



## OTA Compression, LLC

PO Box 141747, Irving, TX 75014  
(972) 831-1300

### I. General Terms & Conditions

1. Specifications. This quotation is based upon OTA Compression LLC or Kimark Systems, Inc.'s (collectively, "Seller") understanding of the data and specifications customer ("Purchaser") submits. These Terms and Conditions apply to any quotation Seller conveys, and any firm order that Seller accepts from Purchaser. Seller is not liable for any errors, omissions or incorrect information Purchaser provides regarding such quotation or order.
2. Shipment. Standard CAP (Customer Arranged Pickup) Origin. Seller can arrange FOB Destination for an additional fee paid by Purchaser. Shipping costs dependent on quantity of items shipped and determined after receipt of order.
3. Taxes. Pricing does not include any federal, state, or local sales, use, property, excise, or other similar taxes applicable to or imposed upon the equipment or services in this proposal. Purchaser is responsible for all taxes. Any taxes Seller pays are added to the pricing and paid by Purchaser, unless Purchaser provides Seller with a tax exemption certificate acceptable to all applicable taxing authorities. Without limiting any other provisions herein, the obligations in this Section 3 survive Purchaser's payment.
4. Payment. Payment is due and payable in U.S. dollars per the quotation or order, standard (Net 30), or as provided in the subject proposal.
5. Cancellation. Purchaser may cancel any order Seller accepts only upon written notice to Seller prior to Seller's time for performance. With respect to any item that has been customized in any respect (in whole or in part) at Purchaser's request and/or to meet Purchaser's unique needs, Purchaser must pay to Seller all of Seller's losses and expenses, including but not limited to lost profits for the order. Seller may cancel any order without liability to Purchaser if: (i) Purchaser's payments are in default on this or any other order, or Purchaser breaches any other material provision hereunder; (ii) substantial changes occur in the availability of raw materials or components provided by third party vendors; (iii) events beyond Seller's reasonable control make it impossible to secure shipment; (iv) Purchaser becomes insolvent or is the subject of the filing of a bankruptcy petition, or makes an assignment for the benefit of creditors or fails to pay its debts as they come due; or, (e) Seller reasonably believes in its sole discretion that Purchaser is insolvent or will not pay in accordance with the terms herein.
6. Withdrawal of Quotations. Seller may withdraw any/all quotations prior to Purchaser placing a firm order that Seller accepts relating to such quotations.
7. Changes in Work. If Purchaser changes any order Seller accepts, such change results in a new order offer that Seller must thereafter accept. Purchaser must agree to any pricing change Seller imposes before such new order is binding. Seller separately may make product and design changes in goods ordered which do not adversely affect form, fit or function, with written notification to, and price change approved by, Purchaser. All changes Purchaser requests in the process or design of goods are subject to Seller's written approval and to reasonable changes in delivery and price as Seller determines in its sole discretion.
8. Warranty. Provided the product is installed as Seller specifies, maintained per Seller's instructions, and operated strictly within Seller's performance specifications, Seller warrants that any goods or materials provided: (i) substantially and materially conform to the applicable specifications set forth in Seller's quotations (including, without limitation, Design Specifications, Physical Specs, and Scope of Supply); and, (ii) will be free from defects in material and workmanship for a period of twelve (12) months from the date of initial use or the date of shipment to site, whichever period expires first, and provided Purchaser



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stores product according to manufacturer's instructions. Seller warrants products manufactured by others, such as electric motors, controllers, drive line and similar products only to the extent that Seller enforces warranties by the original manufacturer of such products. Seller warrants replacement parts and products of its manufacture only to the extent of and for the unexpired warranty period of Seller's warranty applicable to the replaced part or product, if any. Subject to Section 13 below, Purchaser must notify the Seller in writing of such defect(s) or nonconformance within fourteen (14) days after discovering the same (but not later than the applicable warranty period set forth above), and must fully cooperate with Seller in pursuing the remedy. Time is of the essence with respect to such notification. Seller, in its sole discretion, determines whether any item is covered by warranty. Seller's sole obligation under this warranty is limited, at Seller's sole discretion and option, to: i) correcting such defects either by suitable repair to equipment or parts at Seller's authorized repair facility or other approved location during normal business hours; or, ii) by furnishing replacement equipment or parts, FOB Origin, or by refunding the purchase price and accepting return of the defective or nonconforming Equipment FOB Seller's point of origin. Seller's warranty does not apply to parts or products damaged in shipment or otherwise damaged through no fault of Seller.

- a. Seller may, but is not obligated to, validate any warranty claim by inspection and verification that such claim exists and was not, for example, caused by accident, misuse, neglect, alteration, improper installation, or unauthorized repair. At Seller's request, Purchaser must, at Purchaser's sole risk and expense, deliver the alleged defective parts or product to Seller for inspection. This warranty does not include costs for transportation of parts or products to or from the authorized repair facility, removal of product from attached equipment nor travel expense to repair product in any location except those approved by Seller. All replaced parts shall become the property of Seller. Expendable parts, such as lubricants, fuses, filters, motor brushes, thermocouples, lamps, etc. are excluded from this warranty.
  - b. **SELLER MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND. ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.** With respect to parts/work manufactured by others, Seller, to the extent assignable, assigns to Purchaser any warranty Seller receives from the manufacturer. Seller is not liable for any repairs, replacements, or adjustments, or for any costs of labor, performed by Purchaser without Seller's prior written approval.
  - c. Seller's warranty obligation for items outside the continental U.S is limited to the repair or replacement of defective parts and does not include removal or reinstallation of warranted parts.
  - d. Normal wear and tear, failure to resist erosive or corrosive action by any fluid or gas, or Purchaser's failure to properly store, install, operate, or maintain any item equipment in accordance with best industry practices or Seller's specific recommendations are expressly excluded from, and invalidate, any warranty.
  - e. The terms, conditions and limitations of Seller's warranties are not waived or modified absent a prior written document executed by Seller's duly authorized officer.
9. Limitation of Liability. **SELLER'S TOTAL LIABILITY UNDER WARRANTY OR OTHERWISE, DOES NOT EXCEED THE PURCHASE PRICE PURCHASER PAYS. SELLER IS NOT LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OR CONTINGENT LIABILITIES.**



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10. Termination. If Purchaser's finances are unsatisfactory to Seller, in Seller's sole discretion, Seller may suspend performance of any order, require advance payment for any goods or services, or require satisfactory security or other adequate payment assurances from Purchaser. If Purchaser does not pay in accordance with the terms herein, or fails to comply with any provision herein, Seller may, at its sole discretion, in addition to any other available remedies, cancel any unshipped or unexecuted portion of any order, with Purchaser remaining liable for all unpaid accounts. If Purchaser does not pay in accordance with the terms herein, the unpaid amount is delinquent, Purchaser is in immediate default (without prior notice of default, said notice being waived), and Purchaser's full balance bears interest at the maximum rate of interest permitted by applicable law until paid in full. Purchaser must pay Seller's collection costs and expenses, including reasonable attorneys' fees, incurred in collecting such account. Purchaser's full payment to Seller is a condition precedent to Purchaser's ability to assert any claim against Seller.
11. Assignment. Purchaser and Seller may not assign or transfer the rights and obligations between them, or the terms of this document, without the other party's prior written consent, with such consent not unreasonably withheld.
12. Title and Risk of Loss. Title and risk of loss or damage to any equipment passes to Purchaser upon loading POINT OF MANUFACTURE. (Unless FOB Destination Shipping terms previously arranged.)
13. Acceptance and Inspection. Purchaser may reasonably inspect any equipment ordered within fourteen (14) days of the delivery date to Purchaser's destination. Purchaser must assert any nonconformance, defect, or deficiency claims that are ascertainable or discoverable from such inspection (including shortages) in writing to Seller within said fourteen (14) day period or they are waived. Purchaser may not revoke acceptance of such goods after said fourteen (14) day period and Purchaser otherwise accepts such goods upon delivery absent timely written notification of a claim.
14. Confidentiality. Purchaser must maintain as confidential, and not disclose, Seller's proprietary information disclosed with respect to any goods or services provided, regardless of form. Purchaser must not disclose (and shall not permit its employees, contractors or consultants to disclose) any such proprietary information to any other person or entity or use such proprietary information for its own purpose or benefit without Seller's advance written permission. Such proprietary information does not include information that: (i) was in Purchaser's possession prior to Seller's disclosure, provided that such information is not subject to another confidentiality agreement with or other contractual, legal, or fiduciary obligation of confidentiality of which Purchaser has knowledge; (ii) was generally available in the public domain prior to disclosure by Seller; (iii) lawfully becomes generally available in the public domain through no violation of this Section 15 after disclosure by Seller; or, (d) is developed by Purchaser's employees, agents, or consultants, completely independent of, and without reference to, Seller's proprietary information and without breaching Purchaser's disclosure or use obligations set forth in this Section 15. Purchaser may disclose Seller's proprietary information: (i) to any of its employees, contractors or consultants who have a need to know the same in connection with the use or operation of the subject Equipment; (ii) to any third party to whom Purchaser is or becomes legally compelled by any governmental, judicial, or regulatory authority with jurisdiction to disclose the same (e.g., by order, deposition, interrogatory, civil or criminal investigative demand, request for documents, subpoena, summons, or similar process or rule of procedure, or by statute, rule, or regulation, or other legal requirement), but only to the extent disclosure is required; (iii) to any third party as may be reasonably necessary or appropriate in connection with any emergency or in order to prevent or mitigate harm, injury or damage to persons or property; (iv) to any of Purchaser's partners or co-owners who own or will own or otherwise have an interest in or rights to the goods or services provided; and, (v) to any person



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or entity that purchases, or is interested in purchasing, any interest in the subject goods or services from Purchaser.

15. Governing Law. All negotiations, agreements and dealing between Purchaser and Seller and their relationship were conducted in Dallas County, Texas, are performable in Dallas County, Texas, with all such items construed in accordance with and governed by the laws of the State of Texas without regard to its conflicts of law principles.
16. Separability. If any or part of these Terms and Conditions is held void or unenforceable, such part shall be treated as severable, leaving valid the remainder.
17. Waiver. Seller or Purchaser's failure to insist in any one or more instances upon the performance of any of the terms or conditions herein, or to exercise any right hereunder, is not construed as a waiver of any other terms or conditions herein nor of the future performance of any term or condition or the future exercise of any such rights. Seller's failure to require strict performance of any provision does not diminish Seller's right thereafter to require strict performance of any other provision.