

General Business Terms for Gas Supply

I. General items

1. Scope

All supplies are based on the General Business Terms (GBT) shown below. Other GBT are only recognised as long as they do not extend the customer's legal rights, and they do not counter or restrict these GBT for Gas Supply. This also applies if Messer Industriegase GmbH, hereinafter referred to as "Messer") does not contradict other provisions or performs the delivery without contradiction.

2. Offer, contract conclusion, prices

2.1 Messer's offers are subject to change. Written and verbal orders and other agreements, as well as verbal side-agreements and assurances are only binding and effective after they have been confirmed in writing. In the case of immediate delivery, the Contract confirmation can be replaced by sending the goods. Messer's and the customer's contractual obligations result solely from the concluded written Contract.

2.2 Deliveries and services from Messer are made basically on the basis of the prices which apply at the time of the granting of the order. If the time between the order and delivery is greater than four months, Messer has the right to invoice the customer the then-applicable prices for the delivery or service.

2.3 Unless otherwise agreed, prices are from the agreed delivery point, plus the respectively valid statutory VAT. Messer has the right to invoice the customer for new taxes and fees. Messer also has the right to pass on costs which arise due to the implementation of new, statutorily required, provisions after the conclusion of the Contract.

2.4 If the customer does not properly meet its contractual obligations, Messer is entitled at any time to recall the special provisions it has granted to the customer with immediate effect.

3. Payment conditions

3.1 Invoices are immediately due upon receipt without deduction.

3.2 The customer agrees that it will receive its invoices electronically. Electronic invoices will be sent to the customer per email in PDF format.

3.3 Objections against claims in the invoice must be made by the customer within 14 days from the invoice date; otherwise, the claim is held to be recognised. Such objections do not affect the due date of the uncontested invoice amount.

3.3 In the case of delay of payment, Messer has the right to invoice interest for the delay period of 10%, as long as the customer does not prove to Messer that damages have not occurred or are significantly lower than the above interest rate. Messer is entitled to enforce proven higher damages.

3.4 Payments are always set against the oldest open claims, even if the customer has specified it for another claim.

3.5 The customer can only invoice claims against Messer if its counter-claim is uncontested or is legally ordered.

4. Ownership reservation

The gases delivered by Messer remain the property of Messer until they are fully paid for.

5. Warranty

5.1 Messer's warranty obligation exists for a period of 12 months after delivery of the gases concerned, as long as the gas is shown to be in a perfect state with regular stability of at least 12. If this is not the case, Messer shall provide, in deviation from No. 1, a warranty for the period for regular stability of the gas.

5.2 If a gas delivery is faulty, or if it differs from the ordered type or volume, Messer will provide to the customer, at its own discretion, compensation to the extent of the non-delivery of the amount contracted or shall oblige the customer to pay the purchase price. Number 5.1 applies mutatis mutandis for the replacement delivery. For replacement delivery which is not in accordance with the Contract, the customer can cancel the delivery against credit for the full purchase price; the granting of credit does not depend upon a subsequent order.

5.3 The customer must immediately complain about faults in a gas delivery.

6. Liability

6.1 Messer is liable up to the amount of typically foreseeable damages for customer's claims for damages - for whatever legal reason. This also applies to the culpable breach of an obligation, whose fulfilment makes possible proper performance of the Contract, and in whose compliance the customer should trust ("cardinal obligation"). In deviation from this, if there is delay, the liability is up to an amount of 5 % of the value of the delayed delivery or service. Liability for production failure or lost profit is excluded.

6.2 The liability limitations in Number 6.1 do not apply in the case of:

- intentional or grossly negligent cause of the damage, as well as fraudulent concealment of defects
- culpable injury to life, limb or health
- breach of warranties
- claims by the customer under the Product Liability Law.

6.3 Messer's liability in the case of the use of gases in the atomic industry and aerospace is excluded.

6.4 The above liability rules also apply to the staff and legal representatives of Messer.

7. Intended use

Unless expressly sold as medical gas, the products may not be used on people or animals.

8. Unavoidable events

For unforeseen events which cannot be avoided with reasonable means by Messer or its subcontractors, which include strikes, blockages, operating disruptions and dispositions from a high power which affect delivery and pick-up obligations, as long as such obstacles exist. The above circumstances do not apply if they occur during delay.

9. Determining volumes

9.1 The volume amounts are in kg or m^{3h} (related to the gas level at 15° C and 1 bar).

9.2 The remaining contents of returned cylinders are not compensated.

10. Delivery by third parties

Messer can use other companies to fulfil its delivery obligations.

11. Jurisdiction

The jurisdiction is Frankfurt am Main, Germany.

12. Data protection

12.1 Messer works with personal data provided by customers. Personal data are information which concern a living individual who can be identified with the data.

12.2 The personal data provided by customers is used:

- to deliver the agreed goods and to provide the agreed services,
- for invoicing, account maintenance, inventory management, telemetry, statistical assessment and for internal accounting
- to check creditworthiness and prevention of abuse.

12.3 Messer will transfer personal data for data processing facilities working for Messer, and to affiliated companies, or forwarded to licensed business information services or attorneys.

12.4 If in Messer's view it is required by law or is in the interest of public safety and order, or the customer has consented to it, Messer will also provide personal data to government officials, public institutions or third parties.

12.5 Information to process the personal data of the customer is found in Messer's data protection declaration, which can be provided to the customer at any time upon request, and which can be downloaded from Messer's Internet site (www.messer.de) at any time in its current version.

II. For gas deliveries in containers and leaving containers and pallets, the following additional terms apply:

1. Transport and working with gases

The cost of transporting gases, including containers and pallets from the ramp of the delivery location (factory or warehouse), as well as conveying empties to the delivery point are borne by customers. The customer or vehicle driver is responsible for safe loading. If loading assistance is provided, this is done at the hazard of the vehicle driver. The customer is responsible for working with gases, and in particular for storage and conveying gases in accordance with the rules for accident prevention. Messer has the appropriate rules for viewing at its delivery points.

2. Leased cylinders and pallets

2.1 The leased containers and pallets from Messer are transferred under lease to customers only for their own use for gases purchased from Messer and remain the property of Messer. Any other use or forwarding to third parties, especially for removing or filling gas is, also for safety reasons, prohibited, unless Messer has granted a written agreement to this in writing.

2.2 Messer invoices for the cylinders and pallet leasing the respective valid rates which can be found on the price lists which can be seen at Messer or at the delivery points, and which can be sent upon request. Messer is entitled to send an interim invoice as per No. 13 on a monthly basis.

2.3 Messer can invoice upon the order or at a later time a security amount of 75% of the repurchase costs for equivalent new cylinders or pallets, in order to protect itself against any damages due to possible loss, damage and dirt on cylinders and pallets.

2.5 After being emptied, the cylinders and pallets must be returned to the respective delivery point, even if they had been driven to the customer. The customer receives a return receipt without reference to the ownership relationship for the actually returned volume of empties. Assignment of empties to the respective customer number is done first at booking the receipts into the IT system. Return of cylinders and pallets which are assigned to a customer number different than that of those given back, is credited to the customer number of the assigned customer.

2.6 The customer must check the delivery slips, return receipts and invoice for demonstrated cylinder and pallet inventors for correctness, and must place any objections immediately, but latest within 10 work days from receipt, in writing; otherwise, the given cylinder and pallet inventory are held to be recognised. Messer refers in the text of the invoices to the significance of objections which had not been filed.

2.7 The customer is obligated to notify of damage, internal contamination as well as loss of cylinders or pallets immediately to the delivery point. Bottles which are complained about must be conspicuously marked. The customer is liable for damage and uncleanness of cylinders and pallets to the return to the delivery point, or until transfer to the carrier. If the customer returns cylinders or pallets or parts of them which are not in a state which allows for restoration of the ability to use with suitable means, Messer must be compensated for 75% of the repurchase costs of equivalent new cylinders or pallets or parts thereof, as long as the customer cannot prove that the damages occurred were significantly less.

2.8 In the event of uncertainty about the whereabouts of cylinders or pallets, the customer - in order to avoid further lease payments - can place a security sum until the whereabouts of the cylinders or pallets are clarified to Messer. If the security has already been paid for the cylinders or pallets, a customer statement that its whereabouts are unknown is sufficient.

2.9 After the cylinders or pallets are returned to the delivery point, the customer receives its paid security amount without interest minus any costs Messer has incurred for procuring replacements, repairing damage or for contamination. If the customer does not return cylinders or pallets for which it had paid a security within a deadline of one year after payment of the security, Messer keeps the security payment as compensation for damages. If the security deposited by the customer falls below 75% of the repurchase costs of equivalent new cylinders or pallets, Messer has the right to demand the difference.

2.10 There is no right of retention from Messer for the cylinders and pallets.

3. Warranty and liability

Numbers 1.5 and 1.6 apply accordingly to the liability due to failure to contractually transfer leased containers and pallets. The customer must immediately complain about faults in leased containers or pallets. Deliveries with complaints shall be conspicuously marked and returned to the delivery point.