

## **GENERAL CONDITIONS**

### **I. DEFINITIONS**

- a. **Offer** means any offer for the delivery of goods and/or services by seller under the terms and conditions contained therein. Any offer remains valid for a maximum period of sixty (60) days from the date of sending and is subject to the sellers' General Terms and Conditions with the exclusion of all other Terms and Conditions unless otherwise expressly agreed in writing.
- b. **Contract** means this contract as signed between Parties for the purchase of industrial gases in accordance with the Special and General Terms and Conditions of Seller. Unless expressly agreed otherwise in writing, all contractual relationships are subject to the Seller's Special and General Terms and Conditions.
- c. **Packaging** means all gas cylinders, batteries, cryogenic vessels or other packaging materials and accessories including taps, protective caps and transport containers used to pack and/or store gases in liquid or gaseous form.
- d. **Gases** means all industrial gases (standard or special) as defined in the Special Conditions, in liquid or gaseous form with a purity and in a packaging form as defined in the Special Conditions.
- e. **Goods** means the gases, the packaging, the stock, the installations and the materials to be supplied by seller in accordance with the contract.
- f. **Incoterms** means the Incoterms 2010 applicable on every sale and supply of goods.

### **II. PACKAGING**

The packaging is and remains the inalienable property of Seller who is the owner thereof. In the packaging, the name of the owner is clearly marked. Buyer is not allowed to alienate the packaging or to use it for any purpose other than the one for which they have been delivered or to use it outside of the statutory scope. The filling of the packaging may only be performed by Seller or by a third party, which has explicitly been accepted by Seller. The packaging is hired by Buyer who is subject to paying the rent according to the rate specified in Annex 1 and on invoices. This rate may be adjusted by the Seller at any time due to an increase in cost. The packaging, hired by Buyer must be returned to Seller in good condition, including all their parts. If, for any reason, the packaging is not returned or returned in less than good condition, Buyer shall be liable to Seller to pay damages equal to the value of new packaging of the same type. In the event that the packages are not returned within the time limit specified in the Special Conditions, Seller reserves the right to charge the Buyer per package an increased rental fee according to the rate that is applicable. The law obliges gas manufacturers to periodically check the packaging. The Buyer needs to return the packaging for which the recertification date is due as soon as possible. In the event that Buyer disputes the number of packaging supplied, he will immediately notify the Seller in writing upon receipt of the relevant invoice. Unless Buyer supplies acceptable evidence, the number of packaging included in Sellers accounting will be binding on Parties.

### **III. ORDERS AND DELIVERIES**

The delivery of standard industrial gases is performed within two (2) working days starting on the day of the order by fax, by phone or e-mail. Orders by phone always have to be confirmed in writing. The lead-time for supply of specialty industrial gases will be explicitly agreed between Parties in writing. Every offer, sale and delivery of goods is performed on EXW basis (Incoterms 2010), unless Parties agree otherwise in writing. In case of explicit request by Buyer, Seller can perform the loading and transport of the goods for account and responsibility of Buyer. Buyer will inspect and accept the goods immediately upon delivery. Buyer is entitled to refuse the delivered goods but only if these do not comply with the required purity according to the Special Conditions. In such case, Seller shall take back such goods and will send a credit note to Buyer to the value of the non-conform goods. Risk of loss, damages or contamination of the goods is transferred to Buyer at the moment of and on the location of the delivery. The title of ownership on the delivered gases remains with Seller until payment has been completed with regard to the order.

### **IV. LOCATION FOR LOADING AND UNLOADING**

In as far as the Parties have agreed on another delivery location than Seller's address, Buyer will ensure that this loading and unloading location is fit for the purpose of loading and unloading of packages, in a manner that is acceptable to Seller. The loading and unloading place needs to be easily and safely accessible to Seller's trucks. Seller is allowed to charge a cost for loss of time (waiting) or other additional costs if the loading and unloading location is not readily available and/or not safe and ready for use at the agreed delivery date.

### **V. GUARANTEE**

Seller does not provide any guarantee other than the compliance of gases with the Technical Specifications supplied by Buyer. Seller does not guarantee or warrant any way the suitability of the gases for any specific use and Buyer is advised to verify the suitability of the gases for the intended use.

### **VI. PRICES AND PAYMENT**

Unless otherwise agreed, our prices are net, excluding VAT and ex-works. All costs, taxes and taxes related to collecting, storage and use of the goods are for account of Buyer. The costs for transport and insurance are borne by Buyer unless otherwise agreed in writing between Parties.

The minimum quantity of gases to be taken by Buyer, as specified in the Special Conditions of the Contract, will be invoiced in accordance to the Terms and Conditions of this contract whether Buyer has taken that quantity or less.

All costs, rates and fees are included in Annex 1 and shall be revised from time to time and at least once a year in order to (i) reflect increases in Seller's costs or (ii) when the Buyer does not meet the agreed obligation to take the minimum quantities as specified in the Special Conditions (iii) or when Buyer does not meet his contractual obligations.

Buyer expressly agrees to receive invoices that will be sent by electronic means only by Seller. If Buyer wishes to receive an invoice by post, he agrees to the administrative costs for his account.

Buyer will verify the contents of the invoice immediately upon receipt thereof. Any objections with regard to amounts, numbers or incorrect recordings on this invoice must be notified in writing to Seller within fifteen (15) days after the invoicing date. The invoice is deemed to be tacitly accepted by Buyer, if Buyer does not raise any objections within the specified time limit. Seller is not obliged to take objections into account that have been notified after the time limit of fifteen (15) days after the invoicing date.

The payment obligation of an invoice is not suspended due to a possible pending objection. In case the objection is found to be rightful, Seller will provide a credit note without delay. Seller reserves the right to deduct the amount of the value of this credit note from the next invoice.

All invoices from Seller are without discount, within fifteen (15) days from the invoicing date. In case of late or non-payment, interest and fees will automatically and without prior notice be due to Seller in accordance with the rates and amounts included in Annex 1, without prejudice to all other remedies open to Seller to claim compensation for the damages Seller has suffered as a result thereof.

Seller reserves the right to unilaterally change payment conditions and/or to suspend any delivery until complete payment has been received for all open invoices without any discount or compensation for Buyer. Seller is also entitled to charge all judicial and extrajudicial collecting costs to Buyer.

Seller unilaterally reserves the right to suspend delivery of existing orders and/or to perform delivery of new orders only after receipt of prepayment by Buyer in the event that Buyer has not paid or paid late, in the event that Buyer has suspended payment of unprotested invoices, in the event that Buyer is subject to or threatens to become subject to a seizure procedure (conservative or executing), in the event that Buyer has filed or will file for a judicial reorganization procedure, in the event that Buyer has filed for bankruptcy or when it reasonably can be assumed that Buyer is not able to meet or comply with the obligations of this contract.

Seller reserves the right to recover the packages and take these back in possession, whether these are empty or not, without prior notice and without any right for damages by Buyer in the event that Buyer has not paid or paid late, in the event that Buyer has suspended payment of unprotested invoices, in the event that Buyer is subject to or threatens to become subject to a seizure procedure (conservative or executing), in the event that Buyer has filed or will file for a judicial reorganization procedure, in the event that Buyer has filed for bankruptcy or when it reasonably can be assumed that Buyer is or will not be able to meet or comply with the obligations of this Contract.

### **VII. CURRENCY FLUCTUATION RISK**

The currency fluctuation risk is for account of the Buyer unless Parties have agreed otherwise in writing.

### **VIII. FORCE MAJEURE**

Neither party shall be liable for its failure to perform its contractual obligations, other than the obligation of paying on due date, under this contract by reasons of force majeure. The case of force majeure is considered to exist as result of any contingencies, such as but not limited to: strike, fire, explosion, natural disaster, acts of God, war (declared or not), insurrection, accidental production outages, shortage or no availability of gas or raw material, malfunction of the installations used for the production of the gases or the raw product by Seller and/or a supplier and/or a producer be it by lack of maintenance or any other cause, a malfunction with regard to transport or storage of the gases or the raw product at Seller and/or supplier and/or producer and/or subcontractor; decline in the production of the gases and/or raw product by Seller and/or supplier and/or producer and/or subcontractor; refusal to supply Seller with raw product and/or gases by supplier and/or producer; measures taken by authorities and any other causes beyond the reasonable control of the parties.

Parties shall immediately inform each other of a force majeure event stating the cause and the estimated duration thereof by registered mail. During the period(s) in which the party is prevented from meeting its commitments, the contract is suspended and the term of the present contract shall be extended by such period(s). During the period of suspension, Seller shall authorize Buyer, at his request, to purchase gas elsewhere and to store it in the installation, if the deliveries are done in accordance with the safety standards of Seller.

### **IX. LIABILITY**

Buyer is liable for the gases from the date of delivery.

Buyer is responsible for:

1. informing its employees and third parties about the hazards associated with the use of gases and instructing them on the safe use of gases;
2. the use of the gases, alone or together with other products or substances,
3. the packaging, in Buyer's capacity as holder and user.

It is expressly agreed that Seller's right of inspection and/or performance of maintenance does not lead to any liability for damages for Seller.

Seller will provide the professional user of the gases with the legally required Safety Data Sheets. If Buyer does or did not receive the SDS for any reason, he will immediately inform Seller thereof and ask Seller to provide him with the required SDS. Buyer will comply strictly with the safety regulations that have been provided to him with regard to the gases and installation.

Without prejudice to the other liability limitations in this contract and in as far as permitted by the applicable imperative law, Seller can only be held liable for the direct damages that are the sole and direct consequence of Seller's fault or gross negligence. Sellers' overall liability under this contract is in any and all events limited to an amount equal to the value of the delivery of defective gases in as far as permitted by applicable imperative law. Seller shall under no condition be liable for loss of production, loss of income, loss of profit, production stop in whole or partial, production lay time costs, indirect damages and/or consequential damages loss, costs, claims, demands arising out of the performance of this contract, in as far as permitted by the applicable imperative law.

**X. IMPORT AND EXPORT TRADE REGULATION**

Buyer agrees to comply with all applicable import and export control laws or regulations including but not limited to those of the United States and/or those of any other country region with jurisdiction over the parties or the transactions occurring under this contract, including the obligation not to transfer, export or import any product, technology, technical data or items provided by Seller to any person or destination when such transfer, export or re-export and/or import would be in violation of applicable import/export laws or regulations.

Buyer shall provide seller with any and all trade compliance information that may be required for Seller to comply with import/export laws, including but not limited to the end user's name and address, end-use of any product, technology, technical data or items obtained from Seller and country of final destination.

Seller reserves the right to suspend or terminate its performance hereunder without any right to damages for Buyer if a required import or export license could not be obtained from the competent authority and/or to suspend or terminate this contract for cause and with immediate effect if buyer or any transaction hereunder is suspected or found to be in violation of any import/export laws. Buyer shall obtain all required import and export licenses. Buyer shall not use seller's name as the importer or exporter of record without seller's prior written consent. Buyer shall indemnify, defend and hold seller harmless from and against any violation by Buyer of this provision and any import/export laws. The provisions of this section shall survive the termination or expiration of this contract

**XI. COMPLAINTS**

All complaints, whatever the reason or the nature, with regard to delivered gases, installation or services, must be made in written and no later than fifteen (15) days after delivery. Objections with regard to the content of invoices must be made in writing and no later than fifteen (15) days after the invoice date.

**XII. ASSIGNMENT**

This contract shall be to the advantage of and shall be binding to assignees and/or successors of each of the Parties.

**XIII. UNILATERAL TERMINATION OF THE CONTRACT BY SELLER**

Seller reserves the right to terminate (in part or in whole) the contract or to suspend its obligations (in part or in whole) automatically and with immediate effect without any prior notice and without any compensation being due to Buyer in case of (i) serious or repeated breach of contract by Buyer or when Buyer is (ii) is declared bankrupt, has suspended its payments, or is subject to a seizure procedure or (iii) if it can be reasonably expected that the Buyer will not be able to meet, in good time or satisfactorily, his obligation arising from this Contract, or (iv) if Buyer is in breach of legal obligations according to applicable law or can be reasonably be suspected or being in breach with legal obligations according to applicable law.

**XIV. GENERAL DATA PROTECTION REGULATION**

GDPR. The General Data Protection Regulation of 27/4/2016 (2016/679) on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data, hereinafter GDPR. Parties agree that it might be necessary to transfer, store, process and use personal data (any information relating to an identified or identifiable natural person (the Data Subject)) in order to perform all the obligations under the agreement. Both Parties consent to such transfer, storage, processing and use of personal data in as far as required for this Agreement and to the extent that this is performed in full compliance with the applicable GDPR and/or local privacy legislation and/or regulation. Both Parties shall ensure that they have the required authorizations from the concerned Data Subjects for such transfer of personal data to the other Party for the envisaged use or processing. The other Party will assist each other in ensuring the rights of the data subjects as foreseen in the GDPR. The personal data will in no event be retained longer than is required for the performance of the Agreement or by law. Parties shall take the required technical and organizational measures to ensure that the personal data are secure and confidential while retained. The personal data may only be transferred to affiliated companies and/or third parties without additional consent of the other Party in as far as this is essential for the purpose of performance of the contractual obligations and in as far as these third parties are located within the European Economic Zone and guarantee and warrant that they have taken all required technical and organizational precautions to receive, process, store and use such personal data in full compliance with the GDPR requirements. In case of any infringement or threatened infringement regarding the personal data, the Parties shall immediately inform each other and the competent Data Protection Authority. Parties shall indemnify and hold each other harmless for any claims, costs, charges, damages, expenses or losses and all other consequences of any breach on their part of the applicable European and/or local legislation on the protection of personal data in the context of this contract

**XV. LAW AND JURISDICTION**

The contract shall be governed by the Dutch laws. The courts of Rotterdam have exclusive jurisdiction over any dispute between Parties.