



AS Linde Gas General Conditions of Sale

Applicable from 01.09.2011

1. VALIDITY OF THE GENERAL CONDITIONS

- 1.1 These general conditions of sale of AS Linde Gas (hereinafter "Conditions of Sale") shall apply to all orders of gases, equipment and other products (hereinafter "Products") submitted to AS Linde Gas, address Valukoja 8, 11415 Tallinn (hereinafter "the Seller") and to the conclusion of a sales contract for Products between the Seller and the person ordering Products (hereinafter "the Buyer" and "Contract") and the Contract thus concluded.
- 1.2 The Seller shall have the right to unilaterally amend the Conditions of Sale at any time. Amended Conditions of Sale shall only apply to such orders and Contracts where the order has been submitted after the amendment of the Conditions of Sale.
- 1.3 Upon conclusion and performance of a Contract, the parties shall firstly adhere to the terms and conditions separately agreed between the parties and thereafter to these Conditions of Sale.
- 1.4 A Contract may cover both the sale and intermediation of Products.

2. DEFINITIONS

- 2.1 Unless the parties have separately agreed otherwise, the following definitions shall apply to the sale or intermediation of Products by the Seller to the Buyer:
 - 2.1.1 Bottled gas – compressed gas stored in closed cylinders or compressed Liquefied gas (e.g. carbon dioxide, propane or nitrous oxide) stored at ambient temperature.
 - 2.2 Liquefied gas – cooled gas in a liquid state at atmospheric pressure or overpressure (e.g. liquid argon, liquid nitrogen, liquid oxygen or liquid carbon dioxide).
 - 2.3 Dry ice – solid carbon dioxide.
 - 2.4 Package – containers used for the storage and transport of gas, including cylinders, cylinder packs, cylinder racks, transport containers, gas vessels and dry ice boxes.
 - 2.5 Gas Centre – stationary gas production, separation, storage or distribution equipment located at the Buyer's premises, such as Liquefied gas containers equipped with evaporators, mixers and other devices.

3. CONCLUSION AND ENTRY INTO FORCE OF THE CONTRACT

- 3.1 In order to submit orders on behalf of a Buyer who is a legal person the Buyer must have submitted to the Seller a list of persons entitled to order goods and services from the Seller in the name of the Buyer. The list must be signed by a person with the authority to represent the Buyer.
- 3.2 The Buyer shall submit orders for the Products personally to the Seller's representative at the Seller's point of order or another location, or electronically on the Seller's website or by phone, e-mail, fax or other means of communication. As a rule, the Buyer's order shall be construed as an offer within the meaning of the Law of Obligations Act.
- 3.3 The Seller shall acknowledge the receipt of an offer in a form at least equivalent to that in which the offer was submitted. This acknowledgement shall be construed as acceptance within the meaning of the Law of Obligations Act only if it contains no significant changes compared to the offer, including changes of the term of delivery, or reference to additional conditions to be fulfilled before concluding a Contract. If an acknowledgement of receipt of an offer contains significant changes compared to the offer or reference to additional conditions to be fulfilled prior to conclusion of a Contract, it shall be construed as a rejection of the Buyer's offer and a new offer which the Buyer may then choose to accept.

- 3.4 If the Seller has not acknowledged the receipt of an order within 5 (five) working days from the date that the order is submitted, the offer shall be deemed expired. In its acknowledgement of receipt of an offer, the Seller shall refer to these Conditions of Sale and request the Buyer to read them. If the Buyer does not agree to the Conditions of Sale, it may withdraw from a Contract prior to delivery of the Products, but not later than within 1 (one) working day.
- 3.5 A Contract shall be deemed concluded and enters into force at the moment when either the Seller or the Buyer accepts the other party's offer, but not later than upon signature of the consignment note by the Buyer.

4. PRICE OF PRODUCTS AND TERMS OF PAYMENT

- 4.1 The Buyer shall pay for Products in accordance with the Seller's pricelist applicable at the time of submitting the order. The price of Products shall be paid together with value added tax.
- 4.2 In addition to the price of Products, the Buyer shall pay for other services ordered from the Seller, including transport, storage, transshipment and additional packaging, in accordance with the Seller's pricelist applicable at the time of submitting the order. These costs or the basis for calculation thereof shall be notified to the Buyer latest at the time of conclusion of the Contract.
- 4.3 The Seller has the right to require advance payment.
- 4.4 Payments for Products and services can be affected:
 - 4.4.1 in cash or by bank transfer upon delivery of Products at the latest;
 - 4.4.2 by bank transfer as invoiced.
- 4.5 The Seller may allow or deny payment by bank transfer as invoiced at its own discretion.
- 4.6 In case of payment as invoiced, the term of payment shall be at least 7 (seven) calendar days from the date that the invoice is issued.
- 4.7 In case of payment by bank transfer, the payment shall be deemed completed upon receipt of the amount at the Seller's bank account.
- 4.8 The Buyer shall compensate the Seller for any expenses arising from changes in an order already submitted that are requested by or on behalf of the Buyer.
- 4.9 The Seller may also require the Buyer to compensate for any additional handling or planning costs resulting from the delivery of Products in the Buyer's packaging or to the Buyer's Gas Centre.
- 4.10 Any payments from the Buyer to the Seller shall first cover any collection costs incurred by the Seller (including court expenses, legal fees etc), followed by fines for delay, contractual penalties and other monetary obligations not directly related to the cost of Products, and only then the price of Products and services. If the Seller offsets the Buyer's payment against obligations other than payments for Products and services, it shall notify the Buyer thereof within a reasonable time.
- 4.11 The Buyer shall compensate the Seller for any damages arising from the Buyer's breach of Contract.

5. DELIVERY OF PRODUCTS

- 5.1 The Seller shall deliver the ordered Products to the Buyer at the time specified in the order or at a time separately agreed with the Buyer. The Seller shall indicate proposed changes in the time of delivery in its acknowledgment of receipt of the order if necessary. Orders with no specified term of delivery shall be delivered within a reasonable time.

- 5.1.1 If the delivery of Products to the Buyer is conditional upon presenting of a permit or licence by the Buyer, submitting information necessary for fulfilling the order, advance payment, provision of security or other requirements, the Seller shall notify the Buyer thereof in its acknowledgment of receipt of the order. The Seller may refuse to begin production or delivery of the Products ordered until the Buyer has met all such requirements.
- 5.2 The risk of accidental loss of or damage to Products passes from the Seller to the Buyer upon delivery of the Products. The Products shall be deemed delivered when loaded onto a means of transport provided by the Buyer, or upon delivery from the Seller to the Buyer if Products are delivered to the Buyer by the Seller's means of transport.
- 5.3 The delivery of Products from the Seller to the Buyer shall be certified by signing an instrument of delivery and receipt or another document confirming the delivery of Products (e.g. consignment note).
- 5.4 The Seller or its representative shall supply Products (gases) ex works (factory). For an additional fee, the Seller may transport gas at constant pressure (CIP) to the Buyer or a recipient indicated by the Buyer. Unless agreed otherwise, the point of delivery shall be the gas outlet orifice (valve, valve flange or other equivalent point) at the Gas Centre. If the Buyer owns the Gas Centre or operates a Liquefied gas circulation system, the point of delivery shall be the gas inlet orifice at the Gas Centre. Delivery terms shall be interpreted in accordance with the international delivery terms applicable at the time of conclusion of the Contract (INCOTERMS® 2010).
- 5.5 Products other than gases shall be delivered from the Seller to the Buyer in a warehouse agreed by the parties.
- 5.6 If the parties have agreed that the Seller shall transport the Products to the Buyer's premises, the Buyer shall ensure that the delivery location on its premises is readily accessible to the Seller's long and heavy vehicles. This obligation shall apply to buyers of Liquefied gas around the clock and to buyers of other Products during their normal working or opening hours.
- 5.7 By signing an accompanying document, the Seller and Buyer certify that the customer number and product quantity indicated in the document are correct. The Buyer or a recipient indicated by the Buyer shall be present upon the delivery of Products and shall immediately sign the accompanying document to confirm receipt of the Product. In case the accompanying document contains incorrect information, a notation shall be made in the accompanying document.
- 5.8 If the Buyer fails to receive Products at the agreed time, it shall compensate for any damage thus incurred by the Seller, including transport costs. If the Buyer has given the Seller permission to deliver Products without the Buyer's presence, the Seller shall note in the accompanying document that the Buyer was not present upon the delivery of Products and shall notify the Buyer of the delivery of Products as soon as possible. The Seller may give such notification by leaving the accompanying document in a designated (mail)box or any other agreed location. If the Buyer or its representative is not present upon the delivery of Products, the risk of accidental loss of or damage to Products passes from the Seller to the Buyer upon leaving the accompanying document in a designated (mail)box or any other agreed location. Information indicated in the accompanying document shall be deemed correct unless the Buyer submits evidence to the contrary.
6. **MEASUREMENT OF PRODUCT QUANTITY**
- 6.1 The pressure of Bottled gas shall be measured at a temperature of +15°C. The quantity of gas shall be calculated as a function of the inner volume of the gas cylinder and nominal pressure inside the cylinder. Calculation of the quantity of gas shall take into account the compressibility (compression factor) of the gas.
- 6.2 The quantities of Bottled gases liquid at ambient temperature and gases dissolved in a liquid (e.g. acetylene) shall be determined by weighting.
- 6.3 The quantity of Liquefied gases shall be determined on weight or volume basis. The quantity of Liquefied gas shall be expressed by weight (in kilograms (kg)) or volume (in litres (l) or cubic metres (m³)) in gaseous state at a temperature of +15°C and a pressure of 98.07 kPa. The Seller shall submit the conversion rates used to the Buyer upon request.
- 6.4 The quantity of Dry ice shall be measured by weighting at the Seller's production facility or another location designated by the Seller.
- 6.5 If the parties have agreed the quantity, volume or weight of Products to be delivered to the Buyer, any deviation of up to ±5 % from the agreed quantity, volume or weight shall not constitute a breach of Contract.
- 6.6 If the Buyer has any remarks or claims regarding the quantity, volume, weight etc. of the delivered Products, it shall note these remarks or claims in the instrument of delivery and receipt or another document confirming delivery of Products.
7. **PRODUCT CHARACTERISTICS AND DOCUMENTATION**
- 7.1 Products supplied by the Seller shall comply with the Seller's product specifications. The Seller shall submit the product specifications to the Buyer upon request. The Seller shall submit the Products' traceability and quality certificates and analysis results to the Buyer for a special fee and upon the Buyer's request which may not be filed later than the corresponding order.
- 7.2 The Buyer shall be prohibited from reproducing, disseminating or displaying the product documentation or descriptions obtained from the Seller or making them available to third persons by any other means. Reproduction is permitted for personal use only.
8. **OWNERSHIP AND USE OF PRODUCTS**
- 8.1 The ownership of Products shall transfer from the Seller to the Buyer upon the full payment of the price of Products and any related fines for delay.
- 8.2 The Contract shall not cover Product packaging, unless this has been individually agreed between the parties. Packaging shall remain in the Seller's ownership. For purchases of Bottled gases, the use of cylinders shall be covered by AS Eesti AGA's general rental conditions and subject to rent payments according to the Seller's applicable pricelist.
- 8.3 The Buyer shall be liable for the preservation and use in good faith of the Products and their packaging from the time when the risk of accidental loss of or damage to Products transfers to the Buyer (i.e. delivery), regardless of the transfer of ownership from the Seller to the Buyer.
- 8.4 The Buyer may sell, sub-lease or transfer Products or their packaging owned by the Seller only with a prior written permission from the Seller. Any other form of permission shall be null and void.
- 8.5 The Buyer shall use Products and their packaging only for the intended purposes, in a prudent manner and in accordance with instructions for use or any other instructions provided by the producer and Seller and in compliance with applicable laws and regulations.
- 8.6 If a Product or its use may be hazardous to persons, property or environment, the Buyer is prohibited from transferring the ownership or usage rights thereof to third persons without a prior permission from the Seller. All Products and their use shall be assumed to be hazardous to persons, property or environment until the Seller has issued a written confirmation to the contrary.
9. **PROCESSING OF PERSONAL DATA**
- 9.1 By concluding the Contract, the Buyer allows the Seller to process and transfer its personal data under conditions set out in the Contract.
- 9.2 The Seller may collect and process personal data submitted by the Buyer or obtained from other sources and, if necessary, transfer such data to third persons for the purposes of Contract performance, data processing or analysis of the Seller's economic activities.
- 9.3 The Seller may use the Buyer's personal data to send advertising and other information to the Buyer. The Seller shall not disclose the Buyer's personal data to third persons for marketing purposes.

- 9.4 The Seller's rights related to the use of personal data shall also extend to other companies within its group or persons to which the Seller transfers its claims arising from the Contract. Third persons to whom claims are transferred may not use the Buyer's personal data for marketing purposes.
- 9.5 The Buyer may prohibit the processing of its personal data at any time, except where such processing is necessary for performance of the Contract or recovery of claims arising from the Contract.

10. LIABILITY

- 10.1 In case of a delay in the performance of a monetary obligation, the Seller may demand from the Buyer a fine for delay in the amount of 0.1% (zero point one per cent) of the unpaid amount per each day of delay.
- 10.2 If the transfer of Products to the Buyer is delayed due to the Seller's intentional acts or gross negligence, the Buyer may demand reduction of the sales price by up to 0.5% for each week of delayed delivery, but not more than 7.5% of the total price of delayed Products. If the Buyer's act or omission is hindering or preventing the delivery of Products, the Seller may claim from the Buyer any damages thus incurred.
- 10.3 The Seller shall only be liable for damage caused by wrongful violation, except in the case of health damage.
- 10.4 The Seller's liability shall be limited to direct patrimonial damage, except in the case of health damage.
- 10.5 If the Buyer is in delay with the performance of any of its obligations, the Seller shall send at least one reminder and set an additional term of at least 7 (seven) calendar days for such performance. The Buyer shall cover the expenses related to sending reminders in accordance with the Seller's pricelist applicable at the time of sending the reminder.
- 10.6 If the Buyer fails to perform a monetary obligation within the additional term provided for performance, the Seller may transfer its monetary claims to a factoring or recovery operator and claim the related recovery costs from the Buyer.
- 10.7 The Buyer's failure to perform any obligation within an additional term provided for performance shall be deemed a substantial breach of Contract which entitles the Seller to withdraw from the Contract or cancel the Contract.
- 10.8 The Seller shall not be liable for Product deficiencies caused by, among others:
- 10.8.1 repair, adjustment, insufficient maintenance, relocation or redesigning of the equipment which constitute Products or packaging, if these works were not performed by the Seller;
- 10.8.2 modifying the composition, rebottling etc. of the gases and liquids which constitute Products, if these activities were not performed by the Seller;
- 10.8.3 other acts or omissions of the Buyer, including the use of Products for other than intended purposes or failure to follow the directions for use or instructions provided by the producer or Seller;
- 10.8.4 reasons beyond the Seller's control, including supply voltage or current fluctuations in the power grid to which Products are connected etc.
- 10.9 If the Buyer has notified the Seller of non-compliance of Products or packaging, the Seller shall verify the compliance of Products or packaging with the Contract. If such verification indicates that the Products or packaging are in compliance with the Contract, the Seller has the right to demand compensation for the cost of verification of the compliance of Products or packaging with the Contract. In case of Bottled gas, the verification cost shall include the value of gas which must be discharged from the cylinder in order to check its compliance.
- 10.10 The Seller shall not be liable for any incompliance of Products or packaging identified later than 2 months after delivery.
- 10.11 If the Buyer has not added any notations regarding the quantity, volume, weight etc. of the delivered Products to the instrument of delivery and receipt or another document confirming delivery of Products, the Buyer may invoke the incompliance of quantity, volume or weight of Products with the Contract only if it proves that it could not have reasonably verified their compliance with the Contract upon delivery.
- 10.12 The Buyer shall release the Seller from liability to any third persons arising from the Buyer's acts or omissions.

11. APPLICABLE LAW AND DISPUTE SETTLEMENT

- 11.1 The Contract and all documents relating to it shall be governed by the laws of the Republic of Estonia. The parties expressly exclude the application of the UN Convention on Contracts for the International Sale of Goods (CISG) to the Contract.
- 11.2 All disputes between the parties arising from the Contract or relating to it shall be resolved by negotiations. If a dispute arising from or related to the Contract or arising from or related to a breach, termination or invalidity of the Contract cannot be resolved by negotiations, such dispute, disagreement or claim shall be resolved in the Harju County Court.