

GENERAL TERMS OF DELIVERY AND PAYMENT CHEMOGAS

Article 1. Applicability

- 1.1 Chemogas shall be understood to mean the N.V. (limited liability company) Chemogas with its statutory principal seat and independent management seat at Grimbergen. Buyer shall be understood to mean the contract party of Chemogas.
- 1.2 These terms shall apply to all contracts and legal relationships, whatever they may be called, between Chemogas and a third party, or when Chemogas, whether on request or not, makes a tender.
- 1.3 Deviations from and additions to these terms or the order shall only apply if and in as much as they have been confirmed in writing by Chemogas.
- 1.4 The buyer shall never be entitled to invoke deviating usages or practices.
- 1.5 Nor shall the buyer be entitled to invoke his own purchase conditions, not even if the buyer has indicated or states in his purchase conditions that his purchase conditions shall apply and take priority over terms of delivery and payment, whatever they may be called, of his suppliers. Such a clause or such conditions shall not be accepted or recognized by Chemogas and shall be without effect. The terms in question shall at all times take priority over different conditions or clauses of buyers or other contracts parties.

Article 2. Tenders

- 2.1 All tenders shall be made without obligations, unless stated otherwise.
- 2.2 Tenders with obligations may before their acceptance be cancelled or altered at all times and shall, subject to prior acceptance, by operation of law obtain a noncommittal nature on the twenty-first day after date of the tender unless otherwise stated in the tender.

Article 3. Drawings and data

- 3.1 Chemogas shall retain all rights of the data mentioned in and added to its tender and contracts.
- 3.2 The data stated in or with the tender shall be an approach of the actuality and shall not be part of the contract.

Article 4. Intellectual, industrial ownership and know-how

- 4.1 Unless expressly stipulated otherwise any and all intellectual or industrial in respect of the software, equipment and/or other goods, information and/or data, e.g. analyses, (technical) documentation, drawings, and models, developed and/or made available during the preparation and/or implementation of the agreement are exclusively vested in Chemogas.
- 4.2 The buyer declares and guarantees vis-à-vis Chemogas that the buyer does not infringe the rights of third parties with the preparation and/or the implementation of the agreement. The buyer indemnifies Chemogas against any and all claims in connection therewith and shall pay compensation for any and all damages that are the result of this kind of infringement and that are at the expense of Chemogas or the party that relies on this kind of right.
- 4.3 Any and all drawings, models, (technical) documentation, computer programmes or other data carriers as well as the specifications of any and all goods that were supplied to the buyer by Chemogas for or upon (the preparation of) the implementation of the agreement shall at all times remain the property of Chemogas and shall be returned to Chemogas by the buyer after completion of the agreement.

Article 5. Secrecy

- 5.1 Subject to prior written permission from Chemogas the buyer shall be bound to keep secret all data, obtained directly or indirectly in connection with the order in the broadest sense. This obligation to secrecy shall be understood to include also the prohibition to divulge information to parties other than those directly involved.

Article 6. Orders

- 6.1 An order for delivery or for provision of certain services, which shall be understood to mean also the acceptance of an order, shall be made in writing, with the simultaneous enclosure of sufficient information and documentation as to enable Chemogas to commence the performance of the order and to complete it properly. This information shall be understood to include also specific quality requirements of the buyer, such as an application of the products intended by the buyer of which application Chemogas does not in fairness know the quality requirements. If such information has not been provided to Chemogas, the validity of the products as regards these requirements shall be at the buyers risk.

Article 7. Place, delivery and risk

- 7.1 All deliveries shall take place ex-factory, unless stated otherwise. Goods delivered shall be at the buyer's risk from that moment
- 7.2 If the goods must be delivered elsewhere, Chemogas shall be entitled to charge freight costs.
- 7.3 The place of delivery shall be normally accessible to the vehicle used by or on behalf of Chemogas; in case of an order for delivery on site of the buyer, buyer shall not insist that delivery take place on the site and the receipt shall be effected at the entrance of the site.

Article 8. Transfer of buyer's rights

- 8.1 Transfers or transition of the buyer's rights to a third party shall not have effect with respect to Chemogas, subject to written permission from Chemogas.

Article 9. Prices

- 9.1 If after the date of the tender or after the conclusion of the contract there is any increase of the costs on which the prices are based, Chemogas shall be entitled to raise these prices.
- 9.2 An increase of the costs shall be understood to mean also foreign currency changes which lead to an increase of the cost prices for Chemogas, government interventions and amended legislation and regulations.
- 9.3 If extra costs should arise for Chemogas which were not anticipated at the time of the tender or of the confirmation of the order and/or which must be attributed to delay of the delivery owing to the (further) wishes or indications of the buyer or owing to whatever other circumstance for which Chemogas is not liable, these extra costs shall be at the expense of the buyer according to a statement by Chemogas.

Article 10. Invoicing and payment

- 10.1 Payment shall be made cash on delivery, or in the manner as stated on the invoice.
- 10.2 Complaints relating to the amount of the invoice and/or the cylinder balance shall be made no later than 14 days after the invoice date, failing which the buyer shall be deemed to have agreed.
- 10.3 If the invoice has not or not completely been settled on the agreed date, or, failing such, within 30 days after the invoice date, the buyer shall be regarded as being in default by operations of law and Chemogas shall without notification be entitled to charge the buyer for an interest from the date of maturity amounting to the statutory interest, increased by 3% including all judicial and extrajudicial costs incurred in the collection of its claim. All claims of Chemogas against the buyer shall at that moment become immediately payable.
- 10.4 Chemogas and the buyer shall be deemed to have agreed that these extrajudicial collection costs have been fixed at 15% of the invoice, including the possible cash discount surcharge, unless Chemogas proves that these costs have been higher, in which case it shall be entitled to that higher amount.

Article 11. Reservation of ownership

- 11.1 All goods originating from Chemogas shall remain the property of Chemogas until the moment of complete payment of all claims of Chemogas, on whatever account, including the interest and costs – and in case delivery is made on current account until the moment of settlement of any possible balance to the deficit of the buyer.
- 11.1 Other than to buyers within the framework of his normal operations the buyer shall, for the intended complete payment or settlement, not be entitled to pledge goods or to transfer their property to third parties. In case of breach of this rule, the purchase price shall be payable immediately, irrespective of the terms of payment. Further more, Chemogas shall in such a case be entitled to effect the recovery of all goods from wherever they may be situated, at the expense of the buyer.

Article 12. Packaging remains the property of Chemogas

- 12.1 The delivery of gases shall be made in bottles, cylinders (whether packaged or not), tanks, containers, transport reservoirs (including components and accessories) and unpressurised barrels, all referred to here as 'packaging'. 'Packaging' shall be understood to mean also the packaging forms as referred to in the regulations in the area of the transport of dangerous substances but also any other packaging forms, such as crates and pallets.
- 12.2 The packaging which has for inspection purposes been provided with a stamped number and/or exclusively with the name of Chemogas, as well as other packaging including pallets, boxes and such, shall always remain the property of Chemogas.
- 12.3 The packaging which has for inspection purposes been provided with a stamped number and/or exclusively with a name other than Chemogas, shall always be returned to Chemogas.
- 12.4 The buyer commits himself not to alienate or encumber this packaging or in any other way to surrender its use to third parties
- 12.5 In case of return of packaging the buyer shall be obliged to send a transportation document along.

Article 13. Compensation for use of packaging

- 13.1 For the use of packaging belonging to Chemogas, whether or not property bottles, Chemogas shall, either in advance or afterwards, charge a compensation according to tariffs to be decided by Chemogas and in accordance with the applicable rental system.
- 13.2 The buyer shall irrevocably authorize Chemogas to enter company sites, factories, company buildings and such, pursuant to whatever title such sites and buildings may used by the buyer, for the purpose of inspection of the packaging belonging to Chemogas, in regard of their number and their mode of use.

Article 14. Return of packaging

- 14.1 If it appears from administration of Chemogas that packaging belonging to Chemogas has not been returned to Chemogas (in time), the buyer shall be obliged to pay the price of new similar packaging by way of compensation, apart from the user fee specified in article 13.1.
- 14.2 As regards packaging provided with an inspection date, its contents shall have been used before the date stated and its packaging shall be returned to Chemogas. Costs resulting from the untimely return of packaging in connection with the inspection date and the obligations of Chemogas with respect to the statutory regulations, shall be at the expense of the buyer.

- 143 If packaging is subsequently still returned, Chemogas shall be entitled, but not obliged, to take it back. If Chemogas takes it back, it shall cancel its claim for compensation, less the compensation for use which has become payable under article 13, and if this compensation has already been paid, to pay back the amount paid, less the compensation for use as referred to in article 13. In addition, administration costs, compensation for damage and/or depreciation and recovery costs shall be deducted from the compensation, respectively on the amount repayable.

Article 15. Damage, pollution and loss of packaging

- 15.1 The risk of damage to, pollution or loss of packaging shall be for the buyer from the moment when this packaging leaves a workshop or depot of Chemogas for delivery to the buyer, until the moment when it has returned to a workshop or depot of Chemogas, irrespective of the cause of the damage or the loss.
- 15.2 In case of loss the buyer shall due a compensation equal to the replacement value.
- 15.3 The buyer shall be liable for all direct and indirect damage, caused by or in connection with the return of packaging.
- 15.4 If packaging after its return causes Damage to Chemogas or to third parties, the provisions of the previous paragraph shall apply accordingly, unless the buyer proves, or makes it plausible via information he shall provide, that he has returned the packaging properly, in good condition and in accordance with all relevant applicable statutory and contractual provisions..

Article 16. Duty to report damaging influences

- 16.1 If a buyer suspects or can reasonably suspect that packaging, after having been delivered to him, is or may have been contaminated, as a result of some event, by a foreign agent – including (sea)water – he shall immediately and in any case within 24 hours notify Chemogas of this orally, by telephone, or in writing, under the obligation to send a written confirmation by letter to Chemogas within the same term.
- 16.2 The same shall apply if packaging has been exposed to strong heat radiation, as in case of fire, or to any other circumstance or influence of which the buyer suspects or could reasonably have suspected that this circumstance or influence may in any direct or indirect way have had some kind of damaging effect on the packaging.
- 16.3 This notification must be submitted to Chemogas N.V., 85 Westvaardijk, 1850 Grimbergen, telephone number +32 2 251 60 87, telefax +32 2 252 17 51, info@chemogas.com while instructions shall also be asked about the course of action to be followed further in relation to his packaging?

Article 17. Inspection and indemnity

- 17.1 The buyer shall be obliged, as far as it is in his power, to inspect the content of the packaging immediately upon its receipt and in any case before its coming into use.
- 17.2 The buyer shall be obliged to observe all government regulations, including those which relate to (transport of) dangerous substances, goods under pressure and shall indemnify Chemogas against all civil law and public law consequences which should occur because of non-compliance with one or more of such government regulations.

Article 18. Filling prohibition

- 18.1 The filling or procuring the filling of packaging of Chemogas other than by Chemogas shall be prohibited.

Article 19. Packaging belonging to the buyer

- 19.1 Handing in of packaging belonging to the buyer to a branch or depot of Chemogas shall be deemed to contain a tacit order to the procuring of such repairs of the shut-off cock of the packaging and/or such reinspection of the packaging as are regarded to be necessary by Chemogas, as well as the order to fill the packaging, all this being to the expense of the person who has handed in or produced the handing in of the packaging. The buyer remains responsible for the proper state of the packaging.
- 19.2 As soon as any packaging not belonging to Chemogas has for longer than one month remained at any site or in any building which is the property of Chemogas or which is being used by Chemogas, and is not collected, after the buyer has been duly summoned to do so, Chemogas shall be entitled to charge a compensation for the ensuing duration according to the tariffs applied by Chemogas in that case.
- 19.3 If the longer stay concerns packaging which, pursuant to government regulations or an order, must not be filled again, then Chemogas shall be entitled, after the expiry of the period stated, to destroy or effect the destruction of the packaging at the expense of the buyer.

Article 20. Remainders

- 20.1 Remainders of products in packaging taken back shall not result in a claim for compensation or settlement. Chemogas shall reserve the right to determine that for certain categories of products, costs shall be charged upon the receipt of remainders.

Article 21. Delivery times

- 21.1 If a time of delivery is determined, it shall be deemed to have been approximately agreed, unless a fatal time has been explicitly stated. Chemogas shall be obliged to stick to his delivery time as much as possible, but shall not be held liable for the consequences of exceeding such time if Chemogas has not been reasonable capable of anticipating this. Such excess shall not oblige Chemogas to any compensation for costs, damages, or interest, nor shall it entitle the buyer to cancel the order.

Article 22. Guarantees and complaints

- 22.1 All good delivered by Chemogas shall be used in accordance with our indications and/or the instructions for use in case of doubt about the application or use, the buyer shall turn to the specialists available with Chemogas.
- 22.2 With due respect for the restriction imposed here Chemogas shall guarantee the soundness and quality of the goods it supplies and the due execution of an order contracted for during a term of at most three months, after delivery ex-factory.
- 22.3 The guarantee shall not include the consequences of normal wear or injudicious or improper use.
- 22.4 The guarantee for goods delivered shall be limited to defective material, manufacturing and construction defect, in which case Chemogas shall exclusively commit itself to repair or replace defective parts under the following conditions: if operations must take place outside the Chemogas workshops, relocation an labor costs shall be charged; if, in the judgment of Chemogas, the operations may be carried out inside the Chemogas workshops, no labor costs shall be charged; in that case possible postage costs shall be at the buyer's expense.
- 22.5 Complaints shall be made in writing and as soon as possible, but no later the 14 days after delivery or installation or completion of the operations or services or, if a completion protocol has been drawn up, after the date of such drawing up, or – in case of invisible defects – within 14 days after the defects could reasonably be ascertained, but in any case no later than 14 days after the expiry of the period of guarantee.
- 22.6 In case this period is exceeded, any relevant claim against Chemogas shall be cancelled, unless the interests of Chemogas are not prejudiced as a result.

Article 23. Liability

- 23.1 Chemogas shall be liable for personal injury, including death and bodily harm, occurring during, or as a direct result of, the implementation of the agreement or as a direct result of the delivery of defective goods, which liability is limited to a maximum of € 1,000,000.00 (in words: one million euros) per event per annum, in the course of which a series of subsequent related events is qualified as one event, to the extent that it can be blamed on negligence on the part of Chemogas.
- 23.2 The liability of Chemogas for property damage occurring during, or as a direct result of, the implementation of the agreement or as a direct result of the delivery of defective goods is limited to the total order value of the delivery in question, in the course of which a series of subsequent related events is qualified as one event, to the extent that it can be blamed on negligence on the part of Chemogas.
- 23.3 Chemogas is not held to or liable for compensation for trading or commercial losses, including lost income, lost profit, lost savings, lost use, lost opportunities, damages due to (partial) business interruptions, damages to goodwill and/or any other consequential damages.

Article 24. Force majeure

- 24.1 Chemogas shall not be liable for damage, delay, impairment or defects which are due to force majeure to be understood to mean all events occurring reasonably without the influence of Chemogas, including also, but not exclusively: strike, exclusion, blockades, riots, lack (of fuel), catches in the power supply, driving ban, non-compliance with obligations by suppliers, fire, industrial accidents, war, threat of war, disturbance of the peace, natural disasters, floods.
- 24.2 As soon as force majeure occurs, Chemogas shall unilaterally, be entitled to extend agreed terms as much as is reasonable in connection with the factor(s) of force majeure which has/have occurred, and – at its own option – to comply with contracts pro rata.
- 24.3 In case of force majeure the buyer shall not be entitled to claim the rescission of the contract concluded.

Article 25. Prescription

- 25.1 Any right of claim and defense against Chemogas shall become prescribed by the sole lapse of one year after the development of the claim.

Article 26. Disputes

- 26.1 For all disputes arising from the application of these general terms or from contracts of Chemogas the Belgian courts within whose district the management seat of Grimbergen resides shall have exclusive jurisdiction.

Article 27. Applicable law

- 27.1 All contracts shall be subject to Belgian law only.