

General conditions for supply of gas GSG 2017 (ALG)



1. Standard terms and conditions

These terms and conditions of supply apply when the parties have agreed upon them in writing or otherwise. Deviations from these terms must be agreed in writing in order to be valid. Information contained in product brochures, price lists and so on, as well as information provided by any other means, is only binding in so far as the agreement between the parties specifically refers to it.

2. Definitions

Bottled Gas shall be taken to mean gas stored under pressure in closed containers.

Liquid Gas shall be taken to mean cooled gas that is a liquid at atmospheric pressure or when under pressure, such as liquid argon, nitrogen, oxygen or carbon dioxide.

Dry Ice shall be taken to mean carbon dioxide in its solid state. Packaging shall be taken to mean containers for the storage and transportation of gas, such as gas cylinders, gas cylinder packages, gas cylinder pallets, baskets for gas bottles, transportable vats, transportable tanks or boxes for Dry Ice. Gas Installation shall be taken to mean stationary equipment at the Buyer's premises for the production, separation, storage and/or distribution of gas, such as storage tanks or gas mixers. Equipment shall be taken to mean Packaging, Gas Installations and other equipment that the Seller makes available in fulfilment of the gas supply Agreement.

3. Calculation of quantities, etc.

Bottled Gas is pressure tested at a temperature of +15°C. The stated gas volumes for compressed gases are a function of the internal volume of the gas cylinder, the nominal filling pressure and gas specific factors, unless otherwise stated.

For Bottled Gas that is in a liquid state when under pressure at 15°C, and for gases dissolved in a liquid, such as acetylene, the quantity is calculated by weighing.

The quantity of Liquid Gas is determined by weighing or measuring the volume. The quantity is either stated as a weight in kilograms (kg) or as a volume – in litres (l), if liquid, or cubic metres (m³), if gaseous – at +15°C and 98.07 kPa. Conversion factors can be provided by the Seller on request. The quantity of Dry Ice is determined by weighing.

4. Quality and documentation

The Gas and Dry Ice supplied shall comply with the Seller's specifications. The Seller shall provide such specifications at the request of the Buyer. At an additional cost, the Seller is to provide documentation of traceability, quality controls and analyses, provided that this has been specified in the order.

5. Terms of supply

Bottled Gas and Liquid Gas in Packaging is supplied Ex Works of the Seller or of the Seller's agent at a retail outlet. At an additional cost, the Seller can offer to supply the products CIP to the Buyer's premises or CIP to a recipient designated by the Buyer. The point of delivery for Liquid Gas supplied in a Gas Installation is the Gas Installation's outlet connection (valve, flange or equivalent), unless otherwise agreed. If the Buyer provides a Gas Installation or Packaging, or if the Buyer has a system in which Liquid Gas circulates, the point of delivery is the Gas Installation's, or alternatively the Packaging's, inlet connection. Dry Ice is supplied Ex Works of the Seller's production plant for Dry Ice, or another location designated by the Seller.

These terms of supply shall be interpreted in accordance with the INCOTERMS in force when the agreement was signed.

6. Receipt of the gas

Within his premises, or at another reception point designated by him, the Buyer shall maintain a road that is clear, accessible and otherwise suitable for long and heavy vehicles, leading to the Gas Installation. This obligation applies 24 hours a day for Buyers with a Gas Installation, whilst for other Buyers it applies during their normal working or opening hours.

If the Buyer does not help to ensure that delivery can be made in accordance with the Agreement, other than for the reasons specified in Clause 14, the Seller is entitled to compensation for waiting time and any other costs that he incurs.

The Buyer and Seller shall check that the correct customer number and correct quantity of gas are recorded on the delivery confirmation. The Buyer, or one of the Buyer's designated recipients, shall be present during delivery and shall without delay confirm the delivery, or alternatively the quantity of gas that has been filled into the Gas Installation, by signing the delivery confirmation. Any deviations shall be recorded on the delivery confirmation. If the Buyer is not present during delivery, the Seller shall check that the information on the delivery confirmation is correct. The Seller shall record on the delivery confirmation that the Buyer was not present and shall as soon as possible notify the Buyer that a delivery has been made or that the Gas Installation has been filled. Such notification shall be given by the Seller putting the delivery confirmation in a letter box agreed for this purpose or some other place that has been agreed. The information on the delivery confirmation shall then be considered accurate unless the Buyer can prove otherwise.

7. Delivery of gas to a Gas Installation or in Packaging provided by the Buyer

If gas is delivered in Packaging, or to a Gas Installation, provided by the Buyer, the Seller is entitled to compensation for the

additional handling and delivery planning costs that he incurs as a result. When exchanging the Packaging provided by the Buyer, the Seller is entitled to deliver the gas in different Packaging of an equivalent type.

The delivery of gas in accordance with this Clause assumes that the Packaging or Gas Installation meet any requirements specified by the authorities or the Seller.

8. Marking of equipment

The Seller is entitled to mark Equipment with his own unique markings. The Buyer may not remove or change any such markings without the prior written consent of the Seller.

9. Safety, handling and care

The Buyer has a duty to follow government regulations and the recommendations of the Seller with respect to the transportation, storage and use of the gas and Dry Ice supplied, as well as to the handling and care of Equipment. The Buyer shall look after the Equipment and handle it with due care. The Buyer is liable for damage or loss of this Equipment caused by the Seller.

The Buyer shall immediately notify the Seller of any faults with the equipment. The Buyer shall take all reasonable precautions to limit damage resulting from any such faults. When installing and uninstalling the Equipment, as well as when delivering gas and Dry Ice, the Seller shall comply with all government regulations relating to HSE.

Gas cylinders, gas cylinder packages and gas cylinder pallets shall be returned to the Seller at residual gas pressure. The Buyer is not entitled to compensation for this residual gas.

10. Prices and terms of payment

Unless otherwise agreed in writing, the Seller's current price and terms of payment on the delivery date shall be applied. These are specified on the Seller's price list. It also sets out the Seller's current invoicing, late payment and payment reminder charges, as well as late payment interest rates.

11. Defects

If the Seller has delivered defective gas or Dry Ice, the Seller shall as soon as possible, and free of charge to the Buyer, provide gas or Dry Ice that meets the Agreemental specifications. If the Seller paid for the transportation of the original delivery, the Seller shall also pay for the transportation of the replacement delivery.

If the Seller fails to supply the Buyer with gas or Dry Ice that meets the Agreemental specifications within ten days of receiving a written reminder, the Buyer is entitled to cancel the Agreement in relation to the defective delivery.

12. Compensation claims

In the event of a defective delivery of gas or Dry Ice, the Buyer must make a claim against the Seller immediately after he discovers, or should have discovered, the defect. The claim shall contain a description of the problem with the delivery.

If the Buyer fails to make a claim within 1 (one) year of delivery being made, or when it should have been made, he loses his right to make a claim with respect to the defect. If the Buyer makes a claim, and it turns out that there is no defect for which the Seller is responsible, the Seller is entitled to compensation for the time with he has spent and the expenses that he has incurred in dealing with the claim.

13. Product liability

The Buyer shall indemnify the Seller with respect to the Seller's liability to third parties for damage or losses for which the Seller is not liable to the Buyer under the terms of the second paragraph of this Clause. The Seller is not liable for damage or losses that gas or Equipment supplied by him cause:

- a) to real property or moveables, or the consequences of such damage or losses, if the damage or losses occur when the gas or Equipment is in the possession of the Buyer, or
- b) to products manufactured by the Buyer, or to products that incorporate the Buyer's products, or for damage or losses to property that these products cause due to properties of the gas or Equipment supplied.

The abovementioned limitations on the Seller's liability do not apply if the Seller has caused the damage or losses through gross negligence.

If a third party raises a compensation claim against the Seller or

the Buyer with respect to damage or losses of the claim, the Seller and Buyer undertake to adopt as their place of jurisdiction the court or arbitration court that handles any compensation claim against either one of them, if the claim is based on damage or losses that are allegedly caused by the gas or Equipment supplied. However, internal liability between the Buyer and the Seller shall always be decided in accordance with Clause 20.

14. Force majeure

If the fulfilment of the agreement becomes impossible or unduly burdensome due to circumstances such as war, government intervention, rioting, civil commotion, energy shortages, labor conflicts, prohibitions, restrictions, lack of permits, accidents, machine breakdowns, unfavorable transport or weather conditions, interruptions or disruptions in telecommunications, fuel shortages or problems with or delays to deliveries from subcontractors caused by such circumstances, the affected party shall be exempted from his obligations to a proportionate extent.

The abovementioned circumstances only provide grounds for exemption if one of the parties could neither have reasonably foreseen those circumstances when the agreement was signed, nor reasonably have avoided or overcome the consequences of those circumstances.

If either party wishes to invoke this force majeure Clause, he shall without undue delay notify the other party of this in writing, also stating when the force majeure will cease to apply. Regardless of what follows from the above, each party is entitled to terminate the agreement, after notifying the other party in writing, if the fulfilment of the agreement is delayed by more than 6 (six) months due to a force majeure event as set out in the first paragraph of this Clause.

15. Late delivery

If the Seller completes a delivery late, for reasons other than those specified in Clause 14, and the delay is not the fault of the Buyer, the Buyer is entitled to compensation. The Seller's liability for compensation is limited to:

0.5% of the agreed price for the delayed delivery for each whole week that the delay persists, up to a maximum of 7.5% of the agreed price. If only part of the delivery is delayed, compensation shall be proportionate to the price of the part of the delivery that is delayed.

16. Limitation of liability

The Seller has no liability other than as set out specifically in this agreement. This applies to all losses including, but not limited to, production losses, loss of profit or other financial consequential losses. However, this limitation on the Seller's liability does not apply if the damage is caused by gross negligence.

17. Termination of the agreement

Each party is entitled to terminate the agreement if the other party is in serious breach of his obligations under this agreement and fails to resolve the matter within 30 (thirty) days of receiving a written demand that he do so.

18. Miscellaneous

The Seller reserves the right to not deliver to the Buyer, even if such a delivery is covered by the agreement, if the Buyer does not have the necessary permits, or if the delivery for other reasons would be in breach of safety regulations specified by the authorities or the Seller. If the Seller has undertaken to connect Equipment to the Buyer's gas system, the Seller is entitled to not do so if the gas system does not comply with the safety regulations specified by the authorities or by the Seller under the agreement between the parties.

19. Data protection

The Seller will treat personal information about the Buyer in such a way as to be able to provide the agreed services/ products, administer the agreement between the parties, for marketing purposes (including direct marketing), for customer profiling and invoicing, etc. By providing personal information (including personal identity numbers where relevant) when the Agreement is signed, the Buyer agrees to his personal information being used in this way. The Buyer can demand to know what personal information is held by the Seller. Furthermore, the Seller is obliged to correct inaccurate personal information at the request of the Buyer.

20. Disputes

Any dispute between the Lessee and the Lessor shall be finally decided in accordance with the International Chamber of Commerce's arbitration rules, by one or more arbitrators appointed in accordance with those rules. The arbitration proceedings shall take place where the Lessor has his place of business, under law that applies there. If the Lessee is considered a consumer, the dispute shall be resolved through the ordinary court system.