

GENERAL PURCHASING CONDITIONS – NIPPON GASES NETHERLANDS BV

1. DEFINITIONS

"Purchaser" means NIPPON GASES NETHERLANDS BV, headquartered at Beugsloepweg 3, 3133 KV Vlaardingen, the Netherlands; "Seller" means the legal entity that supplies the Deliverables to Purchaser. "Order" means the purchase order emitted by the Purchaser, the present General Purchasing Conditions, the Supplementary Purchasing Conditions included in the Order and any other documents listed by the Purchaser on the Order. "Agreement" means the purchase agreement, Purchaser's Order, these General Conditions of Purchase and any other appendices and agreed amendments or variations to said documents as a whole. "Deliverables" means all goods, services, works, documents, certificates and packaging as appropriate, to be delivered by Seller pursuant to the Agreement

2. ORDER

The Purchaser is only committed by an Order. No other means implying an obligation may be used, even in the case of delivery of supplies, execution of services or partial payment. A verbal request from the Purchaser is not valid unless it is confirmed by the Order. Calls for tender and requests for rates from the Purchaser are only for information purposes and do not commit the Purchaser.

3. ORDER ACCEPTANCE

Acceptance of the Order by the Seller or the shipping of material to carry out the Order automatically imply acceptance of all clauses contained in the present General Purchasing Conditions and the Supplementary Conditions included in the Order, as well as the renunciation by the Seller to the Seller's own General Terms of Sale. All additional clauses, conditions and modifications relating to any of the documents making up the Order shall be subject to a special written agreement that has been signed by both parties; in the absence of such agreement, they shall be considered as null and void.

4. ACKNOWLEDGEMENT OF RECEIPT – SUBCONTRACTING

Acknowledgement of receipt by the Seller implies acceptance of the Order. Acknowledgement of receipt must be returned to the Purchaser within ten working days of Order receipt at the latest. In the absence of an acknowledgement, the Order shall be considered as accepted. Since the relationship with the Seller is of an intuitu personae nature, the Seller is not authorized to subcontract all or part of the Order without the prior written consent of the Purchaser.

5. GENERAL OBLIGATIONS OF SELLER

Seller shall without undue delay prepare and provide offer documentation and order confirmations free of charge, and any deviations from Purchasers' orders/requests shall be expressly specified. The deliverables shall in all respects meet the specifications of the Order, and shall in addition be of high quality, incorporating first class workmanship as well as fit for their intended purpose. Seller shall in addition perform any professional services and/or works with that degree of skill, care, diligence and good judgment normally exercised by recognized professional firms performing work of the same or similar nature.

Seller shall obtain and maintain all permits necessary to deliver the deliverables and perform the services and/or works, and shall upon Purchaser's request produce documentation showing that the necessary permits have been obtained and are valid and in force for the duration of the performance of the Order.

Seller shall at all times comply with applicable rules and regulations relating to HESQ and have a satisfactory system for HESQ assurance and quality assurance suitable for the Deliverables, Services and/or works. Purchaser is at any time entitled to carry out, and Seller shall assist in carrying out, inspections of the Deliverables and HESQ audits at Seller's or any subcontractors' premises.

6. DELIVERY

The commercial terms used in the Order shall have the meaning attributed to them by Incoterms 2010, published by the International Chamber of Commerce. Ownership of the merchandise and risks shall be transferred to the Purchaser upon delivery, as stated on the Order. Since respect of delivery deadlines is an essential element of the Order, any delays in delivery shall give rise, automatically and without formal notice, to a penalty of two percent of the total value of the Order per week of delay. The application of penalties for late delivery shall not affect the Purchaser's right to cancellation of the Order when formal notice to the Seller has remained without effect for 15 days. If merchandise is not fully delivered by the date indicated on the Order, the Purchaser may either (i) request immediate delivery of the remaining merchandise by the most rapid means of transportation, with any additional transport fees at Seller's costs, as well as damages for late delivery, or (ii) forfeit the delivery of the remaining merchandise and claim damages for non-execution, or (iii) terminate the Order and request damages resulting from this termination, without prejudice to any other rights that the Purchaser may have pursuant to applicable law or the Order. All deliveries of merchandise must be accompanied by a delivery slip made out to the Purchaser and including a reference to the Order number.

7. IDENTIFICATION AND PACKING

Merchandise shall be identified in conformity to the Purchaser's instructions and packed according to the Purchaser's and/or the transporter's Requirements and all applicable legislation and regulations. Dangerous merchandise shall be identified with an appropriate warning affixed to all containers and shall include pertinent documentation. Unless otherwise agreed, the containers, boxes, etc., shall be supplied by Seller and will not be charged to Purchaser. Purchaser shall return packaging material to Seller at Seller's costs in the event the Seller at the latest requests this at the time of acceptance of the Order.

8. QUALITY

Reception of merchandise by Purchaser is always subject to a careful subsequent inspection. The Seller guarantees that merchandise delivered pursuant to the Order conform to specifications supplied by the Purchaser and are free of manufacturing or design defects. The Seller shall be responsible for any defect in merchandise delivered and guarantees its perfect operation for one year starting from the date of reception by the Purchaser, unless a longer period of time has been indicated in the Supplementary Purchasing Conditions. Within the framework of this guarantee, the Purchaser reserves the discretionary right to request replacement or repair of merchandise that is found to be defective at Seller's cost, or to cancel the Order, or to claim damages for the loss in value.

9. INVOICING – PAYMENT TERMS

Seller shall submit a final invoice without undue delay after Purchaser has accepted the deliverables as being compliant with its specifications. The final invoice shall refer to Purchaser's order number and shall include all amounts that are due pursuant to the Agreement. Amounts or claims not included cannot be submitted later. Payment will be made by Purchaser after receipt of the final invoice within the term agreed in the Order. Payment is subject to the complete delivery of the deliverables by Seller, the full acceptance thereof by Purchaser and the invoice complying with the requirements of the Order.

10. INSTALLATION

Seller is the only liable party for the performed services. Seller shall have sole and exclusive responsibility toward the Purchaser and third parties for all acts or omissions of Seller's employees or of any of Seller's subcontractors acting independently and charged with installing the merchandise, which is the object of the Order.

11. RESPONSIBILITY – INSURANCE – ILLEGAL EMPLOYMENT

If the Order includes work (the Works) to be performed by the Seller on land or on a site owned by the Purchaser, Seller shall be exclusively responsible for paying the employment costs and obligations required by social legislation, in particular as concerns work accidents. The Seller shall commit to carrying out the Order with employees who have been hired and declared in conformity with applicable legislation and shall supply Purchaser with all documents justifying the legality of the Seller's situation with respect to fiscal and social obligations before the start of the Works. Seller shall indemnify Purchaser for all claims, losses, costs, fees, fines and consequential losses that have been caused by Seller in this context. In such case, the transfer of risk will occur when the work has been fully accepted by the Purchaser. Until this final acceptance, the Seller is the only liable party with regard to the works and must take out and maintain at the Seller's expense an insurance policy, from a company that is known to be solvent, to cover the Seller's liability for an amount deemed sufficient by the Purchaser. Seller shall provide evidence of such coverage to Purchaser before the start of the Works. Purchaser shall have a right to compensation for all damages, claims, costs and fees resulting from defects or non-conformity of supplied merchandise and/or from the performance or non-performance of the Works. Generally, Seller shall compensate the Purchaser for all bodily, material and immaterial damages that the Purchaser may incur relative to merchandise and / or services and/or Works supplied and/or performed by the Seller, or lateness in carrying out the Order. The Seller shall fully indemnify Purchaser in the event of any claims against Purchaser for as long as the Purchaser's liability may be invoked.

12. THIRD-PARTY RIGHTS

Seller guarantees that the merchandise delivered to the Purchaser is free from any third-party rights, in particular of any intellectual / material property rights. Seller commits to protecting and fully indemnifying Purchaser and to assuming the responsibility for any claims, complaints or actions formulated against the Purchaser, as well as to fully pay for all fees (including legal fees), loss and damage incurred by the Purchaser, in particular that which relates to legal proceedings against the Purchaser with respect to the existence of third-party rights on the merchandise delivered by the Seller.

13. FORCE MAJEURE

Force Majeure shall mean an occurrence beyond the reasonable control of the party affected, provided that such party could not reasonably have foreseen such occurrence at the time of accepting the Order and could not have avoided the occurrence or the consequences thereof. Neither party shall be liable for failure to perform any obligation under this agreement to the extent such failure to perform is the direct consequence of a Force Majeure occurrence. At the risk of forfeiting the Seller's right to validly invoke a case of force majeure, the Seller shall notify the Purchaser of this situation and justify it in writing as soon as the event occurs and at the latest within four working days. If a case of force majeure has been invoked by the Seller, the Purchaser shall have the right to cancel the Order and to seek supplies elsewhere without having to pay compensation.

14. INTELLECTUAL PROPERTY

All the drawings, software, detail drawings, plans, templates, models, tools, plates, etc., communicated to the Vendor by the Purchaser: (i) shall remain the exclusive property of the Purchaser; (ii) shall be used by the Seller only to prepare the Order and corresponding delivery; and (iii) shall be returned to the Purchaser upon first request. The provisions of the present General Purchasing Conditions concerning confidentiality shall be applicable. The Seller shall not deliver to third parties any items identical to those manufactured specially for the Purchaser according to the drawings, detail drawings and other elements mentioned above without the prior consent of the Purchaser.

15. CONFIDENTIALITY

Unless specifically agreed otherwise in writing, all written and verbal communication of Purchaser related to the preparation and carrying out of the Order are confidential. The Seller shall commit to keeping this information confidential as long as it has not become part of the public domain.

16. TERMINATION OF CONTRACT

In case Seller fails to perform or to perform in due time or satisfactorily any obligation whatsoever pursuant to the law, these Purchasing Conditions and/or the Supplementary Purchasing Conditions included in the Order and/or any other documents listed by the Purchaser on the Order, the Purchaser shall have the right to suspend its obligations either wholly or in part or to terminate the contract. In such cases, the Seller shall not be entitled to any compensation. In the event of an early termination, the Seller shall immediately return all sums already paid by the Purchaser. The Seller shall also reimburse all losses, costs and other payments sustained or expected to be sustained by Purchaser including any loss of profit, loss of income. The Seller shall indemnify Purchaser for all claims, damages and costs that are the consequence of his performance or failure to perform the Order.

17. SUSPENSION OF PAYMENT AND ASSIGNMENT OF CLAIM

In case Seller suspends payments, or enters into a voluntary liquidation process, bankruptcy, a recovery plan or legal liquidation, the Purchaser reserves the right to cancel the Order. Seller's receivables against the Purchaser resulting from the Order shall not be assigned to a third party without the Purchaser's consent.

18. ASSIGNMENT

Any transfer or assignment of the Order without the Purchaser's written consent shall be null and void.

19. LABOR REGULATIONS

Seller guarantees that it complies with the labor legislation to which it is subject. Seller guarantees that all Deliverables are produced and/or provided in compliance with the labor laws in force in the locations where the production of the Deliverables or the services are performed. Seller shall defend, indemnify, and hold harmless Purchaser, from and against any and all claims, losses, damages, expenses and liabilities, including attorney fees, arising from the failure by Seller to comply in this context. In the event Seller violates the applicable labor laws or regulations and/or this clause, this shall be considered a material breach of contract and Purchaser shall have the right to immediately and automatically terminate the Agreement without any notification being due and without liability or indemnity from Purchaser's side. The Agreement shall be rendered void in case of termination by Purchaser in this context.

20. NO GRATUITY, FCPA AND OTHER APPLICABLE ANTI-CORRUPTION LEGISLATION

Seller will not offer or give any gratuity to induce any person or entity to enter into, execute or perform any term or condition of this Agreement or any other agreement with or between the parties. Seller further represents that it has knowledge and understanding of the applicable European Anti-corruption legislation, the local Anti-corruption legislation, and the Foreign Corrupt Practices Act of the United States of America ("FCPA"), and that no principal, partner, officer, director or employee thereof is or will become an official of any governmental body of any country (other than the U.S.) in which Seller provides Products for Purchaser during the term period which this Agreement covers. Seller agrees that it shall not, in the conduct of its performance under this Agreement, and with regard to any funds, assets, or records relating thereto, offer, pay, give, or promise to pay or give, directly or indirectly, any payment or gift of any money or thing of value to (i) any non-U.S. government official to influence any acts or decisions of such official or to induce such official to use his influence with the local government to effect or influence the decision of such government in order to assist that party in its performance of its obligations under this Agreement or to benefit the other party; (ii) any political party or candidate for public office for such purpose; or (iii) any person if that party knows or has reason to know that such money or thing of value will be offered, promised, paid, or given, directly or indirectly, to any official, political party, or candidate for such purpose; and/or (iv) intentional or unintentional, actively or passively offer, pay, give, or promise to pay or give, directly or indirectly any payment or gift of any money or thing of value to improperly influence any person or to perform or not perform an act which is in violation of his or her legal, contractual or professional obligations.

Seller shall defend, indemnify, and hold harmless Purchaser, from and against any and all claims, losses, damages, expenses and liabilities, including attorney fees, arising from the failure by Seller to comply with the FCPA, the European and/or any other applicable anti-corruption legislation. In addition in the event Seller violates the FCPA and/or the applicable European and/or local anti-corruption legislation, Purchaser may immediately and automatically terminate the Agreement without any notification being due, without liability and the Agreement shall in the event of termination by Purchaser be rendered void.

Seller acknowledges and agrees that in supplying products, goods and/or services to Purchaser, Seller shall comply with all applicable European and/or local anti-slavery and/or human trafficking laws, statutes, regulations and codes from time in force and shall at all times comply with standards that are no less than those required by the applicable legislation, irrespective of turnover. Seller does not and will not engage in any activity, practice or conduct that would constitute an offence under any such applicable legislation. Seller is committed to including this same obligation in all contracts/agreements with Sellers subcontractors and suppliers. Seller shall defend, indemnify, and hold harmless Purchaser, from and against any and all claims, losses, damages, expenses and liabilities, including attorney fees, arising from the Seller's failure to comply in this context. In the event Seller violates the applicable anti-slavery and/or anti-human trafficking laws and/or this clause, this shall be considered a material breach of contract and Purchaser shall have the right to immediately and automatically terminate the Agreement without any notification being due and without liability or indemnity from Purchaser's side. The Agreement shall be rendered void in case of termination by Purchaser in this context.

21. STANDARDS OF BUSINESS - COMPLIANCE WITH EXPORT CONTROL REGULATION

Seller applies and shall apply standards of business conduct in the performance of his business, which are consistent with those of Purchaser's Code of Conduct. Purchaser may perform an integrity due diligence review of Seller to ensure compliance with Purchaser's Code of Conduct. Seller also confirms and guarantees that he complies with all applicable export control regulations of the United States or of any other country with jurisdiction over the parties or the transactions occurring under this agreement. Seller reserves the right to immediately withhold any and all Orders placed and/or to terminate this Agreement if it is determined that Seller violates or is suspected of violating export controls without any damages being due to Seller. This applies also if no export or re-export permit can be obtained from the responsible authority for an order. Purchaser has the right to cancel Orders subject to such conditions without notice if the Seller violates the provisions of this paragraph. Seller shall defend, indemnify, and hold harmless Purchaser, from and against any and all claims, losses, damages, expenses and liabilities, including attorney fees, arising from the failure Seller to comply in this context.

22. REACH REGULATION

Seller warrants that it, and all sub suppliers of substances used in relation to the Deliverables complies with the applicable REACH Regulation. The Seller undertakes that all those substances used in the production or incorporated in the Deliverables which are subject to registration under the REACH Regulation, have been pre-registered and either haven or shall be registered by Seller or his sub-suppliers covering the uses by Purchaser, in accordance with the requirements of the REACH Regulation. The Seller shall provide promptly the relevant and updated Safety Data Sheets in accordance with the requirements of the REACH Regulation.

23. GENERAL DATA PROTECTION REGULATION

(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.

24. APPLICABLE LAW – LITIGATION

The interpretation and carrying out of the Order are subject to the Dutch law and the application of the Vienna Convention on Contracts for the International Sale of Goods is excluded. Any disagreements related to the interpretation or carrying out of the Order shall be submitted to the competent Dutch courts.