



JETCAN

## **SERVICE TERMS AND CONDITIONS**

### **(1) The Responsibilities and Rights of the Parties**

- 1-1 The Customer will ensure that:
- (i) The daily and other routine maintenance of the Equipment is carried out in accordance with Atlas Copco's instruction book.
  - (ii) At all times, the Equipment is kept in the environmental conditions recommended by JCAS and the instructions relating to the operation of the Equipment as advised by JCAS from time to time are followed.
- 1-2 JCAS will contact the Customer before the planned time for a visit. The Customer will then ensure that the Equipment is available for servicing. In case lifting equipment (crane/forklift) are required, the customer confirm its availability at site.
- 1-3 The Customer shall at its own costs and expense make available to JCAS's personnel attending at the Site all facilities reasonably necessary for such personnel to carry out the obligations under this Agreement including but not limiting to lifting tools and equipment. The Customer shall ensure that JCAS's personnel has full and free access to the Equipment at the agreed time and to any records of its use and maintenance to enable such personnel to carry out its duties. Any costs and/or expenses incurred by JCAS as a result of access to the Equipment or facilities being delayed from the agreed time will be borne by the Customer and will be invoiced separately by JCAS.
- 1-4 The Customer shall provide all safety related information and take all such steps as may be necessary to ensure the safety of any of JCAS's personnel present at the Site.
- 1-5 Maintenance visit will be carried out during normal working hours, 8.00am to 5.00pm Mondays to Fridays. If this is not practical, any extra cost incurred by JCAS in carrying out inspection outside the normal working hours will be borne by the Customer and will be invoiced separately.

### **(2) Services Inclusion & Exclusion**

- 2-1 The Price includes all costs for labour charges and spare parts as shown in the quotation. A service report, including recommendation for further service and/or repair (if there is any) will be submitted to the Customer after each visit.
- 2-2 The services provided by JCAS can be invoiced as a full amount as and when required upon agreement by both parties.

### **(3) Limitations and Termination**

- 3-1 JCAS shall not be obliged to maintain or repair any Equipment in the event of:
- (i) Negligence by the Customer in the daily maintenance (to be carried out in accordance with Clause 1-1 here-in-of the same; or
  - (ii) Any failure of the Equipment caused by unforeseen circumstances including but not limited to failure, interruption or out of specification, the provision of services in respect of the Equipment (including but not limited to the quality and/or quantity of cooling water, air, electrical power) by the Customer or any third party and/or accidental or wilful damage to the Equipment by the Customer or any third party.
- 3-3 JCAS shall be entitled to terminate this Agreement forthwith by notice in writing to the Customer.
- (i) In the circumstances referred to in Clause 3-1 and 8-1
  - (ii) If a third party has been engaged to work / provide service and/or repair on the Equipment without the expressed approval of JCAS.
- 3-4 Upon the termination of this Agreement, the Customer shall immediately pay to JCAS all sums due under the terms of this Agreement.
- 3-5 JCAS shall not be liable to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any parts or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible or which are due to any other fault of the Customer.
- 3-6 JCAS shall (to the maximum extent permitted by law) not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under any of the express terms herein, for any loss of profit, loss of revenue, loss of anticipated savings, loss of business, loss of goodwill, loss of data, or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether direct or indirect and whether caused by the negligence of JCAS its servants, agents or otherwise) which arise out of or in connection with the provision of the services or the parts supplied (if any) under this Agreement, or their use by the Customer. In relation to direct losses, JCAS's aggregate liability under or in connection with this Agreement shall not exceed 100% of the total value of the Agreement that is lower or equal RM 500.00 or not exceed 10% of the total value of the Agreement that is higher than RM 500.00.
- 3-7 Without prejudice to any other rights of termination under this Agreement, JCAS shall be entitled to terminate this Agreement immediately by notice in writing to the Customer if:
- (i) the Customer commits a material breach of any term of this Agreement and (where such breach is capable of remedy) fails to remedy the same within fourteen (14) days of receiving written notice requiring it to do so;
  - (ii) the Customer becomes insolvent, enters into liquidation, has a receiver or administrator appointed over its assets, enters into any arrangement or composition with its creditors, or suffers any analogous event under any applicable law;
  - (iii) the Customer ceases or threatens to cease carrying on business; or
  - (iv) JCAS reasonably determines that the Customer's financial condition is such that the Customer may be unable to meet its obligations under this Agreement.
- 3-8 JCAS may terminate this Agreement at any time for convenience by providing the Customer with not less than thirty (30) days' prior written notice. In the event of such termination, the Customer shall pay for all services performed and parts supplied up to the effective date of termination.
- 3-9 Termination of this Agreement shall not affect or prejudice any right of action or remedy which shall have accrued or shall accrue thereafter to either party. The provisions of Clauses 3-5, 3-6, 5, 8 and 9 shall survive the termination or expiry of this Agreement.

### **(4) Force Majeure**

- 4-1 The performance of any obligation under this Agreement shall be postponed and JCAS shall be deemed to be not in breach of this Agreement if any of the following reasons prevents totally or partially, the due performance of such obligation.
- (i) Act of God, restriction in the use of power, storm, lock out, strike, fire, civil commotion or civil unrest, act of war, compliance with the regulation or order of any governmental authority or any other circumstance beyond the control of JCAS.
- 4-2 For the purposes of this Clause 4, force majeure events shall include (without limitation) Act of God, epidemic, pandemic, restriction in the use of power, storm, lock out, strike, fire, civil commotion or civil unrest, act of war, terrorism, compliance with the regulation or order of any governmental authority, sanctions, trade restrictions, supply chain disruption, shortage of materials or any other circumstance beyond the reasonable control of JCAS.
- 4-3 JCAS shall notify the Customer in writing as soon as reasonably practicable of the occurrence of any event of force majeure and shall use reasonable endeavours to mitigate its effects, provided that JCAS shall not be obliged to incur any material additional cost in doing so.
- 4-4 If any event of force majeure continues for a period in excess of ninety (90) days, JCAS shall be entitled to terminate this Agreement immediately by notice in writing to the Customer without any liability to the Customer.

**JetCan Compressed Air Services Sdn. Bhd. 202401046636 (1592482-X)**

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**JETCAN**

**(5) Warranty**

- 5-1 Any services rendered by JCAS under this Agreement shall be carried out based on the relevant factory specification and recommendation.  
5-2 To the extent permitted by law, except as otherwise expressly provided in this Clause 5, JCAS makes no other representations or warranties and expressly excludes the same whether implied, statutory or otherwise.

**(6) Price Adjustments**

- 6-1 Subject to any special terms agreed, the Customer shall pay JCAS's price as in quotation and any additional sums which may be agreed upon between JCAS and the Customer for the provision of the services under this Agreement which in JCAS's sole discretion is required as a result of the Customer's instructions or lack of instructions or any other cause which is attributable to the Customer.  
6-2 Unless otherwise stated in the quotation, all invoices shall be due and payable within thirty (30) days from the date of the invoice. If the Customer fails to make any payment by the due date, JCAS shall be entitled to charge interest on the overdue amount at the rate of 1.5% per month (or the maximum rate permitted by applicable law, whichever is lower) from the due date until the date of actual payment. Such interest shall accrue on a daily basis and be compounded monthly.

**(7) Refusal of Services**

- 7-1 Notwithstanding the clauses contained herein, in the event that the Customer has failed to settle in full any of JCAS's invoices or other payments due by the Customer to JCAS, JCAS reserves the right to discontinue or to suspend its obligations under this Agreement (including the provision of services) without any liability to the Customer. In the event that JCAS agrees to continue with the provision of any services suspended or discontinued, JCAS reserves the right in its absolute discretion to determine the terms and conditions of payment for the same.

**(8) Governing Law and Dispute Resolution**

- 8-1 The Agreement shall be governed by and construed in accordance with the Laws of Malaysia. Any dispute arising in relation to this Agreement shall, at the election and sole discretion of JCAS, be submitted to the jurisdiction of the Malaysia courts or resolved by arbitration and, in this regard, the Customer shall be deemed to JCAS 's election. In the event that JCAS elects to resolve a dispute by arbitration, the Customer shall further be deemed to have agreed to submit the said dispute to arbitration. The parties hereby agree that such arbitration shall be held in Kuala Lumpur and be conducted in accordance with the UNCITRAL rules. Such arbitration shall be presided by one arbitrator who shall be appointed by the parties. Should the parties be unable to agree to the appointment of an arbitrator, the Director of the Asian International Arbitration Centre (AIAC) shall appoint the arbitrator.

**(9) General**

- 9-1 If any term of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part the other terms of this Agreement and the remainder of the affected term shall continue to be valid.  
9-2 Any notice to be given by either party to the other under this Agreement may be delivered by hand or sent by registered or prepaid post to the other party at the address for that party shown in this Agreement. Any notice delivered by hand shall be deemed to have been served on delivery and any notice sent by post shall be deemed to have been served within 48 hours after posting.  
9-3 Any waiver by JCAS of a breach of any terms of this Agreement by the Customer shall not be considered as a waiver of any subsequent breach of the same term or any other terms. Any waiver given by JCAS shall only be valid if provided in writing and endorsed by the Business Line Manager of JCAS.  
9-4 The Customer shall not assign, transfer or sub-contract any of its rights or obligations under this Agreement without the prior written consent of JCAS. JCAS may assign, transfer or sub-contract any of its rights or obligations under this Agreement to any member of the Atlas Copco group of companies without the Customer's consent.  
9-5 The Customer shall pay all amounts due under this Agreement in full without any deduction, set-off, counterclaim or withholding (except as required by law).  
9-6 This Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes all prior agreements, understandings, negotiations and representations, whether written or oral, relating to such subject matter. Neither party has relied on any representation or warranty not expressly set out in this Agreement.

**(10) Trade Compliance**

- 10-1 Notwithstanding any provision or clause in this Agreement to the contrary, any quotation issued by JCAS is legally binding upon JCAS only after the Customer has received a written acceptance from JCAS of any order from the Customer based on that quotation, and JCAS may at any time withdraw its quotation.  
10-2 By entering into this Agreement or placing any order with JCAS, the Customer certifies, warrants and represents that the Equipment and any services, parts, or items supplied under this Agreement will not be used for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons, nor for any other purpose prohibited by applicable law.  
10-3 The Customer further certifies, warrants and represents that it shall comply with all applicable local and international foreign trade and customs requirements, as well as any embargos and other sanctions (collectively, "Foreign Trade Obligations") imposed by the European Union, the United States of America, the United Nations, Malaysia, or any other applicable jurisdiction.  
10-4 The Customer shall immediately notify JCAS in writing of any breach or possible breach of this Clause 10.  
10-5 JCAS shall not be obligated to fulfil any order or agreement or any part thereof, nor be liable for its non-fulfilment, if such fulfilment is prevented by any impediments arising out of Foreign Trade Obligations.  
10-6 JCAS shall have the right to terminate this Agreement, or any order or any part thereof, with immediate effect and without prior notice, if fulfilment is prevented by any impediments arising out of Foreign Trade Obligations.  
10-7 The Customer shall indemnify and hold JCAS harmless for any direct or indirect damages, costs and expenses (including legal fees) arising in consequence of or otherwise in connection with any breach by the Customer of this Clause 10.

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