



**GENERAL TERMS AND CONDITIONS OF SALE
LINDE GAS BENELUX**

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1 Applicability

- 1.1 The name Linde shall be taken to mean the private companies with limited liability Linde Gas Benelux B.V., Linde Gas Therapeutics Benelux B.V., Linde Homecare Benelux B.V., Linde Gas Cryoservices B.V. and Linde Gas Belgium S.A./N.V. The term Buyer shall be taken to mean the other party to the contract concluded with Linde.
- 1.2 These general terms and conditions of sale (hereinafter: the Conditions) shall apply to any commitments and legal relationships, of any name, between Linde and the Buyer (hereinafter: the agreement) pursuant to which Linde delivers, leases and/or makes available in any other way, gases and/or other goods and/or services from the time when the Buyer requests an offer from Linde and/or Linde submits an offer, whether or not at the Buyer's request. The term services shall be taken to include, among other things, the provision to the Buyer of additional work relating to the supply of gas, collection, delivery and/or exchange and rental of the packaging, the carrying out of design, installation, assembly, commissioning, maintenance and/or consultancy activities of any name.
- 1.3 The Conditions shall also apply to orders placed by the Buyer during (re)negotiation of the terms of the agreement between Linde and the Buyer.
- 1.4 The Buyer shall never invoke any deviating terms and conditions, habits or practices. Deviations of the Conditions can only be evidenced by writing.
- 1.5 Linde explicitly rejects any other terms and conditions in so far the Buyer refers to such terms and conditions in his offer or acceptance.
- 1.6 If any stipulation of the Conditions is or becomes null and void, the remaining stipulations of the Conditions shall remain in full force and Linde and the Buyer shall enter into consultations in order to come to an agreement about new stipulations to replace the void and/or nullified stipulations, whereby the aim and spirit of the void and/or nullified terms and conditions shall be observed.
- 1.7 Linde had the right to unilaterally change and/or amend the Conditions by giving notice to the Buyer.
- 1.8 The Dutch version of the Conditions is authentic, meaning that, if a translation of the Conditions is used, the Dutch version shall at any time prevail and shall be decisive in case of inconsistencies, ambiguities or disputes regarding the interpretation of the text.

2 Offers

- 2.1 All offers are without obligation.

3 Place, delivery and risk

- 3.1 All deliveries shall be ex factory.
- 3.2 If the goods and/or services are to be delivered at or on the Buyer's premises, the transport shall be for the account of the Buyer. The place of delivery must be normally accessible for the means of transport used by or for Linde. Deliveries shall take place at the entrance.
- 3.3 Linde shall make available the agreed products and/or services to the Buyer at the agreed time, or, if no time has been agreed at the time of delivery which is usual for those products or services.
- 3.4 Once delivered the goods and/or services shall be for the risk of the Buyer.

4 (Completion or) delivery of services

- 4.1 Services are considered to have been completed or delivered:
 - (i) if the Buyer has approved the result of the activities that have been carried out them; or
 - (ii) when eight (8) days have lapsed since the date on which Linde informed the Buyer in writing that the services have been completed and no written comments or complaints regarding the result of the services that have been delivered have been received; or
 - (iii) when eight (8) days have lapsed since the date on which Linde informed the Buyer in writing that the services have been completed and the Buyer has failed to inspect or test (or order the testing of) the result of the services that have been delivered within this period; or
 - (iv) when the Buyer has actually started using the product resulting from the performed activities, whereby the part the Buyer has started to use will be considered as completed.
- 4.2 The absence of a part that should have been delivered by a third (sub) supplier shall not constitute a reason to consider the services as not having been delivered.
- 4.3 Minor non-essential defects will be repaired or eliminated by Linde as soon as possible and shall not constitute a reason for the Buyer to withhold its approval.

5 Cooperation of the Buyer and indemnification from employer's liability

- 5.1 The Buyer will provide any cooperation required for the proper performance of the agreement, including the provision of all the required data, particulars and information. These particulars shall include specific quality requirements from the Buyer and, the envisaged application of the products to be delivered by Linde. If Linde suspects that the products or services it is to deliver will be used unlawfully or for improper purposes, Linde shall have the right to suspend the performance of the agreement.
- 5.2 The Buyer guarantees the correctness of the information supplied for the purpose of the performance of the agreement. In that regard, Linde does not have any obligation to have this examined or investigated.
- 5.3 The Buyer shall provide the following for its own risk and account and for the performance of the agreement:
 - a. the approved hoisting and/or lifting equipment, scaffolding, racks, ladders, including the mounting thereof and similar tools required for the performance of the agreement;
 - b. the supply of fuels, other auxiliary materials including such materials as compressed air, gas, water, electricity, diesel oil and petrol, supply and discharge pipes, telecommunications facilities and the required outlets for the items mentioned above;
 - c. a dry, heated, lighted room of sufficient size that can be locked separately, as accommodation for the employees involved, as well as a similar room for the storage of materials to be processed and tools to be used and personal property of the employees. Such facilities should be close to the place where the agreement is performed;
 - d. earth works, paving, piling, breaking, groundwork, concrete, carpentry, gates and furnishing work or other additional work, of any nature; the Buyer shall at all times ensure the good and continuous accessibility of the place(s) where the agreement is to be performed.
- 5.4 If Linde has agreed to perform services whereby staff of Linde or of third parties will be used at the Buyer's premises, the Buyer shall provide adequate (protective) clothing, equipment and the required safety instructions and will supervise compliance with these instructions. The Buyer shall indemnify Linde for any claims any employee of Linde or third party used on the Buyer's premises, whether or not pursuant to employer's liability (Section 7: 658 BW), may have against Linde as a consequence of an occupational accident he or she has suffered.

6 Prices

- 6.1 Unless other prices have been agreed to in writing, the gross standard prices of Linde apply, which prices the Buyer is deemed to have accepted at the time of conclusion of the agreement.
- 6.2 If, after the offer has been submitted, or after the signing of an agreement, a change occurs in the market conditions or the costs on which the prices are based, Linde shall have the right to modify the prices. A change in the costs shall be taken to include foreign exchange rate fluctuations which lead to changes in cost prices for Linde, including costs change due to government action or to a change in the law.
- 6.3 All prices are excluding turnover tax (BTW) and other levies imposed by the authorities.
- 6.4 In the event that extra costs arise for Linde, which have not been foreseen at the time of the offer or the order confirmation, and/or which can be attributed to a delay in the delivery as a consequence of (further) wishes or instructions on the part of the Buyer or as a consequence of any other circumstance for which Linde is not responsible, these extra costs shall be charged to the account of the Buyer in accordance with a specification of Linde.

7 Invoicing and payment

- 7.1 Payment shall take place in cash upon delivery, or as indicated on the invoice and at any rate not later than 14 days after the invoice date.
- 7.2 Complaints regarding the invoice amount and/or cylinder balance must be submitted within 14 days from the invoice date, in default whereof the Buyer shall be deemed to have agreed.
- 7.3 If the invoice amount has not been paid or has not been paid fully on the agreed date, or if no date has been agreed, within 14 days after the invoice date, the Buyer shall be deemed to be in default by operation of law and Linde will have the right to charge interest to the Buyer in the amount of the statutory interest, increased by 3%, as well as all the costs in and out of court incurred by Linde to collect its claim, without any notice of default being required. All the claims of Linde on the Buyer shall be immediately payable.
- 7.4 Linde and the Buyer shall be deemed to have agreed that these extrajudicial costs have been determined at 15% of the invoice amount, including any interest charged on late payments, unless Linde is able to demonstrate that these costs have exceeded that amount, in which case Linde will also be entitled to the amount by which that amount has been exceeded. Linde and the Buyer shall be deemed to have agreed that the Buyer shall reimburse the full costs of litigation in the case the Buyer shall be ordered by a court to pay the costs of Linde.
- 7.5 All the amounts charged to the Buyer shall be paid without discount or deduction. The Buyer does not have the right to offset any claims that have arisen for any reason whatsoever. The Buyer shall not have the right to suspend any payment it owes to Linde.
- 7.6 If there are good grounds to assume that the Buyer will not fulfil its obligations arising from the agreement in a timely manner, the Buyer shall immediately provide Linde with security at Linde's first request, in a form desired by Linde and if necessary supplement it for the proper fulfillment of all its obligations arising from the agreement.

8 Retention of title

- 8.1 Any goods delivered by Linde and/or any the results of services performed by Linde shall remain Linde's property until the time when all the claims Linde may have, for any reason, on the Buyer at the time of delivery have been paid in full, including any interest and costs. If the Buyer has been granted a credit facility, the retention of title will continue until the time of settlement.
- 8.2 The Buyer may only use and/or consume the delivered goods and/or services encumbered with retention of title in the context of its ordinary business operations. Until the obligations mentioned in the previous paragraph have been fulfilled, the Buyer shall not have the right to transfer the ownership of any of the goods delivered by Linde to any third parties or to encumber them with any limited rights. If this obligation is not fulfilled, Linde shall, without prejudice to its other rights, at all times have the right to take the goods back or to have them taken back from the place where they are located, such fully for the account for the Buyer, without any further notice, or notice of default being required.

9 Packaging

- 9.1 Gases are delivered in bottles, cylinders (which may or may not be packaged), tanks, containers, transport reservoirs (complete with parts and attachments), negative-pressure vessels, crates, boxes, pallets and other installations and equipment, including storage containers for delivery in bulk, to be made available and/or installed by Linde for the storage and the use of goods to be delivered by Linde (hereinafter: the packaging). The term packaging shall also be taken to mean the types of packaging referred to in the regulations regarding the transport of hazardous substances. The term packaging shall not include disposable packaging intended for once-only use.
- 9.2 The packaging shall at all times remain the property of Linde.
- 9.3 The Buyer undertakes to refrain from alienating or encumbering the packaging or providing them for use by any third parties in any other way.

10 Packaging usage fee and 'staangeld'

- 10.1 The Buyer shall pay a usage fee for the usage of the packaging from the day of delivery in compliance with Article 3 up to and including the day at which the packaging is returned by or on behalf of the Buyer, all this in accordance with rates to be determined by Linde. Linde will submit these rates for inspection at the Buyer's request.
- 10.2 In a contract between Linde Gas Belgium S.A./N.V. and the Buyer, if the packaging is not returned within an agreed term, the Buyer shall be liable for damages, called 'staangeld', for the temporary disuse of the packaging caused by the late return. No turnover tax (BTW) shall be due for the amount of these damages.
- 10.3 The Buyer grants Linde irrevocable authority to access the premises, plants, company buildings and suchlike, of any name and used by the Buyer under whatever title, to inspect the packaging with regard to its quantity as well as regarding its usage.

11 Returning packaging

- 11.1 If the packaging has not been returned to Linde, the Buyer shall pay the price of new, similar packaging, in addition to the usage fee mentioned in the previous article. Vis-à-vis the Buyer, the books and records of Linde shall constitute conclusive evidence.
- 11.2 The contents of packaging provided with a (re-)inspection date must be used prior to the indicated date and the packaging must be returned to Linde not later than on that date. Any costs and/or liability arising from any failure to return packaging in a timely manner in connection with the inspection date and the legal obligations of Linde in that respect shall be for the account of the Buyer.
- 11.3 If the packaging is returned to Linde after the period mentioned in the previous article has lapsed, Linde shall have the right, but not the obligation, to take back this packaging.
- 11.4 The buyer cannot claim reimbursement for or deduction of the value of any quantity of product still present in the packaging when it is returned. Linde shall have the right to charge a waste disposal fee to the Buyer if there is any product (remainder) present in the packaging when it is returned.

12 Damage, contamination and loss of packaging

- 12.1 The Buyer shall be liable for any damage to, soiling or contamination or loss of packaging from the time of delivery referred to in Article 3, until the time at which it has been returned to Linde, irrespective of the cause of the damage or the loss. If the packaging is lost, the Buyer shall pay a fee equal to the new value of the packaging.
- 12.2 If the packaging causes any damage to Linde or to any third parties after it has been returned, the Buyer shall be liable for this, unless the Buyer proves that the packaging was returned to Linde properly, in a good state of repair and in compliance with all the legal and contractual provisions in force.

13 Duty to report harmful effects to packaging

- 13.1 If a Buyer suspects or can reasonably suspect that the interior of the packaging is or can be contaminated or infected by a foreign substance, including (sea) water, after any incident, after it has been delivered to the Buyer, he must notify Linde thereof immediately and must confirm this notification in writing within 24 hours.
- 13.2 The same applies if the packaging has been exposed to strong heat radiation, such as that of a fire, or to any other circumstance or influence of which the Buyer suspects or can reasonably suspect that it may, in any way, have had a direct or indirect effect on the packaging.

- 14 Inspection, application and indemnification of packaging**
- 14.1 Insofar as this is possible for the Buyer, it is under an obligation to inspect (the contents of) packaging immediately upon receipt and at any rate prior to taking it into use. In the event of any doubt regarding the state of repair of the packaging, and also in the event that the state of repair of the packaging and/or the contents thereof, the Buyer shall immediately notify Linde thereof by telephone.
- 14.2 The Buyer shall not sell or deliver the products and/or the packaging to any third parties, without Linde's prior written permission.
- 14.3 The Buyer is responsible for acquiring and maintaining all the permits and exemptions required for the transport, use and/or processing of the product, the packaging and/or other equipment and for its strict compliance with all the regulations defined and/or to be defined by law and/or by the competent authorities in the future and for indemnifying Linde for all the consequences under civil law and under public law that may arise because of any non-compliance with any or more such government regulations.
- 14.4 The Buyer shall follow all the instructions of Linde for the delivery and the use of products, packaging and equipment delivered by Linde and shall, in particular, comply with all the safety measures. The Buyer is deemed to have taken cognisance of the safety information sheets of the products the Buyer has purchased from Linde. This information will be sent to the Buyer by Linde with the first delivery. The Buyer shall ensure that this information will be made available to the direct or indirect actual user(s).
- 14.5 The Buyer indemnifies Linde for any claims of third parties in connection with the use of the packaging and/or the use and/or processing by the Buyer of goods delivered and/or made available by Linde, including product liability claims of third parties as a consequence of any defect in a product or system delivered by the Buyer to a third party and which consisted, among other things, of products delivered by Linde and/or which has been created using goods delivered and/or made available by Linde, except if and insofar as the Buyer proves that the damage is caused by this product.
- 15 Prohibition to refill packaging**
- 15.1 Refilling the packaging of Linde or having it refilled other than by Linde is not permitted.
- 16 Packaging of the Buyer or of third parties**
- 16.1 Returning packaging that belongs to the Buyer, to (a representative of) Linde is deemed to imply a tacit order to Linde to perform any repairs deemed necessary by Linde to the control valve of the packaging and/or the retesting of the packaging, as well as the order to refill the packaging, all this for the account of the person who has returned the packaging or ordered it to be returned.
- 16.2 When any packaging that does not belong to Linde has remained in any area or building used by or for Linde for longer than one month, and has not been collected after the Buyer was urged to do this, Linde shall have the right to charge a fee for the next period in accordance with the rates of Linde in force at such time.
- 16.3 If any packaging that does not belong to Linde remains present in any area or building used by or for Linde and this packaging may no longer be refilled pursuant to the (safety and/or environmental) regulations in force, Linde shall have the right to destroy the packaging (or order it to be destroyed) for the account of the Buyer.
- 17 Additional work**
- 17.1 If Linde, at the request or with prior permission of the Buyer performs activities beyond the contents or scope of the agreed services, the Buyer shall pay Linde for these activities in accordance with Linde's usual rates. However, Linde is not under an obligation to meet such a request and may demand that a separate written agreement be signed.
- 17.2 The Buyer accepts that the agreed completion time of the services and the mutual responsibilities of the Buyer and Linde may be affected by the activities referred to in the previous article.
- 18 Guarantees and complaints**
- 18.1 Any goods and/or services delivered and/or made available by Linde shall be used in compliance with the instructions and/or the instructions manual provided by Linde. In the event of any doubt with regard to the application or use, the Buyer shall consult the specialists available at Linde's.
- 18.2 With due observance of the limitations stipulated hereinafter, Linde guarantees the soundness and quality of the goods and/or services delivered and/or made available by Linde, as well as the best possible performance of the services it has provided, for a period of not more than six months after (completion or) delivery.
- 18.3 The guarantee does not include the consequences of normal wear and tear (such as, among other things, the replacement of batteries, electrodes, plastic, rubber and glass parts) or injudicious or improper use.
- 18.4 The guarantee regarding goods and/or services that have been delivered and/or made available is limited to material, manufacturing faults, in which case Linde will only be under an obligation to repair or replace defective parts, on the understanding that Linde will be entitled to charge the working hours required for the replacement to the account of the Buyer.
- 18.5 Complaints must be submitted in writing and as soon as possible, though not later than 14 days from delivery, installation and/or completion of the activities, goods and/or services, or, if a completion protocol has been drawn up, from the date on which it was drawn up, or – in the event of invisible defects – within 14 days after the defects could reasonably have been detected, though at any rate within 14 days after the expiry of the guarantee period.
- 18.6 If the period stipulated in the previous paragraph is exceeded, this shall result in the cancellation of all the claims on Linde with regard to the guarantee obligation.
- 19 Liability**
- 19.1 Linde shall only be liable for direct damage, to the extent that this is due to negligence on the part of Linde arising during or as a direct result of the performance of the agreement or as a direct consequence of the delivery of faulty goods and/or services, which liability shall be limited to a maximum of (i) an amount equal to 100% of the annual revenue effectively achieved under the agreement in the contractual year preceding the year in which the event giving rise to the damage occurred or if the damage occurred in the first contractual year an amount equal to 100% of the estimated annual revenue or (ii) EUR 400.000 (in words: four hundred thousand euro), whichever amount is the lesser, per event and per year whereby a sequence of successive or related events shall be considered as one.
- 19.2 The total aggregate liability of Linde during the total duration of the agreement, for damage or loss, in whatever form, is limited to (i) an amount equal to 100% of the revenue effectively achieved during the total duration of the agreement or (ii) a maximum of EUR 800.000 (in words: eight hundred thousand euro), whichever amount is the lesser.
- 19.3 Without prejudice to the stipulations of the previous paragraph of this Article, Linde shall have no liability (whether in contract, tort or otherwise) for any other loss or damage including (without limitation) loss of profits or economic loss, which shall be deemed to include, among other things, loss or damage to revenue, profits, savings, use, contracts, goodwill or business, loss due to business interruption and/or any other consequential or indirect damage.
- 19.4 The limitations and exclusions of liability as stipulated in these Conditions do not apply in the event of willful misconduct or gross negligence on the part of Linde.
- 20 Force majeure**
- 20.1 Linde is not liable to fulfil any obligations arising from the agreement if this is prevented by force majeure. The term force majeure shall be taken to mean anything which occurs beyond the reasonable control of Linde, including, but not limited to: fire, (the threat of) war, (the threat of) terrorism, unofficial or organised strikes, blockades, riots or other disturbances of the peace, fuel shortage, energy shortage, transport restrictions, industrial accidents, weather conditions, natural disasters, including floods, earthquakes, epidemics, quarantine measures, restrictions on the granting of permits, failure by sub-suppliers to fulfil their obligations.
- 20.2 As soon as a situation of force majeure arises Linde shall be unilaterally authorised to extend the agreed periods as is reasonable in connection with the factor(s) of force majeure that have arisen, and fulfil agreements proportionately at its discretion.
- 20.3 In the event of force majeure, the Buyer shall at any rate not have the right to demand the dissolution of the agreement that has been concluded.
- 20.4 In the event of force majeure, Linde will try to find a solution to meet the Buyer's need for the product and/or the service. Linde shall have the right to charge the additional costs of delivering the product and/or the service to the Buyer in spite of the situation of force majeure.
- 21 (Intellectual and industrial) property rights**
- 21.1 Unless explicitly agreed otherwise in writing, all the intellectual and industrial property rights to all the programmes, equipment and/or other goods, information and/or data such as analyses, (technical) documentation, drawings and models, developed and/or made available during the preparation and/or performance of the agreement exclusively belong to Linde.
- 21.2 The Buyer declares and guarantees to Linde that it does not infringe upon the rights of any third parties by the preparation and/or performance of the agreement. The Buyer indemnifies Linde for any claims in that regard and shall compensate any damage which is caused by such infringement and is charged to Linde or the party that invokes such right.
- 21.3 All drawings, models, (technical) documentation, computer programmes or other information carriers, as well as any specifications and any goods provided by Linde to the Buyer prior to or during (the preparation of) the performance of the agreement, shall at all times remain the property of Linde and shall, after the agreement has been performed, be returned by the Buyer to Linde.
- 22 Termination and cancellation**
- 22.1 Without prejudice to any further conditions agreed in writing, Linde may terminate the agreement with immediate effect partly or in full without any notice of default or judicial intervention being required, by a written notice if the Buyer is granted suspension of payments, whether or not provisionally, if the Buyer's bankruptcy or a 'gerechtelijk akkoord' is filed for, in the event of an attachment or an impending attachment of objects at the Buyer's premises in which or on which goods of Linde are located or if its business is liquidated or terminated other than because of a reorganisation or merger of businesses or if a request has been filed to declare a debt repayment scheme applicable to the Buyer. Linde shall never be under any obligation to pay any compensation because of such termination.
- 22.2 If the agreement is terminated and/or declared dissolved, for any reason, the Buyer shall immediately put the packaging, equipment and attachments of Linde at Linde's free disposal. The Buyer authorises Linde now for then to detach and remove this packaging, equipment and attachments from the area where they are installed.
- 22.3 In any case where the agreement is terminated (prematurely) pursuant to any stipulation thereof or by judicial intervention or the intervention of an arbitrator, the agreement shall continue to govern the legal relationship between the parties to the extent that this is necessary for the settlement thereof.
- 22.4 In the event of an attachment or an impending attachment at the Buyer's premises of objects in or on which goods of Linde are located, the Buyer shall immediately notify Linde thereof by telephone and in writing.
- 22.5 In any case where the Buyer places an order, after the Buyer has terminated the agreement, the Buyer shall be deemed to have revoked (his notice of) termination.
- 23 Transfer of rights/obligations**
- 23.1 The Buyer shall not transfer any rights and/or obligations arising from the agreement to any third parties without Linde's prior written permission.
- 23.2 Linde has the right to transfer its rights and/or obligations arising from the agreement to a third party. In the context of the performance of an agreement to provide services, Linde shall have the right to outsource part of or all its obligations to a subcontractor it has appointed thereto.
- 24 Period of limitation**
- 24.1 Any right of action and/or defence with regard to Linde shall be precluded by the single lapse of one year after the right of action has arisen.
- 25 Confidentiality**
- 25.1 Except with Linde's prior written permission, the Buyer shall observe secrecy with regard to all the data obtained directly or indirectly in connection with the assignment in the broadest possible sense of the word.
- 26 Applicable law and disputes**
- 26.1 The agreement between Linde, except Linde Gas Belgium S.A./N.V., and the Buyer shall be governed by Dutch law.
- 26.2 Any disputes arising from the agreement and/or the Conditions shall exclusively be submitted to the court in Rotterdam.
- 26.3 The agreement between Linde Gas Belgium S.A./N.V. and the Buyer shall be governed by Belgian law. Any disputes arising from the agreement and/or the Conditions shall exclusively be submitted to the court in the judicial district of Antwerp.
- 26.4 Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.