having to be agreed separately if invoiced discount expenses are not paid within eight days, bills of exchange received are not discounted by our bank, discounted bills of exchange are charged back or a bill of exchange is not redeemed.

The same shall apply if a cheque of the customer is not redeemed or if the latter gets into payment arrears with an instalment in the event of payment by instalment being agreed.

**C.7.12**

If after conclusion of the agreement – should a declaration of intent of the customer still be required for conclusion of the agreement, after the last declaration of intent of BOGE directed to the conclusion of the agreement – a significant deterioration in the financial circumstances of the customer occurs, for example if bill of exchange or cheque protests occur, BOGE may demand down payment or provision of security for all services and deliveries from agreements deriving from the same legal relationship (§ 273 BGB) at the discretion of BOGE. Should the customer not comply with this demand, BOGE may withdraw from the agreements mentioned or after setting a period of notice demand damages instead of payment, i.e. 25% of the unperformed order amount without special demonstration, unless the customer proves lesser damages. Only if unusually high damage exists in individual cases may BOGE, as an exception, demand compensation of damage going beyond the flat rate.

**C.8. Inspection and notification of defects obligation****C.8.01**

Deliveries by BOGE, including drawings, implementation plans, planning proposals, etc, must be checked by the customer immediately on transfer regarding their usability and conformity with regulations.

**C.8.02**

Obvious defects must be claimed in writing immediately vis-à-vis BOGE, at the latest, however, within six days of arrival at the destination including precise statement of the specific objections.

**C.8.03**

In the event of direct delivery to third parties the period for notification of defects shall be extended to 14 days.

**C.8.04**

The customer must also provide written notice of concealed defects immediately upon discovery.

**C.8.05**

For BOGE sales partners with written sales partner agreements the BOGE sales partner terms shall additionally apply as to the modalities of defect notification.

#### C.8.06

Should the customer fail to comply with these obligations as set forth under C.8.01 to C.8.05, any warranty claims shall be ruled out. This shall not apply to cases where damage from injury to life, physical injury or health impairment is based on breach of duty due to intent or negligence by BOGE or a legal representative or agent of BOGE. It shall not apply either if other damage is based on intent or gross negligence.

### **C.9. Warranty**

The warranty restrictions below shall not apply where damage from injury to life, physical injury or health impairment is based on breach of duty due to intent or negligence by BOGE or one of our legal representatives or agents. They shall also not apply if other damage is based on intent or gross negligence of BOGE or an agent.

#### C.9.01

The warranty period shall amount to 12 months. All liability and warranty shall be ruled out for insignificant breaches of duty and inconsiderable defects. In the event that the customer is entitled to subsequent specific performance, BOGE shall decide whether the subsequent specific performance occurs via the elimination of the defect or supply of an item free of defects.

#### C.9.02

Work on items delivered by BOGE or other services rendered by BOGE shall only be regarded as work to eliminate defects or subsequent improvement

- insofar as the defectiveness has been expressly acknowledged by BOGE
- or insofar as notifications of defects have been proven
- and insofar as these proven notifications of defects are justified.

Without these conditions such work must be regarded as special performance.

#### C.9.03

Moreover, subsequent improvements or substitute deliveries by BOGE shall also be rendered as special performance if they do not occur expressly in acknowledgement of a legal obligation.

#### C.9.04

Insofar as the warranty period is suspended or interrupted by work or substitute deliveries carried out by BOGE, such a suspension or interruption shall only cover the functional unit affected by the substitute delivery or subsequent improvement.

#### C.9.05

The customer must provide BOGE with the time and opportunity necessary to carry out the subsequent improvements and substitute deliveries owed as warranty. Only in urgent cases of the endangering of operational safety and to avert disproportionately great damage, in which case BOGE must be notified immediately, or if BOGE is in default with the elimination of a defect, shall the customer be entitled to eliminate the defect itself or have it eliminated by third parties and to demand compensation of the costs required from BOGE.

#### C.9.06

If subsequent performance to be carried out at discretion has not led to the elimination of the defect after a reasonable number of attempts to be judged in the individual case, the customer shall be entitled to withdraw from the agreement. At least three subsequent performance attempts shall be reasonable. The number of reasonable subsequent performance attempts after which a customer is entitled to withdraw shall in each case depend on the particular functional unit of the contractual object. Irrespective of whether the same functional unit of the contractual object is always affected, the customer shall be entitled to withdraw if the number of individual defects renders adherence to the agreement unreasonable for the customer.

#### C.9.07

If BOGE has refused subsequent performance despite a corresponding right to subsequent performance of the customer, the customer shall be entitled to immediate withdrawal.

**C.9.08**

The same shall apply if BOGE has not carried out subsequent performance to which BOGE is entitled within an appropriate period of grace to be set by the customer.

**C.9.09**

The customer shall only be entitled to abatement of the price (diminution) if BOGE consents to this.

**C.9.10**

All further claims of the customer shall be ruled out.

**C.9.11**

No warranty shall be accepted for damage for which BOGE is not responsible. This shall for example include damage arising for the following reasons: unsuitable or inappropriate use, defective assembly or start-up by the customer or third parties, natural wear, defective or negligent treatment, unsuitable operating materials or replacement materials, defective building work, unsuitable building ground, electromagnetic, electrochemical or electrical influences provided they are not attributable to the fault of BOGE.

**C.9.12**

BOGE shall not assume any warranty for components provided by the customer.

The customer alone shall be responsible for the suitability and quality of such components insofar as nothing else has been expressly agreed.

**C.9.13**

Non-observance of the operating and maintenance instructions by the customer if it is the cause of damage, shall lead to exemption from liability and warranty for BOGE.

**C.9.14**

In the event of non-observance of the operating and maintenance instructions by the customer, it shall be assumed that damage arising is attributable to this. In this case the customer shall bear the burden of showing and proving the contrary.

**C.9.15**

In the cases where systems or goods supplied by BOGE are set up or operated at a place outside the country in which the customer has its headquarters, the customer has to bear the additional costs arising out of the fact that BOGE has to carry out possible warranty works beyond the borders of that country. This could inter alia be transport costs, travel costs or other expenses. This shall not apply if a place of delivery or place of destination was agreed on between BOGE and the customer.

**C.9.16**

BOGE distributors are obliged to carry out technical support towards their customers. This includes carrying out the warranty works arising out of the business relationship between the distributor and its customers such as supplementary performance in the case of defects. If it turns out that Boge is liable for such defects towards the distributor, BOGE will reimburse the distributor accordingly.

**C.9.17**

For BOGE sales partners with written sales partner agreements the BOGE sales partner terms shall additionally apply, taking the warranty into account.

**C.10. Damages**

The liability restrictions in these terms of business shall not apply to damage from injury to life, physical injury or impairment of health and not to damage caused with intent or gross negligence by BOGE, a legal representative or agent.

**C.10.01**

Should BOGE be obligated to compensate damages in other cases, BOGE shall only be liable, in accordance with the provisions below, for the immediate damage to the delivery item itself.

C.10.02

Liability for consequential damage from breach of duty, including in the context of subsequent performance obligation, shall be ruled out.

C.10.03

The same shall apply to damage from tort.

C.10.04

In extension of the above provisions, BOGE shall be liable for damage exceeding the damage caused to the delivery item itself only in cases of intent and gross negligence, and in the framework of the Product Liability Act, as well as in the absence of expressly warranted properties, if this assurance had been precisely intended to safeguard the customer against damage not arising on the delivery item itself.

C.10.05

BOGE shall only be liable for the contractually typical, reasonably foreseeable damage unless a case of intent or gross negligence exists.

**C.11. Call orders**

C.11.01

Should call orders not be retrieved within four weeks of the agreed call period, BOGE shall be entitled to demand payment.

C.11.02

The same shall apply to call orders without a specially agreed call period if since the receipt of the notification from BOGE of despatch readiness four months have passed without retrieval.

**C.12. Warehousing / acceptance delay**

C.12.01

Should a fixed period of warehousing of finished goods at BOGE have exceptionally been agreed on or if due to acceptance delay warehousing becomes necessary, BOGE shall not be liable for damage that occurs despite observance of reasonable care.

C.12.02

BOGE shall not be obligated to insure stored goods either.

C.12.03

In the event of acceptance delay BOGE shall be entitled to place the goods in storage at the risk of and for the account of the customer at a commercial warehouse.

C.12.04

In the event of warehousing at BOGE, it may invoice 0.5% of the invoice amount per month, at least, however, € 30 and a further € 25 monthly from every second full cubic metre of goods.

C.12.05

The two sections above shall apply in the event that despatch is delayed for more than two weeks beyond the notified readiness for despatch.

C.12.06

Should the customer not take delivery of the goods ordered despite the setting of a deadline, BOGE shall be entitled irrespective of demonstration of the actual damage, to demand 25% of the agreed price as flat rate compensation unless the customer proves lesser damage.

### **C.13 Reservation of title**

#### **C.13.01**

All deliveries of BOGE shall occur subject to reservation of title.

#### **C.13.02**

This reservation shall apply in addition to the extension below until payment of all claims from the business connection with the customer until complete release from contingent liabilities which BOGE entered into in the interest of the customer and which are connected with the delivery.

#### **C.13.03**

Pledging of the items delivered shall not be permissible.

#### **C.13.04**

BOGE shall be entitled in the event of good cause to reclaim its goods subject to retention of title, especially in the case of default of payment subject to offsetting of realisation proceeds. This reclaiming shall not represent a withdrawal from the agreement

#### **C.13.05**

If the reclaimed property can be otherwise resold by BOGE in the normal course of business, the customer shall owe 10% of the goods invoice value as repossession costs without further demonstration. Should sale as new in the normal course of business not be possible, the customer shall owe a further 30% of the goods' invoice value for value loss without further demonstration. The customer shall in each case retain the right to demonstrate a lower percentage.

#### **C.13.06**

BOGE shall reserve the right to assert any further, additional damage.

#### **C.13.07**

The handling and processing of goods delivered by BOGE shall always occur on behalf of BOGE, so that the goods remain property of BOGE to the exclusion of the consequences of § 950 BGB in all handling and processing conditions and also as finished goods. Should the goods subject to reservation of title be processed together with other items likewise supplied to the exclusion of the legal consequences of § 950 BGB, BOGE shall at least acquire co-title to the new object in proportion to the invoice value of the goods from BOGE to the invoice value of the other processed goods.

#### **C.13.08**

The customer hereby assigns all claims from the resale, processing, installation and other realisation of our goods in advance to BOGE. Insofar as objects are included in the products sold, processed or installed by the customer which are not the property of the customer and for which other suppliers have likewise stipulated retention of title with sales clause and assignment in advance, the assignment shall occur to the amount of the co-title share of BOGE, corresponding to the fraction of the claim, otherwise to the full amount.

#### **C.13.09**

The direct debit authorisation remaining to the customer despite assignment shall lapse through revocation permissible at any time.

#### **C.13.10**

Should the value of the securities to which BOGE is entitled exceed the claim of BOGE against the customer in the case of goods deliveries by 50%, in the case of other performance by 20%, BOGE shall be obligated on the request of the latter to release securities to a corresponding extent at the discretion of BOGE.

### **C.14 Place of performance**

#### **C.14.01**

The place of performance for services to be rendered by BOGE shall always be the BOGE works.

C.14.02

The place of performance for deliveries shall be the works or warehouse of BOGE, especially if BOGE undertakes the transport itself.

**C.15. Definitions**

C.15.01

All headings in the BOGE terms and conditions of business shall only serve to facilitate legibility and have no influence on the significance and interpretation of the individual provisions.

C.15.02

Any declarations communicated in text form (such as fax or email) are to be regarded as written declarations of intention and knowledge in the meaning of the BOGE terms and conditions of business.

C.15.03

Delivery dates shall designate a time, whether a particular day or a calendar week, etc, at which a delivery must occur.

Delivery periods shall designate a period within which a delivery must occur.

Delivery time shall be the generic term for delivery dates and delivery periods.



## **D. Special terms and conditions for Consignment agreements**

### **D.1. Subject matter of the agreement**

The subject matter of the agreement shall be the delivery of goods as consignment goods, whether on the basis of a framework agreement on conditional purchase agreements in consignment transactions or outside of such a framework agreement.

### **D.2. Consignment**

#### **D.2.01**

The consignor shall purchase the consignment goods from BOGE on the suspensive condition that not until the 10th calendar day of the succeeding the month in which the consignment time expires either

- a) BOGE has otherwise disposed in writing of the consignment goods vis-à-vis the consignor or
- b) the consignor has again provided the consignment goods carriage-free to the distribution centre BOGE.

In the event that no consignment time was agreed, the consignment time shall expire at the latest six months after receipt of the notification by BOGE regarding the readiness for collection of the goods from the BOGE factory.

#### **D.2.02**

Consignment goods shall be provided by BOGE ex works, excluding packaging.

#### **D.2.03**

Should this prove necessary, BOGE may otherwise dispose of the goods vis-à-vis the consignor provided the latter has not already demonstrably sold the goods at the time of the notification.

#### **D.2.04**

Any reconditioning work required on consignment goods returned to BOGE shall be charged to the consignor at prime cost.

### **D.3. Care of goods**

#### **D.3.01**

The consignor shall undertake to store the goods spatially separated from goods belonging to it or third parties and marked in such a manner that the goods can at all times be easily identified as consignment goods. The consignor shall undertake to store the goods carefully and insure them against theft, fire, water and elementary loss. In addition, the consignor shall undertake to take out a machine breakage insurance policy.

#### **D.3.02**

The consignor may neither disassemble the systems supplied, nor disassemble their parts or accessories or change them in any way. The same shall apply correspondingly to the control software.

### **D.4. Sales**

#### **D.4.01**

The consignor shall undertake to report the sale of consignment goods immediately.

#### **D.4.02**

The consignor shall not be authorised to sell individual portions of the goods.



**D.4.03**

In the event of the removal of the goods from the consignment warehouse and in the event of sale or removal of individual portions contrary to D.4.02, the sale of the system shall be simulated and the total price of the system immediately fall due.

**D.4.04**

After report of the sale, BOGE shall issue a fixed invoice. The purchase price shall be the list price valid on the day of the fixed invoice, minus any discounts granted to the consignor.

**D.4.05**

In the event of a sale of the consignment goods not immediately reported, the claim from this fixed invoice shall be due from the date of the sale.

**D.4.06**

In the case of Section D.4.05 the consignor must pay default interest pursuant to Section C.7.04 of the general terms and conditions of service from the day following the due date.

**D.4.07**

The consignor shall be obligated to facilitate BOGE access to the goods on request during normal business hours at any time in order to permit BOGE to take stock.

**D.5. General terms and conditions of business**

Otherwise the General terms and conditions of business Part A and C of BOGE shall additionally apply to the contractual relationship of the parties

**E. Special terms and conditions for assembly work and commissioning** BOGE Compressed Air Systems-GTC • 06/2021

**E.1. Subject matter of the agreement**

E.1.01

The subject matter of the agreement shall be assembly orders or start-ups as work agreements issued by BOGE in the meaning of the German Civil Code. The assembly may also include the start-up of the system.

E.1.02

The installer may only carry out work going beyond the order accepted by BOGE pursuant to C.1.01, C.1.02 and E.1.01 of our terms and conditions of business with the approval of BOGE.

E.1.03

The client shall receive a copy of assembly report.

**E.2. Implementation**

E.2.01

BOGE shall reserve the right to select the installer, as well as whether the deployment is arranged by the BOGE works, a BOGE branch or a customer service station of BOGE.

E.2.02

The installer must be requested in good time by the client providing precise location and time information, so that the work can be taken up immediately.

**E.3. Calculation**

The assembly shall be calculated pursuant to the currently valid invoicing rates for customer service and assembly work according to effort unless a flat rate price has been agreed expressly and in writing.

**E.4. Duration of work**

E.4.01

All statements made by BOGE as to the duration of the work are only approximately authoritative, since the beginning and duration of the work can be postponed by unforeseen circumstances, lying outside of our responsibility.

E.4.02

The work shall be carried out as rapidly as possible.

**E.5. Foreign assembly**

In the event of assembly work abroad, all risks typical for the respective country shall be borne by the client, provided nothing else was expressly agreed.

## **E.6. Equipment and tools**

### **E.6.01**

Should the installations and tools placed by BOGE on the assembly site be damaged or lost without fault on the part of BOGE, without the reasons for this being in the sphere of influence or responsibility of BOGE, the client shall be obligated to replace this damage.

### **E.6.02**

The legal consequence deriving from Section E.6.01 shall also take effect in the event of damage or loss during transport if the reasons for loss or damage are outside of the sphere of responsibility or influence of BOGE.

### **E.6.03**

The legal consequences deriving from Sections E.6.01 and E.6.02 shall also take effect if the client is responsible for the loss or damage.

### **E.6.04**

Damage attributable to normal wear shall not be considered

## **E.7. Acceptance**

### **E.7.01**

The client shall be obligated to confirm the correctness of the entries on the acceptance report and order certificate and the correct implementation of the work.

### **E.7.02**

Objections must be noted on this occasion in writing on the acceptance report.

### **E.7.03**

In addition, in the event of extensive objections these must be explained in another document.

### **E.7.04**

The contractual item shall be regarded as accepted if

- the customer puts it into operation above and beyond a trial run;
- the customer or third parties independently make changes to the contractual item or
- the customer fails to grant BOGE the possibility of carrying out the acceptance within ten days of notification of the completion.

## **E.8. Labour law regulations**

### **E.8.01**

The assembly staff of BOGE must comply with the Working Time Ordinance (AZG). This shall in particular apply to overtime.

### **E.8.02**

In the event of the assembly staff staying on the premises of the client, the latter shall be obligated to make sure that the AZG is also complied with.

### **E.8.03**

In the context of E.8.02 the client shall be responsible for legal consequences from infringements of the AZG. The client must indemnify BOGE from claims and penalties based on such infringements.

### **E.8.04**

In the event of a shift duration of more than ten hours per day, the client must confirm to the assembly staff of BOGE that the work carried out was necessary to uphold production pursuant to § 14 AZG.

### **E.8.05**

Unless not otherwise specified above, the implementation provisions of the federal collective wage agreement for special working conditions of assembly workers in the iron, metal and electrical industries shall be authoritative.

## **E.9. General terms and conditions of business**

Otherwise the General terms and conditions of business Part A and C of BOGE shall additionally apply to the contractual relationship of the parties.

## **F. Special terms and conditions for repairs**

### **F.1. Subject matter of the agreement**

The subject matter of the agreement shall be the repair orders issued as work agreements by BOGE in the meaning of the German Civil Code.

### **F.2. Cost estimate**

#### **F.2.01**

The client shall be provided with a cost estimate on request.

#### **F.2.02**

The costs incurred to determine the scope of the repair work shall be borne by the client.

#### **F.2.03**

The client must also bear the costs mentioned in Section F.2.02 if it refrains from issuing an order for the repair.

### **F.3. Order expansion**

#### **F.3.01**

Should previously unrecognised, important additional defects emerge during the implementation of repair work, these shall be communicated immediately to the customer. The latter may either agree to the corresponding expansion of the repair order or cancel the repair order.

#### **F.3.02**

Should the client cancel the repair order pursuant to Section F.3.01, it must bear the costs incurred up to this point.

### **F.4. Repair objects sent in**

We shall not be liable for damage due to fire, water or theft to repair objects sent in to us.

### **F.5. General terms and conditions of business**

Otherwise the General terms and conditions of business Part A and C of BOGE shall apply to the contractual relationship of the parties.

## **G. Special terms and conditions for inspection agreements**

### **G.1. Subject matter of the agreement**

#### G.1.01

The subject of the agreement shall be the inspection of the technical systems listed in the inspection certificate to the extent described in detail below.

The details of the scope of service shall emerge in each case from the inspection certificate.

#### G.1.02

BOGE may, insofar as the services are not rendered by BOGE itself, make use of suitable experts. In the context of the provisions below the designation BOGE shall also stand for third parties commissioned with the contractual fulfilment by BOGE.

At all events, solely original BOGE spare parts shall be used.

#### G.1.03

All equipment listed in the inspection certificate shall be subjected automatically to an “operational safety check” on the occasion of each inspection.

In this connection all checks, tests and trial runs shall be carried out provided for regarding the systems covered pursuant to the corresponding operational and maintenance instructions of BOGE at the particular time or for the number of hours of operation.

### **G.2. Scope of service**

#### G.2.01

The fee owed to BOGE pursuant to the inspection certificate shall include travel costs and expenses per inspection.

#### G.2.02

The inspections shall be carried out spontaneously by BOGE in a three-monthly cycle.

After every inspection the client shall receive a report on the condition of the system.

#### G.2.03

Small necessary repairs shall be carried out immediately at the request of the customer. The invoice for this shall be issued against proof of material and hours, on the basis of the valid prices of BOGE or of the company entrusted with the inspection by BOGE.

#### G.2.04

If it is determined during an inspection that pursuant to the operating- and/or maintenance instructions of the system that maintenance work is due, the invoice for the maintenance shall be issued according to effort.

#### G.2.05

This inspection agreement shall not absolve the customer from the maintenance and daily checks required pursuant to the operational and maintenance instructions and relevant accident prevention regulations.

The duty of the customer to keep the maintenance book shall be unaffected.

#### G.2.06

As long as the maintenance agreement is in force, the customer may, if it is no longer in possession of the operating and maintenance instructions relevant to its systems, request a new copy from BOGE against payment of the primary costs.

#### G.2.07

Non-observance of the operating and maintenance instructions by the customer if it is the cause of damage, shall lead to exemption from liability for BOGE.

### **G.3. Contractual duration / price changes / termination**

#### **G.3.01**

The duration of the agreement shall be 24 months. It shall be renewed in each case by a further 12 months provided the agreement is not terminated by registered letter by one of the two contracting parties at least three months before expiry.

#### **G.3.02**

If wage, material or other costs change, BOGE shall be entitled to corresponding adjustment of the flat rate. Such an adjustment can only be carried out in each case at the beginning of a contractual year.

#### **G.3.03**

The customer may issue an extraordinary termination of the agreement in the event of an increase in the flat rate within one month of announcement of the increase. Otherwise the agreement may be terminated after the first contractual period of 24 months with a period of notice of three months to the end of a contractual year.

### **G.4. General terms and conditions of business**

Otherwise the General terms and conditions of business Part A and C of BOGE shall apply to the contractual relationship of the parties.



## H. Special terms and conditions for maintenance agreements

### H.1. Subject matter of the agreement

#### H.1.01

The subject of the agreement shall be the maintenance of the technical systems listed in the inspection certificate to the extent described in detail below.

The details of the scope of service shall emerge in each case from the maintenance certificate.

#### H.1.02

BOGE may, insofar as the services are not rendered by BOGE itself, make use of suitable experts. In the provisions below the designation BOGE shall also stand for third parties commissioned with the contractual fulfilment by BOGE.

In any event, solely original BOGE spare parts shall be used.

### H.2. Scope of service

#### H.2.01

The scope of service shall include all checks, tests, maintenance work and trial runs provided for regarding the systems covered pursuant to the corresponding operational and maintenance instructions of BOGE at the particular time or for the number of hours of operation.

#### H.2.02

As long as the maintenance agreement is running the customer may, if it is no longer in possession of the operating and maintenance instructions relevant for its systems, request a new copy from BOGE against payment of the primary costs.

#### H.2.03

Non-observance of the operating and maintenance instructions by the customer if it is the cause of damage, shall lead to exemption from liability for BOGE.

#### H.2.04

After every maintenance BOGE shall produce a report which is handed over to the client.

### H.3. Material, repairs, costs

#### H.3.01

The material required shall be charged according to actual expense on the basis of the valid prices of BOGE or of the company entrusted with the maintenance by BOGE.

#### H.3.02

Small necessary repairs shall be carried out immediately at the request of the customer. The invoice for these shall be issued against proof of material and hours, on the basis of the valid prices of BOGE or of the company entrusted with the inspection by BOGE.

#### H.3.03

Should a maintenance flat rate not have been agreed, the maintenance work carried out shall be charged according to expense at the currently valid prices of BOGE or the company entrusted with maintenance by BOGE.

#### **H.4. Obligations and cooperation of the customer**

##### H.4.01

The client shall be obligated to carry out the checks lying between the maintenance intervals pursuant to the BOGE maintenance instructions. This shall include, but are not limited to, the daily oil and pressure checks. The duty of the customer to keep the maintenance book shall be unaffected.

##### H.4.02

The client shall inform BOGE of the desired maintenance date approximately two weeks in advance, if a particular date has not already been agreed.

Should it not be possible on the part of the client for the work to be carried out on the date planned, BOGE must be informed of this at least eight days in advance. The decisive time for observance of the period of notice shall be receipt of the notification by BOGE.

Should carrying out the work on the agreed date not be possible on the part of BOGE, BOGE shall likewise inform the client of this eight days in advance. The decisive time for observance of the period of notice shall be despatch of the notification by BOGE.

##### H.4.03

It should be possible to carry out the maintenance during normal working hours. Should overtime become necessary to carry out the work at the wish of the client, BOGE shall invoice this separately.

##### H.4.04

Should the operating conditions of the system change significantly after conclusion of the maintenance agreement, the client must inform BOGE of this in writing.

##### H.4.05

If necessary for the conduct of the work in the context of this agreement, the client must provide assistants and auxiliary equipment, such as lifting equipment, free of charge.

##### H.4.06

The agreement shall not absolve the customer from the care to be observed by it regarding the systems.

#### **H.5. Contractual duration / price changes / termination**

##### H.5.01

The duration of the agreement shall be 24 months. It shall be renewed in each case by a further 12 months provided the agreement is not terminated by registered letter by one of the two contracting parties at least three months before expiry.

##### H.5.02

If wage, material or other costs change, BOGE shall be entitled to corresponding adjustment of the flat rate. Such an adjustment can only be carried out in each case at the beginning of a contractual year.

##### H.5.03

The customer may issue an extraordinary termination of the agreement in the event of an increase in the flat rate according to H.5.03 within one month of announcement of the increase.

#### **H.6. General terms and conditions of business**

Otherwise the General terms and conditions of business Part A and C of BOGE shall apply to the contractual relationship of the parties.

## I. Special terms and conditions for full service agreements

### I.1. Subject matter of the agreement

#### I.1.01

The subject matter of the agreement shall be the maintenance and care of the technical systems listed in the full service certificate. BOGE shall be responsible in the context described below in detail without charging separate costs for the preservation of a condition that is as trouble-free as possible of the systems mentioned in the full service certificate.

The details of the scope of service shall emerge in each case from the full service certificate.

#### I.1.02

BOGE may, insofar as the services are not rendered by BOGE itself, make use of suitable experts. The designation BOGE shall also stand for third parties commissioned with the contractual fulfilment by BOGE in the provisions below.

At all events, solely original BOGE spare parts shall be used.

### I.2. Scope of service

#### I.2.01

Within the framework of the agreement BOGE shall carry out the inspections, maintenance, repairs arising and replacement of worn-out parts provided for in the respective operating and maintenance instructions of BOGE.

#### I.2.02

As long as the full service agreement is running the customer may, if it is no longer in possession of the operating and maintenance instructions relevant for its systems, request a new copy from BOGE against payment of the primary costs.

#### I.2.03

Non-observance of the operating and maintenance instructions by the customer if it is the cause of damage, shall lead to exemption from liability for BOGE. Such an exclusion of liability shall also mean that the repairs which have become necessary due to such damage are charged to the customer separately according to the conditions of the maintenance agreement (Section H).

#### I.2.04

After every maintenance activity, BOGE shall produce a report, which is to be transmitted to the client.

### I.3. Restrictions of service obligation

The service obligation of BOGE shall be subject to the following restrictions:

#### I.3.01

BOGE shall not be responsible for repairs in the event of damage based on the interaction of the contractual items mentioned under Section I.1 with other systems, machines or accessories that are defective.

#### I.3.02

In the event of defects based on interaction of the contractual items mentioned under Section I.1 with systems, machines or accessories which were not delivered by BOGE or not for this purpose, BOGE shall only be responsible for repair covered by the flat rate if the suitability of such interaction was previously expressly declared by BOGE.

#### I.3.03

A repair covered by the flat rate in the meaning of Section I.1 shall not exist either in the event of defects caused by external influences (fire, water, shock, blow, fall, etc), operating errors, fluctuations in the power supply or persons not commissioned by the client.

#### I.3.04

A repair obligation covered by the flat rate shall not exist if either the customer infringed a communication obligation incumbent on it according to Section I.13.01 or if a repair would have been unnecessary in the event of this obligation being observed. If the repair is more expensive on account of the above-mentioned responsibility infringement than it would have been in the event of observance of the communication obligation, the customer must reimburse BOGE the difference.

#### I.3.05

Transport costs of the client shall only be assumed by BOGE if the contractual item was brought to its special workshop on the express instructions of BOGE.

#### I.3.06

The agreement shall not absolve the customer from the care to be observed by it regarding the systems. The responsibility of the customer shall in cover, but not be limited to, carrying out the daily oil and pressure checks.

### **I.4. Place and time for full service work**

#### I.4.01

Service and repair work shall be carried out at the client's premises or – if necessary – at the special workshop of BOGE.

BOGE shall render the services due according to Sections I.1 and I.2 after prior notification within as short a time as is possible taking into account its staff capacity, other similar work and the procurement time for spare parts.

#### I.4.02

In the event of failure of the systems on working days BOGE shall in general begin with the elimination of the damage within 24 hours of the damage report and carry out the repairs. This shall exclude, subject to special arrangements, Sundays and public holidays.

#### I.4.03

BOGE shall contact the client about two weeks before necessary maintenance work or an inspection in order to arrange the day of maintenance. Should it not be possible on the part of the client for the work to be carried out on the date planned, BOGE must be informed of this at least eight days in advance. The decisive time for observance of the period of notice shall be receipt of the notification by BOGE. Should the client wish the service work to be carried out outside of normal working hours, the additional costs shall be invoiced separately.

### **I.5 Replacement of parts**

The exchange of parts or complete modules shall not be invoiced separately. Replaced parts shall become the property of BOGE; the client shall not be entitled to any reimbursement claim for them. Whether a repair or exchange of parts is carried out shall be at the discretion of BOGE. The same shall apply to the question whether spare parts or used exchanged parts are used.

## **I.6. Other repairs**

The client may also make use of BOGE for repairs not due under Sections I.1 and I.2.

These services shall be invoiced separately according to the conditions of a maintenance agreement (Section H).

## **I.7. Pricing**

### **I.7.01**

The flat rate price shall be the quid pro quo for the maintenance readiness owed by BOGE and must be paid irrespective of whether the other services due according to this agreement actually prove necessary.

### **I.7.02**

Should the agreement be invoiced on the basis of hours of operation, the customer must pay the difference from the operating-hour rate stipulated in the agreement if the basic running time stipulated for the particular system is exceeded within a 12-month contractual period. Should the stipulated basic running time per machine be undershot by more than 2000 hours, the difference from the operating-hour rate stipulated in the agreement shall be deducted from the flat rate due and offset against the payment for the following year.

## **I.8. Waiting times**

Waiting times before implementation of announced work, if the client is responsible, as well as any travel costs that become necessary, must in addition be reimbursed.

## **I.9. Due date and default**

The flat rate price shall be due annually in advance on the day and month stipulated in the agreement as the beginning of the agreement. In the event of default in which the client becomes involved regarding its above-mentioned payment obligation, also without dunning letter, after overrunning the above-mentioned payment date, the client shall owe BOGE default interest pursuant..

## **I.10. Liability restriction**

Notwithstanding the liability restriction arising from the general terms and conditions of service, BOGE shall not be reliable for faults which are attributable to

- changes to the operating conditions laid down in the full service certificate without the explicit approval of BOGE
- conduct for which the customer, its staff or third parties are responsible

## **I.11. Severability**

This full service agreement shall be based on the legal model of the work agreement. However, this shall apply subject to the proviso that acceptance of the services to be rendered by BOGE is not the condition for the due date of the flat rate price.

## **I.12. Contractual / duration / termination**

### **I.12.01**

The duration of the full service agreement shall be 24 months. It shall be renewed in each case for a further 12 months if the agreement is not terminated by one of the two contracting parties at least three months before expiry by registered letter, but can then be terminated by either party with a period of notice of six months to the end of the month.

### **I.12.02**

If wage, material or other costs change, BOGE shall be entitled to corresponding adjustment of the flat rate. Such an adjustment can only be carried out in each case at the beginning of a contractual year.

### **I.12.03**

The customer may issue an extraordinary termination of the agreement in the event of an increase in the flat rate within one month of announcement of the increase.

## **I.13. Obligations and cooperation of the customer**

### **I.13.01**

The client must inform BOGE immediately of the following occurrences:

- increased noise level or vibrations
- leakiness and escape of liquids
- failure of measuring instruments
- change in thermal behaviour
- change in environmental conditions

### **I.13.02**

The client shall grant the staff of BOGE and of subcontracting companies it commissions free access to the systems and provide assistance such as lifting equipment, electricity, water, lubricants and supplies, etc.

### **I.13.03**

The customer shall be obligated to keep a complete maintenance book for every system included in the agreement, on the basis of which the daily operating hours and daily oil and pressure checks are evident.

## **I.14. General terms and conditions of business**

The general terms and conditions of business Part A and C of BOGE shall apply in supplement to the above provisions.

## **J. Special terms and conditions for try and buy agreements**

### **J.1. Subject matter of the agreement**

The subject matter of the agreement shall be BOGE-issued orders in which BOGE supplies the customer with a compressor system. The customer may use the system initially free of charge for a month; following this for a further two months (60 days) in return for a licence fee and only then decide whether it wishes to buy the system.

All the inspection and notification of defect obligations shall be incumbent on the customer upon receipt of the system which it would have if it took on the system as buyer.

### **J.2. Time calculation**

#### J.2.01

One month in the meaning of the try and buy agreement shall be 30 days.

#### J.2.02

The calculation of the try and buy time period shall begin with the day of start-up as first day. The maximum duration of the try and buy period shall be 90 days equivalent to three months.

### **J.3. Costs of trial installation**

#### J.3.01

BOGE shall assume the costs of delivery, installation and start-up of the system. The customer shall pay for any consumables, auxiliary materials and the power costs of system operation.

#### J.3.02

Should the customer declare up to the 31st day in writing to BOGE that it no longer wishes to have the system, BOGE shall take the system back at its own expense.

#### J.3.03

Should BOGE not receive a declaration pursuant to Section J.3.02 by the 31st day, the system shall remain another 59 days, a total that is of three months, at the customer's premises. For the duration of the remaining stay until the end of the try and buy period the customer shall pay the stipulated licence fee.

### **J.4. Purchase decision**

#### J.4.01

At the latest on the day after expiry of the try and buy period the customer shall declare to BOGE in writing whether it will buy the system.

#### J.4.02

Should the customer make no purchase declaration, BOGE shall be entitled to collect the system immediately. A collection obligation shall only exist if the customer insists on collection. For the period from the expiry of the try and buy period until collection of the system by BOGE the customer shall pay an increased licence fee amounting to one-fortieth of the fee according to Section J.3.03.

#### J.4.03

Should the customer make a purchase declaration, the purchase agreement shall come into being in accordance with the BOGE General terms and conditions of service.



J.4.04

The purchase price shall be due immediately without deductions. The payments due from the customer pursuant to Sections J.3.03 and J.4.02 shall be applied to the purchase price.

**J.5. Duties of care**

Upon receipt of the system up until collection by BOGE or purchase by the customer, the customer must treat the system with care and subject to observance of the operating regulations of BOGE and shall be liable to BOGE for all damage arising through at least ordinary negligence which the system suffers while in its custody.

**J.6. General terms and conditions of business**

Otherwise the General terms and conditions of business Part A and C of BOGE shall apply to the contractual relationship of the parties.

## **K. Special terms for compressed air contracting**

### **K.1. Subject matter of the agreement**

The subject matter of the agreement shall be orders issued to BOGE for the delivery of compressed air at m3 prices. Provided nothing else has been expressly stipulated, this shall involve unprocessed compressed air.

### **K.2. Scope of service**

Provided nothing else has been stipulated, the system with which the compressed air to be supplied is produced shall be installed, operated and maintained by BOGE. The customer shall be entitled to the stipulated compressed air quality and quantity. With what means this is achieved shall be the concern of BOGE.

### **K.3. Customer services**

#### **K.3.01**

The customer must create the following conditions according to the standards of BOGE for the operation of the systems installed for compressed air generation at its own expense and on its own responsibility:

- a) A secure, air-conditioned, dry installation room of appropriate size with a sufficiently load-bearing ceiling and horizontal floor
- b) The pipes required for the compressed air removal and supply and removal of cooling water
- c) The power and data line cabling required for the power supply and system control (especially remote maintenance)
- d) Cooling water of the required quality

#### **K.3.02**

The customer shall ensure that the requirements set by BOGE regarding points K.3.01 a) to d) are complied with.

### **K.4. Measuring point and price calculation**

#### **K.4.01**

BOGE shall install a gauge (measuring point) that measures the compressed air in relation to the intake condition and the expanded condition, pursuant to PN2CPTC2 between the compressed air generation system and the compressed air pipe system of the customer.

This measured value shall be decisive for the compressed air to be paid for by the customer.

#### **K.4.02**

The customer shall pay the price agreed per m3 of compressed air determined at the measuring point pursuant to K.4.01 to BOGE.

### **K.5. Customer's right to choose**

The customer shall decide on concluding the agreement whether it obtains the compressed air together with the power required to generate the compressed air from BOGE or whether it provides and pays for the power itself. It shall be bound to this decision for the duration of the agreement.

## **K.6. Invoicing and due date**

### **K.6.01**

BOGE shall invoice the compressed air supplied to the customer monthly on a monthly basis for the preceding month.

### **K.6.02**

The customer shall pay within the agreed payment dates. Should the customer get into default with payment, BOGE shall be entitled after a payment reminder with a period of notice of four days to retain all further compressed air deliveries until all claims of BOGE vis-à-vis the customer have been settled.

## **K.7. Delivery quantities**

### **K.7.01**

The customer must take delivery of the agreed minimum quantity of compressed air.

### **K.7.02**

Should it not take delivery of this quantity, it shall nevertheless be obligated to pay the price for the difference between the quantity not taken delivery of and the agreed minimum quantity. In this case BOGE shall invoice this difference quantity at the earliest together with the 12th invoice of the corresponding twelve-monthly contractual since the beginning of the agreement.

### **K.7.03**

If binding fixed quantities have been agreed, these quantities shall be regarded as minimum and maximum quantities. This shall mean that the customer has no claim to additional delivery without a new agreement being reached.

## **K.8. Escalation clause**

### **K.8.01**

Should the customer have decided on supply with compressed air including power and the primary costs of BOGE for the supply of power change after conclusion of this agreement through reintroduction, abolition, increase or lowering of taxes, levies or charges raised in accordance with the power turnover (VAT, energy tax, etc), BOGE may correspondingly increase the adjustment of the prices for compressed air.

### **K.8.02**

Should the collectively-agreed wages of IG-Metall for installers and service technicians change, BOGE may correspondingly increase the adjustment of prices for compressed air in each case at the beginning of a twelve-month contractual period since the beginning of the agreement.

## **K.9. Further obligations of the customer**

### **K.9.01**

The client must inform BOGE immediately of the following occurrences:

- increased noise level or vibrations
- leakiness and escape of liquids
- failure of measuring instruments
- change in thermal behaviour
- change in environmental conditions

### **K.9.02**

The customer shall immediately inform BOGE in text form if a deterioration of the compressed air quality or a reduction in the delivery quantity occurs.

**K.9.03**

The customer shall pledge that BOGE - this shall also apply to agents of BOGE - receive unhindered access to the compressed air system at all times. Similarly the customer must ensure that the data lines used by BOGE for the remote maintenance and control are always available.

**K.10. Exclusive rights of BOGE**

**K.10.01**

The customer shall acknowledge that the sole proprietor of all items introduced in the context of this agreement by BOGE (compressed air – system and accessories) is BOGE, that this also applies to the corresponding software and that customers are not entitled to any rights to any of these things.

**K.10.02**

The customer shall – apart from emergencies – not touch the items introduced by BOGE, let alone carry out any changes, unless it has been authorised by BOGE in individual cases or in general.

**K.11. Compressed air supply**

**K.11.01**

The agreement on the supply of compressed air shall be based on the legal contractual type of the purchase agreement. Compressed air shall also be regarded for the purposes of this agreement as an item to which – subject to these provisions – the legal provisions of the purchase agreement are applied.

**K.11.02**

If exceptionally the supply of processed compressed air was agreed, without one of the quality classes according to DIN ISO 8573-1 having been agreed, BOGE shall supply compressed air of average quality. Compressed air of average quality shall exist if the compressed air is of the quality according to class 3 or 4 of the six compressed air qualities according to DIN ISO 8573-1.

**K.12. General terms and conditions of business**

Otherwise the General terms and conditions of business Part A and C of BOGE shall apply to the contractual relationship of the parties.

## **L. Special terms and conditions for compressed air supplies at a monthly fixed price**

### **L.1. Subject matter of the agreement**

The subject matter of the agreement shall be orders issued to BOGE for the delivery of compressed air at a monthly fixed price. Provided nothing else has been expressly stipulated, this shall involve unprocessed compressed air.

### **L.2. Scope of service**

BOGE shall supply the customer with compressed air in the agreed quantities and quality. For this purpose a compressor system shall be installed at the customer which is capable of generating corresponding compressed air. Provided nothing else has been stipulated, the system with which the compressed air to be supplied is produced shall be installed, operated and maintained by BOGE. The customer shall be entitled to the stipulated compressed air quality and quantity. With what means this is achieved shall be the concern of BOGE.

### **L.3. Customer services**

#### **L.3.01**

The customer must create the following conditions according to the standards of BOGE for the operation of the systems installed for compressed air generation at its own expense and on its own responsibility:

- e) A secure, air-conditioned, dry installation room of appropriate size with a sufficiently load-bearing ceiling and horizontal floor
- f) The pipes required for the compressed air removal and supply and removal of cooling water
- g) The cabling required for the power supply and system control (especially remote maintenance)
- h) Cooling water of the required quality

#### **L.3.02**

The customer shall ensure that the requirements set by BOGE regarding points L.3.01 a) to d) are complied with.

### **L.4. Price calculation**

#### **L.4.01**

The customer shall owe BOGE the agreed monthly fixed price.

#### **L.4.02**

The agreed fixed price shall apply irrespective of how much compressed air the customer actually takes delivery.

### **L.5. Invoicing and due date**

#### **L.5.01**

BOGE shall invoice monthly for the preceding month.

#### **L.5.02**

The customer shall pay within the agreed payment dates. Should the customer get into default with payment, BOGE shall be entitled after a payment reminder and corresponding warning with a period of notice of four days to retain all further compressed air deliveries until all claims of BOGE vis-à-vis the customer have been settled.

## **L.6. Further obligations of the customer**

### L.6.01

The client must inform BOGE immediately of the following occurrences:

- increased noise level or vibrations
- leakiness and escape of liquids
- failure of measuring instruments
- change in thermal behaviour
- change in environmental conditions

### L.6.02

The customer shall immediately inform BOGE in text form if a deterioration of the compressed air quality or a reduction in the delivery quantity occurs.

### L.6.03

The customer shall pledge that BOGE - this shall also apply to agents of BOGE - receives unhindered access to the compressed air system at all times. Similarly the customer must ensure that the data lines used by BOGE for the remote maintenance and control are always available.

## **L.7. Exclusive rights of BOGE**

### L.7.01

The customer shall acknowledge that the sole proprietor of all items introduced in the context of this agreement by BOGE (compressed air – system and accessories) is BOGE, that this also applies to the corresponding software and that the customer is not entitled to any rights to any of these things.

### L.7.02

The customer shall – apart from emergencies – not touch the items introduced by BOGE, let alone carry out any changes unless it has been authorised by BOGE in individual cases or in general.

## **L. 8. Compressed air supply**

### L.8.01

The agreement on the supply of compressed air at a fixed price – subject to these provisions - shall be based on the legal contractual type of the purchase agreement. Compressed air shall also be regarded for the purposes of this agreement as an item to which – subject to these provisions – the legal provisions of the purchase agreement are applied.

### L.8.02

If exceptionally the supply of processed compressed air was agreed, without one of the quality classes according to DIN ISO 8573-1 having been agreed, BOGE shall supply compressed air of average quality. Compressed air of average quality shall exist if the compressed air is of the quality according to class 3 or 4 of the six compressed air qualities according to DIN ISO 8573-1.

## **L.9. General terms and conditions of business**

Otherwise the General terms and conditions of business Part A and C of BOGE shall apply to the contractual relationship of the parties.

## **M. Special terms and conditions for damage agreements**

### **M.1. Subject matter of the agreement**

The subject matter of this agreement shall be a standby obligation entered into by BOGE vis-à-vis the customer. In the event faults in the compressed air systems listed in the maintenance certificate for the corresponding agreement BOGE shall take immediate measures to restore the fault-free compressed air supply at the client's premises.

### **M.2. Scope of service**

The scope of service and terms, insofar as they are not regulated here, are derived from the service description.

### **M.3. Flat rate price and individual prices**

#### **M.3.01**

As quid pro quo for the damage readiness guarantee granted by BOGE, the customer shall pay the agreed annual flat rate in advance.

#### **M.3.02**

Should the cost factors change after conclusion of the agreement, especially the prices for raw or auxiliary materials, wages and transport costs, BOGE may carry out a corresponding adjustment of the flat rate for the succeeding contractual year. In this case the customer shall be entitled to terminate the agreement after corresponding announcement to the expiry of the current contractual year in text form.

#### **M.3.03**

The individual services rendered by BOGE in the framework of this agreement shall be invoiced separately.

### **M.4. Individual services**

The special terms and conditions for repair work shall apply to individual repair services rendered in the context of this agreement.

(Part F. of the general terms and conditions of business of BOGE)

### **M.5. Contractual duration / termination**

#### **M.5.01**

The agreement shall have an initial term of five years.

#### **M.5.02**

The agreement shall be renewed in each case by a further 24 months provided it is not terminated in text form by one contractual party at least three months before expiry.

### **M.6. General terms and conditions of business**

Otherwise, the General terms and conditions of business Part A and C of BOGE shall apply to the contractual relationship of the parties.



## **N. Special terms and conditions for Export Control**

### **– PLEASE NOTE! Important information!**

#### **N.1. Scope of application**

The regulations below additionally apply for those cases in which BOGE provides cross-border services. These can include any of the types of services mentioned in Sections C. to M.

#### **N.2. Various regulations and prohibitions**

##### **N.2.1**

The shipment / export of goods (products, software, technology, services, technical support, etc) in the performance of the contract is subject to European and German foreign trade legislation and the supply may be subject to restrictions and prohibitions under export control laws.

##### **N.2.2**

Furthermore, European and national embargo regulations are in place against certain countries, natural persons and legal entities as well as associations or other parties which prohibit supply or are subject to obtaining permits.

##### **N.2.3**

Goods made in the US, goods with a percentage of 10% or 25% of US goods or goods from companies controlled from the US may in addition be subject to the abovementioned laws and provisions of US (re-) export control laws. This also applies to products which are manufactured under US licences.

##### **N.2.4**

The contractual partner (buyer, ordering party or recipient) shall not sell, export, re-export, supply, pass on or make otherwise accessible the supplied goods, either directly or indirectly to persons, companies, institutions, organisations or in countries if this violates applicable (re-) export control regulations, which may include:

- The German export control regulations (AWG (German Foreign Trade Law), AWV (German Foreign Trade Regulations) and the German export list) in particular the obligation to prevent the goods from being used for civil nuclear applications in the countries mentioned in Section 5 d I AWV.
- The European export control regulations, currently Council Regulation (EC) No. 428/2009 (dual use regulation), in particular the obligation to prevent direct or indirect end use in a country subject to arms embargo in the sense of Art, 4 II of EC Regulation No. 428/2009, a country stated on country list K or in the People's Republic of China.
- US (re-) export regulations.

The aforementioned prohibitions do not only apply insofar as the contractual partner has obtained the relevant permits required and submits these promptly without being requested to do so to BOGE.

#### **N.3. Duty of the contractual partner to provide information and pass on these obligations**

The contractual partner (buyer, ordering party or recipient) shall, in the event of a resale / further transmission of the supplied goods, inform its buyers of the regulations in export control law and pass on the duties arising therefrom.

#### **N.4. Duty of the contractual partner to obtain information**

The contractual partner (buyer, ordering party or recipient) must independently obtain information regarding the relevant regulations and is personally responsible for adhering to them. The contractual partner shall be bound by the legal regulations in their respective valid versions stated in N.2, which are subject to continuous amendments and modifications.

#### **N.5. Final destination of documents**

BOGE may request the contractual partner (buyer, ordering party or recipient) for the so-called final destination documents or end use documents in order to prove the final destination and the intended use.

#### **N.6. Liability in the event of violation**

The contractual partner (buyer, ordering party or recipient) is liable to BOGE for damages which BOGE suffers by the contractual partner (buyer, ordering party or recipient) culpably violating the valid export regulations to the full extent.

#### **N.7. Contractual provisos / risk of implementation**

##### **N.7.1**

An offer aiming to conclude a contract falling within the applicability of this clause N. and the implementation of such a contract are subject to the provision

- that any required permissions for export and/or transfer are granted by the responsible authorities and
- that there are no other legal obstacles that concern BOGE as exporter/transferring party and
- that there are no conflicting provisions concerning (re-) export control laws which apply to BOGE's suppliers.

##### **N.7.2**

Should a required export permit not be granted by the responsible authority, BOGE shall not be under obligation to deliver. Any costs already incurred in this context on the part of the contractual partner (buyer, party placing the order, recipient) shall be borne by the contractual partner itself (buyer, party placing the order, recipient).

##### **N.7.3**

Should delivery be delayed due to a required application and official permission procedure, the contractual partner (buyer, party placing the order, recipient) shall grant BOGE an appropriate extension to the delivery term, taking account of the particulars of the official procedure.

##### **N.7.4**

If, at any point, it transpires that goods to be supplied by BOGE are intended for a purpose other than that underlying the export control checks, or that other changes relevant for export control have occurred which have been kept secret from BOGE or of which BOGE was intentionally not informed, BOGE reserves the right to stop deliveries and immediately cancel the order, irrespective of any offers, delivery confirmations and other agreements issued. Any costs incurred shall be borne by the contractual partner (buyer, party placing the order, recipient).

#### **N.8. General terms and conditions of business**

Otherwise, the General terms and conditions of business Part A and C of BOGE shall apply to the contractual relationship of the parties.