

GENERAL CONDITIONS

I. DEFINITIONS

- a. Gases means oxygen, nitrogen, argon or any other gas as specified in the Special Conditions, supplied in a liquid or gaseous form. Gases shall have the required purity as specified in the Special Conditions. The purity shall be measured in accordance with Seller's method or according to any other method generally recognized as standard.
- b. Cubic meter or m^3 means a standard cubic metre, measured at 15° Centigrade and at an absolute pressure of 1013,25 hPa.
- c. Installation means the cryogenic storage facility and vaporizing equipment and all other types of receivers and/or containers, packaging materials and accessories, including but not limited to telemetry, taps, protective caps and/or (transport) containers used to pack and/or store gases in liquid or gaseous form, installed on Buyer's site by Seller, suited for the regular supply of the required quantities of gas. The installation shall remain at all times the inalienable property of Seller, which is the owner of such installation, and is leased by the Seller for the term of the contract only and in accordance with the Terms and Conditions of this contract.
- d. Offer means any offer for the delivery of gases and/or the installation 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.
- e. Defective Gases means delivered gases that do not comply with the Technical Specifications, as specified in the Special Conditions, in as far as, these are unusable by Buyer.

II. INSTALLATION

1. Buyer shall provide a level plot of ground, acceptable to Seller, for the setting up of the installation and for the delivery of the gases. The Buyer shall at his own expense and responsibility construct and maintain the foundations for the installation on the dedicated location, as per specifications of the Seller. The Buyer shall provide easy and safe access for Seller's trucks to the installation. 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.
2. Seller shall install and commission the installation at the expense of Buyer. Buyer shall in a timely manner, at his own expense and responsibility, supply and install the pipes for carrying the gases to the points of use and, if necessary, shall provide electric power, steam, light and water and any other required utilities. The installation is rented by the Buyer from the Seller at a monthly rental fee and the ownership rights of the Installation shall therefore not be transferred in any way at any moment to Buyer. Immediately after the installation and commissioning of the installation, a descriptive document of the installation and all of its parts shall be made. Buyer shall ensure that the ownership of the installation is clear to all third parties and shall take all preventive measures against (possible) confiscation by third parties at all times. Buyer shall inform Seller immediately in case of (imminent) seizure procedures, bankruptcy or judicial reorganisation. The installation is under the care, custody and control of Buyer during the term of this contract, who shall be liable for any damages caused to it. The installation is not to be used for any other purpose than for the delivery/supply of gases by Seller. Any taxes or other levies relating to the use of the installation shall be for Buyer's account.
3. If the pattern of purchasing justifies a replacement of the installed installation by another installation, which is better adjusted to the quantities sold to Buyer, then Seller shall be entitled to replace the installation at the expense of Buyer. In that case, the price(s) tariffs and fee, included in Appendix 1, can be reviewed in accordance to the changes in the costs involved. It is however Buyer's own responsibility to order, at all times, the required quantities of gases in a timely manner for his production processes.

III. RESPONSIBILITIES SELLER

1. Seller shall make all reasonable efforts to deliver the ordered volumes of gases, in accordance with the availability of the gases and/or the raw material necessary for the production of the gases. Seller shall supply and install an installation at the expense of Buyer in accordance to Art. II of these General Conditions. Seller shall also maintain and repair the installation. In as far as any repair is due to circumstances attributable to the Buyer, the cost of such repair will be payable by Buyer. If the agreed location of the installation does no longer meets Parties' standards or requirements, then Seller shall, at the expense of Buyer, move the installation to another location on the site.
2. Seller shall, in accordance with the applicable safety regulations and the "state of the art" technology,
 - a) install the installation included in the Special Conditions at the place agreed upon with Buyer and connect them to Buyer's piping system,
 - b) carry out the required acceptance tests,
 - c) induct the Buyer's operating personnel on how to operate the installation,
 - d) provide the Buyer with operating and use instructions,
 - e) service, maintain and repair the units during their service life for the account of Buyer,
 - f) carry out the tests prescribed by the public authority,
 - g) dismantle the units of the installation, remove these and dispose the gases that are remaining in the units at Buyer's expense, within a reasonable period after the discontinuation of the contract.

IV. RESPONSIBILITIES BUYER

Buyer is responsible for:

1. taking and paying in time at least the minimum volumes of gases from Seller as specified in the Special Conditions;
2. the construction and maintenance of the foundations for the installation, the supply and installation of the pipes to carry the gases from the installation to the point(s) of use and the supply of the required utilities to Seller, at his own expenses and risks;
3. granting Seller safe and easy access to install and dismantle and/or move the installation on their site, granting Seller access to the installation at all times to perform the deliveries of gases and the general maintenance and repairs of the installation including inspection visits; immediately informing Seller of any apparent defect or necessity for repair of the installation. Any repairs will be for the account of Buyer in case of non-compliance with this disposition.
5. warning its employees and third parties of the dangers relating to the use of gases and providing such employees and third parties with adequate instructions;

6. for the use of the gases, in isolation or combined with other products or substances in any manufacturing process; and for the installation, as guardian and user thereof. The Buyer commits to insure the installation against all risks, including the risk of liability or loss and damages;
7. for obtaining and complying with all required permits, licences, remissions and permissions for the set up and operation of the installation and gases from the authorities concerned and to provide Seller with a copy;
8. the installation shall only be used in accordance with its intended use for the storage of gases, supplied by Seller. For safety reasons, Buyer will not co-mingle gases of different origin in his normal network;
9. The installation shall be returned in perfect condition to Seller at the end of this contract. Seller shall not be liable for the state of the site as a consequence of installing or dismantling the installation.

V. ORDERS AND DELIVERIES

1. Buyer shall place the orders at least eighty-four (48) hours in advance of the delivery. Telemetry may facilitate the ordering process but it is Buyer who remains however exclusively responsible for the regular monitoring of the required supplies and timely ordering of the required volumes of gases. The gases are sold Ex Works (Incoterms2010), ex Seller's plant or Seller's warehouse. Loading, transport and transport insurance shall only be handled by Seller upon Buyer's special request and at Buyer's expense and risk. Buyer allows in such case deliveries twenty-four (24) hours a day and seven (7) days a week and accepts Seller to make partial deliveries.
2. Each quantity of gases delivered hereunder shall be measured by Seller in accordance with the method Seller usually uses for this form of delivery. In deviation of the dispositions of the Incoterm EXW, it is expressly stated that title of ownership of the gases shall remain with Seller until full payment of any and all amounts due by Buyer, in connection with this contract, is received by Seller.
3. There are no express or implied warranties by Seller other than those related to the purity of the gas stipulated by the Technical Specifications by Buyer. Buyer shall be entitled to reject any delivery of defective gases within fifteen (15) days upon receipt of the gases, in which case Seller shall remove the defective gases and shall credit Buyer with the purchase price thereof.
4. Seller reserves the right to withhold, suspend or terminate any delivery of ordered quantities of gases until Buyer has paid all invoices that are overdue (including interests and compensation in that regard) and prepaid the ordered quantities when Buyer has not (fully) paid or has not paid the invoices of Seller which have not been protested, when Buyer has suspended its payments or when he is subject to a seizure procedure (executive or conservative) or if it can be reasonably expected that the Buyer will not be able to meet in good time or satisfactorily his obligations from this contract.
5. Seller reserves the right to immediately recover the installed installation at the expense of Buyer without any prior notice and without compensation being due in those cases where Buyer has not paid or has not paid on due date the invoices of Seller that are not protested or when Buyer has suspended its payments or when he is subject to seizure (executive or conservative) or if it can be reasonably expected that the Buyer will not be able to meet in good time or satisfactorily his obligations from this contract.

VI. PRICES AND PAYMENTS

1. The price(s) mentioned in the Specific Conditions and in Annex 1 shall be revised from time to time and at least once a year (i) in order to reflect increases in Seller's costs or (ii) when the Buyer does not meet the agreed minimum quantity or (iii) when the Buyer does not meet his contractual obligations.
2. The minimum quantity of gases to be taken by Buyer a month, 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.
3. 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.
4. Payment of the amounts owned shall be made fifteen (15) days after the date of invoice at the latest. Any objections with regard to amounts, numbers or incorrect recordings on this invoice must be notified in writing to Seller within 15 (fifteen) days after the date of the invoice. The invoice is deemed to be tacitly accepted by Buyer, if Buyer does not raise any objections within the specified time limit.
5. 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.
6. The obligation to pay is not suspended due to a possible objection that is pending. In case of a rightful objection, 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. Buyer waives any and all possible rights on offset of amounts due between Parties.
7. Seller reserves the right to unilaterally change payment conditions, in case of repeated non-payment on due date (more than twice) by Buyer, and to require cash prepayment for any following delivery, even after all due amounts have been paid by Buyer. Seller is also entitled to charge all judicial and extrajudicial collecting costs to Buyer.

VII. 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 in any way the suitability of the gases for any specific use. Buyer is advised to verify the suitability of the Gases for the intended use.

VIII. COMPLAINTS

All complaints, whatever the reason or the nature, with regard to delivered gases, installation or services, must be made in writing 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.

IX. 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 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.

X. LIABILITY

Buyer is liable for the gases and installation as from the date of delivery.

Buyer is responsible for:

- a) informing its employees and third parties about the hazards associated with the use of the gases and instructing them on the safe use of the gases;
- b) the use of the gases, alone or together with other products or substances,
- c) the installation, 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.

XI. TERMINATION OF CONTRACT

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 obligations arising from this contract, or (iv) if Buyer is in breach of legal obligations according to applicable law or can be reasonably be suspected of being in breach with legal obligations according to applicable law.

XII. ASSIGNABILITY

This contract shall inure to the benefit of, and shall be binding upon, the assigns and successors of the respective Parties hereto.

XIII. IMPORT AND EXPORT TRADE COMPLIANCE

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 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.

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 Belgian laws. The courts of Antwerp have exclusive jurisdiction.