

General Terms and Conditions of AIR LIQUIDE Deutschland GmbH



1. Terms applying to all kinds of business

1.1 Scope of Application

- 1.1.1 Except as otherwise agreed in writing, our deliveries and services are performed solely in accordance with the following terms.
- 1.1.2 We do not accept the customer's general terms and conditions. They will only be incorporated in the contract if we give our express written consent. Our General Terms and Conditions shall also apply where we make performance without reservation, knowing that the customer's terms contradict or deviate from our business terms.

1.2 Offer, Conclusion of Contracts, Prices

- 1.2.1 Our offers are subject to confirmation. Written and verbal orders and other agreements, as well as verbal subsidiary agreements and undertakings shall become valid and binding only when confirmed in writing. In the case of immediate delivery, order confirmations may be replaced by conveyance of the goods.
- 1.2.2 Our contractual obligations as well as those of the customer are determined solely by the written contract entered into.
- 1.2.3 As a general rule, our deliveries and services are performed on the basis of the prices applicable at the time when the order is placed. Only if the agreed period between placement of the order and delivery is more than 4 months do we have the right to charge the customer the prices applicable at the time when delivery/services are performed.
- 1.2.4 Our prices are ex agreed Air Liquide site or distributor, plus energy and environment surcharges, plus VAT at the then statutory rate and other taxes. We have the right to bill the customer for new taxes and charges. We also have the right to pass on to the customer costs we incur in connection with compliance with new, mandatory safety requirements.
- 1.2.5 Where special terms are granted to the customer, these shall apply only on condition that the customer duly complies with his/her contractual obligations. Failure to do so entitles us to revoke the special terms with immediate effect.

1.3 Delivery, Passage of Risk

- 1.3.1 The goods will be delivered from the agreed Air Liquide site or distributor. We are entitled to make partial deliveries. Subject to special arrangement, it is up to us to choose the transport route and means. Transport costs, including the surcharge for the transport of hazardous goods, road tolls, applicable at the time in question, are to be borne by the customer.
- 1.3.2 The risk shall pass to the customer on handover to the carrier or other transporter.
- 1.3.3 As far as the customer or a carrier authorised by him, collects the goods, the goods notified as being ready for shipment must be collected without delay. Failure to do so will entitle us to ship them as we wish at the customer's expense and risk or, at our own discretion, to store the goods and bill the customer immediately. Risk passes on provision of the goods, ready for shipment. The customer is responsible for loading and unloading in a manner that is reliable in operation and safe for transportation. If we provide assistance, we do so purely as a favour.

1.4 Delivery Periods

- 1.4.1 The determination of delivery periods is not binding as far as delivery and completion periods are not fixed by written agreement.
- 1.4.2 Delivery periods quoted by us do not start running until all the relevant commercial and technical questions have been settled.
- 1.4.3 Compliance with our delivery periods presupposes due performance by the customer of his/her obligations in a timely manner. We reserve the right to plead non-performance of the contract.
- 1.4.4 In case of any delays attributable to us, the customer shall have the right to grant a reasonable grace period of at least 2 weeks and to declare that he/she refuses to accept performance after this grace period. If delivery is not effected within the grace period, the customer shall have the right to rescind the contract.

1.5 Force Majeure

In case of force majeure, in particular war, natural disasters, acts of God, strikes, lock-outs, unrest, machine damage that is not the result of improper maintenance, failure on the part of our suppliers to make timely or due and proper delivery, disruptions in the supply of energy or raw materials, exceptional traffic and road situations, and other business disruptions beyond our control, we shall have the right to delay delivery by the length of the disruption or, if the end of the disruption is not foreseeable, to rescind all or part of the contract without any further obligations.

1.6 Customer's Rights in case of Defects

- 1.6.1 The customer may only assert his/her rights in respect of defects where he/she has fulfilled his/her duties to inspect the goods and notify defects in accordance with section 377 of the German Commercial Code (HGB). Except as otherwise agreed, we supply goods that are of merchantable quality in line with our respective product specification.
- 1.6.2 The product shall be deemed to comply with the terms of the contract provided it either does not vary from the agreed specification, or only varies therefrom to a minimum degree, at the time of passage of risk. The contractual compliance and freedom from defects of our product shall be determined exclusively on the basis of the written agreements relating to the product ordered. The content of the agreed product specification or any explicitly agreed intended use shall not give rise to any guarantees, commitments or warranties. The risk of suitability and use of the product is the exclusive risk of the purchaser.
- 1.6.3 In case of any notice of defects, we have the right to view and examine the goods concerned. If such an examination reveals that the defect is not caused by us, the customer shall undertake to pay for our services (including costs of transport, examination and disposal, if incurred).
- 1.6.4 In case of a defect in the purchased object or the work, we are obligated for a period of 1 year from the passage of risk – except where some other period is stipulated by mandatory law – to remedy the defect or deliver a replacement. With regard to the delivery of gases, we are subject to warranty for a period of 1 year from the passage of risk, if the gas in question has a regular stability of at least 1 year. Should this not be the case, we are subject to warranty – deviating from Sentence 1 – for the period of regular stability of the said gas.
- 1.6.5 If we fail to remedy the defect or deliver a replacement, the customer may opt to either rescind the contract or claim damages in accordance with the following provisions.

1.7 Liability

- 1.7.1 We shall be liable in accordance with the relevant statutory provisions if the customer asserts damages claims based on deliberate intent or gross

negligence, including deliberate intent or gross negligence on the part of Air Liquide's representatives or agents, and if we culpably violate a material obligation of the contract. Material contractual obligations are obligations whose fulfillment is essential for the due and proper execution of the contract, and whose fulfillment the purchaser could reasonably rely on. For the delivery of gases, our material contractual obligations shall be restricted to the delivery of gases that comply with the specification. If we are not guilty of deliberate breach of contract, i. e. in case of gross negligence and culpable violation of a material obligation of the contract, our liability for damages is limited to the foreseeable, typical damage. The typically foreseeable damage shall not include liability for financial or other consequential or intangible losses.

- 1.7.2 In the case of delayed delivery, the customer can require payment of compensation for the delayed delivery limited to 1 % of the net value of the goods to be delivered per completed calendar week, max. not more than 5 % of the net value of the goods to be delivered. A further liability for delay in delivery, except in the event of intentional action by ourselves or our vicarious agents, is excluded.

- 1.7.3 Liability for payment of damages beyond the provisions laid down in 1.7.1 to 1.7.2 above is excluded. Claims resulting from damages to life, limb or health and mandatory legal liability facts shall remain unaffected.

- 1.7.4 Damage claims, if any, shall become statute-barred within one year from the statutory commencement of the limitation period save where we are accused of deliberate intent or gross negligence, or where some other period applies under mandatory law.

1.8 Payments

- 1.8.1 Invoices are payable immediately without any deductions.
- 1.8.2 Payments may always be credited against the oldest outstanding receivables, of the respective supply relationship even if the customer has made other arrangements.
- 1.8.3 Setoff against contested counterclaims that are not legally binding and liens on the basis of such claims are not permitted.

1.9 Maturity Interest, Late Payment

- 1.9.1 In case of failure to comply with the due date for payment in accordance with section 1.8.1, maturity interest shall be charged pursuant to section 288(2) of the German Civil Code (BGB). This is without prejudice to our right to claim further compensation for damages due to late performance.

- 1.9.2 We have no obligation to make further deliveries under current contracts until such time as outstanding amounts including interest and any costs incurred have been paid in full.

- 1.9.3 If the customer defaults on payment of due amounts, or should we become aware of circumstances that give us reason to doubt the customer's creditworthiness, we can require immediate payment of all outstanding claims, including those which have been deferred, for which security has been furnished or a bill of exchange has been issued.

- 1.9.4 In the case of delay, we are entitled, without prejudice to further rights, to make further deliveries only against prepayment, to require security, or – after granting a reasonable grace period – to rescind contracts or claim damages. We shall in particular be entitled to terminate extraordinarily the contract without notice if an application to open insolvency proceedings against the customer's assets has been submitted.

- 1.9.5 In addition to the customary default losses, we shall also be entitled to charge the customer for obtaining information, and in the event of early contract termination, the additional costs of returning mobile containers that are incurred as a result of such early contract termination.

1.10 Retention of Title

- 1.10.1 We reserve title to the delivered goods until such time as all outstanding receivables out of the business relationship with the customer, including interest and costs, if any, have been settled. In case of a running account the reservation of title shall serve as security for the balance of our claims. If the product is mixed or combined with other items, we shall acquire joint title to the new item in the ratio of the value of the product we have supplied to the value of the new item. The same will apply if the product supplied is consumed during production of the new item.

- 1.10.2 The reserved goods are intended solely for the customer's use in Germany. Resale is permitted only with our prior written consent. All claims resulting from a resale of the goods, including security, if any, is hereby assigned by the customer to us in an amount equivalent to our purchase price claims. In the event that the reserved goods are sold together with other goods that do not belong to us, claims based on the resale shall be assigned to us in an amount equivalent to the invoice value of the reserved goods.

- 1.10.3 The exercise of the reservation of title due to a default of payment which is not insignificant shall, as far as the customer is not the consumer, only be deemed a rescission of the contract if we expressly indicate as such in writing.

- 1.10.4 Assignment of reserved goods to third parties by way of a pledge or security is not permitted. The customer is obligated to prevent all actions to take hold of and interference of our property and disturbances of our property as well as actions to take hold of objects which, while they do not belong to us, we allowed the customer to use – regardless of the cause in law – and to notify us without delay in case of any such unauthorised take over or interference. If the third party is not in a position to reimburse us the court and out-of-court costs for an action, if any, in accordance with section 771 of the Code of Civil Procedure (ZPO), the customer shall be liable for our loss.

- 1.10.5 In case of late payment or suspension of payments, or a petition for composition or insolvency proceedings by the customer or a creditor, we shall be entitled – without prejudice to all other rights – to take back the reserved goods and sell them to someone else. The proceeds, less all costs and disbursements in connection with the sale (we are permitted to bill 10 % of the proceeds of the sale as costs and disbursements without having to furnish evidence) will be applied against the customer's overall debt; an excess, if any, will be reimbursed. The customer has the right, however, to furnish evidence to show that the costs and disbursements for the sale of the reserved goods were actually lower than assumed above.

- 1.10.6 If the value of the security furnished to us exceeds the amount of our overall claims against the customer by more than 10 %, we are obligated to release security of our choice at the customer's request.

- 1.10.7 We reserve title and copyright to illustrations, plans, drawings, calculations, installation and operation instructions, product descriptions and other documents, which we have produced for the customer, regardless of the medium involved.

General Terms and Conditions of AIR LIQUIDE Deutschland GmbH



1.11 Confirmations and Covenants, Guarantees

- 1.11.1 Our employees have no right to make verbal or written confirmations or covenants that deviate from or supplement the contents of contracts. This shall not apply in the case of confirmations or covenants made by our executives and so-called Prokuristen [holders of full commercial power of attorney] or persons authorised to do so by the above-mentioned persons.
- 1.11.2 Guarantees may only be given by our Prokuristen. Should employees who do not have the power of attorney [Prokura] give any guarantees, these shall be invalid.

1.12 Insurance

- 1.12.1 The customer agrees to insure against damage and destruction at reinstatement value all objects and facilities provided to the customer for his/her use only or under reservation of title.
- 1.12.2 On request, the customer shall furnish evidence of the existence of insurance protection.

1.13 Prohibition of Assignment

The customer does not have the right to transfer or assign rights or claims to third parties.

1.14 Legal Succession

The customer shall inform us, in particular in his/her name or legal form, without being requested to do so. The customer shall be liable for any loss we sustain as the result of failure to provide, or late provision of, such information.

1.15 Safety provisions

Our products are partly subject to specific provisions on industrial gases and hazardous substances. Upon signing the contract or receiving the goods, the customer shall assure that he/she has sufficient knowledge on the handling of such products. The customer shall have the right to request from us further pieces of information on applicable safety regulations at any time.

1.16 Data protection

Customer data will be stored for business purposes only. In doing so, we ensure compliance with the German Data Protection Act.

1.17 Miscellaneous

- 1.17.1 The place of performance for our deliveries is the agreed Air Liquide site or distributor. In all other respects the place of performance shall be Düsseldorf.
- 1.17.2 Our legal relations with our clients are governed by German law, excluding the Convention of the International Sale of Goods (CISG).
- 1.17.3 If the customer is a merchant, a public corporation or special public asset, if the customer has no place of general jurisdiction in Germany, if he/she transfers his/her place of residence or habitual place of abode to somewhere outside Germany, or if his/her place of residence or habitual place of abode is unknown at the time of filing action, the sole legal venue for all disputes shall be Düsseldorf. Where legally possible, we can also sue the customer at his/her court of general jurisdiction.

2. Additional Terms for Mobile Containers

Cylinder, bundle, pallets, cans, ranger, trailer, dry ice boxes and other transportable containers, which serve for storage and dispatching of our products, are called mobile containers in the following.

2.1 Use of mobile container

- 2.1.1 Except as otherwise agreed, the mobile containers we provide are being rented out and not sold. We shall conclude a rental agreement with the customer in relation to the mobile containers supplied. The signature of the customer or its vicarious agents on the delivery note shall constitute evidence of the conclusion of such a rental agreement.
- 2.1.2 The rent payable is based on the rent rates and rent systems applicable at the time in question. Our price lists are available for inspection in our sites or at our distributors' and will be forwarded on request at any time. This rent is payable unless otherwise agreed.
- 2.1.3 A monthly immobilisation fee per mobile container will be charged for each mobile container, if this container is for more than 3 months in the customer's possession after they were last delivered.
- 2.1.4 An additional monthly immobilization fee will be charged if this mobile container remains in the customer's possession for more than 6 months after it was last filled. The currently applicable rental fees can be obtained from our respective price lists.
- 2.1.5 Air Liquide's mobile containers will be provided to the customer only for the purpose of withdrawing from them the gases we deliver. All other uses are strictly forbidden, particularly for safety reasons. The customer may allow third parties to use the mobile containers only with our prior written consent.
- 2.1.6 The customer shall check the accuracy of invoices and stock lists attached to the invoices relating to the mobile containers and notify and complain without delay, however not more than one month from the date of the invoice or stock list. After expiry of this period no complaints will be accepted and the balance of the invoice/stock list will be deemed acknowledged unless it was impossible for the customer – through no fault of his/her own – to verify the invoice/stock list.
- 2.1.7 If the customer lodges a complaint, this will not affect his/her payment obligation or the period allowed for payment.
- 2.1.8 We may at any time require the customer to provide information as to the whereabouts of the cylinders / pallets and inspect the relevant documents. The customer may require that the inspection be carried out by a neutral third party.

2.2 Security

Where a customer does not purchase a reasonable quantity of goods, compared to the number of mobile containers rented, we have the right to demand security from the customer for each mobile container up to the amount of the replacement price. This security can also be required after handover of the mobile container to the customer. We may in particular demand this security if the provision of such security was agreed at the time of conclusion of the contract, if the customer is at least two months in arrears with the rent for mobile containers or has breached other contractual obligations.

2.3 Complaints

- 2.3.1 Should our entrusted mobile containers appear to be defective to the customer, they must be marked clearly with the word "Inspect!" and returned immediately to the agreed Air Liquide site or distributor. For technical reasons we are unable to deal with complaints not handled in this manner.
- 2.3.2 Mobile containers and equipment that appear to be faulty and are the subject of a complaint may not be used.

2.4 Return of mobile container

- 2.4.1 After the goods have been withdrawn, the mobile containers shall be returned without delay to the Air Liquide site or distributor from which they came, together with all fittings and in due and proper condition.
- 2.4.2 A delivery note is issued for the return. If the customer is a merchant, he/she can only prove that he/she has returned the mobile containers by presenting the delivery note.
- 2.4.3 If the customer returns mobile containers other than those provided or returns them to any Air Liquide site or distributor other than the one agreed, this shall not release the customer from his/her obligation to pay rent for and return mobile containers.
- 2.4.4 If the return of mobile containers supplied is not made by the customer or by a third party commissioned by the customer, we shall credit the customer to whom the mobile container is actually attributable the container that is returned to stock, and will charge a handling fee for each container. The same will apply if the container is returned by a recipient of the customer other than the customer or customer's recipient to whom the mobile container is actually attributable. The rent for the returned containers shall be due up to the date of the stock credit note.
- 2.4.5 If the customer is in default of payment, we have the right at any time to require that mobile containers be returned. Insofar the customer has no right of retention of the mobile containers.
- 2.4.6 In the event that, by way of an exception, we take back full cylinders, we may credit the customer, subject of examination for complete filling and damages with the value of the goods ex the agreed Air Liquide site or distributor after deduction of our costs. No credit will be given for residual amounts left in returned mobile containers.

2.5 Damages or loss of mobile containers

- 2.5.1 The customer is liable for the mobile containers including fittings, provided even in the case of accidental damage or loss.
- 2.5.2 If the customer either fails to return mobile containers or parts thereof, or returns them in a state that does not permit them to be restored to a usable condition at reasonable expense, the customer must reimburse the repurchase value of equivalent new mobile containers or parts thereof. The customer may provide evidence that the loss incurred is significantly lower.

2.6 Customer's own mobile containers

Before filling mobile containers of the customer's which are subject to official inspection under the Compressed Gas Regulation, we have the responsibility to inspect them. The customer shall reimburse us for the costs incurred for such inspection and maintenance, even where we have not been specifically charged with inspecting and maintaining the mobile containers. This shall also apply to mobile containers requiring repairs.

This English version of our General Terms and Conditions is for reading purposes only. The German version shall be authoritative and solely applicable, in particular for legal evaluations.

Düsseldorf, June 2012