

## **1. General**

- 1.1 Our purchasing conditions shall apply exclusively and in addition to the elements of a legal contract specified or as specified in our written purchase orders. They shall be binding for both contracting parties in regards to all points concerning this legal transaction, unless otherwise agreed in writing.  
Our purchasing conditions shall likewise apply where AIR LIQUIDE in the knowledge of conflicting or diverging terms and conditions of the supplier accepts the delivery without reservation.  
Our purchasing conditions shall also apply to subsequent orders, placed either verbally or in writing, without AIR LIQUIDE being obliged to make separate reference to the same.
- 1.2 All diverging agreements reached between AIR LIQUIDE and the supplier for the purpose of performance of a contract shall be set down in writing in this contract. They shall apply only following express written approval by AIR LIQUIDE.
- 1.3 Where the term "supplier" is used in this document, it shall be understood to refer to the contractual partner entrusted by AIR LIQUIDE in particular with a delivery or the performance of a service or work.
- 1.4 Short definitions of terms of trade shall apply in conformity with the standards laid down regarding such terms in the last amended version of the INCOTERMS published by the International Chamber of Commerce.

## **2. Quotation - Quotation documents**

- 2.1 Quotations of suppliers shall be deemed to be binding; they must be drawn up in full, in detail and with explicit regard for the requirements specified in this context. Any information which is necessary for the submission of a quotation but is however missing must be requested by the supplier from AIR LIQUIDE of his own accord. Any additional costs ensuing from failure to fulfil these obligations shall be for the supplier's account.
- 2.2 The supplier shall be obliged to draw the attention of AIR LIQUIDE to alternative solutions which are more cost-effective and/or technically more expedient or more innovative.
- 2.3 AIR LIQUIDE reserves the property rights and copyright to figures, drawings, calculations, drafts, samples and other documents. They may not be made accessible to third parties without our explicit written consent. They shall be used solely for the purpose of manufacture based on our purchase order. Following execution of the order they shall be returned to AIR LIQUIDE without any request to this effect. Secrecy regarding such documents shall be maintained vis-à-vis third parties. The obligation to maintain secrecy shall also apply following performance of this contract. It shall expire where and insofar as the manufacturing know-how contained in the furnished figures, drawings, calculations and other documents becomes common knowledge.
- 2.4 All rights of utilisation and exploitation to documents furnished by the supplier to ourselves shall pass to AIR LIQUIDE.

## **3. Purchase order and order confirmation**

- 3.1 AIR LIQUIDE may revoke a purchase order where the supplier fails to accept it in writing within a period of two weeks following receipt (order confirmation). Any divergence from our order must be explicitly identified as such and requires written notice of acceptance by our Purchasing department (amendment of purchase order) to take effect. Assignment shall likewise be permitted only with our consent.
- 3.2 Only written purchase orders or contracts shall be legally binding on AIR LIQUIDE. Preliminary agreements which are concluded verbally or by telephone shall require subsequent written confirmation by AIR LIQUIDE, stating the order number. To ensure immediate identification of all correspondence relating to this legal transaction, the date and number of our purchase order must be clearly marked on all documents.
- 3.3 Execution of the order shall be deemed to constitute acknowledgement of these terms and conditions of purchase by the supplier. The supplier shall guarantee vis-à-vis AIR LIQUIDE compliance with all contractual obligations.

## **4. Prices**

- 4.1 The price shown in the purchase order shall be binding. In the absence of any written agreement to the contrary, the price is quoted "carriage paid" to the delivery address specified by AIR LIQUIDE, including packaging and any assembly work required to ensure readiness for service.  
Where a fluctuation clause is agreed, adjustments in price may relate only to the part of the delivery or service which falls in the period following amendment of the agreed price basis and has not yet been paid.
- 4.2 This price shall be deemed to cover all services and additional services which are necessary according to the supplier's quotation and drawings or catalogues for execution of the overall performance specified in the contract ready for acceptance. It shall likewise include all surcharges, taxes and dues, with the exception of value-added tax.

4.3 Where prices are quoted by weight, the official weight measurement shall prevail, and in its absence the weight we ourselves measure.

## **5. Invoices**

5.1 Payments shall be effected, unless otherwise agreed, either within 14 days with 3% discount or 45 days without deduction.

5.2 Invoices shall state the order number as well as the numbers of every individual item. As long as this information is missing, invoices shall not become due for payment. Copies of invoices shall be marked as duplicates.

5.3 Value-added tax must be indicated separately.

## **6. Payments**

6.1 Payments shall be effected, unless otherwise agreed, either within 14 days with 3% discount or 45 days without deduction.

6.2 The payment period shall commence, as soon as the delivery or service has been rendered in full and following receipt of an invoice issued in the proper manner. Where the supplier is obliged to submit evidence of material testing, test records, quality documentation or other documents, the completeness of the delivery and service shall also be contingent on the receipt of such documents. Deduction of a discount shall likewise be permitted where the ordering party is effecting set-off or withholding payments to a reasonable extent due to defects. The payment period shall commence following the rectification of defects.

6.3 Payment and commissioning shall not constitute acknowledgement that the deliveries and services comply with the terms of contract.

6.4 AIR LIQUIDE shall hold rights of set-off and retention to the extent permitted by law.

6.5 Where a down payment or partial payments have been agreed, the supplier shall submit a written request to this effect in a timely manner. Each payment effected shall permanently reduce the percentage-based share of the order value by the corresponding amount. On payment the share of conforming material or the supply shall pass into the ownership of AIR LIQUIDE and shall be identified as such, notwithstanding the circumstance that the transfer of risk will not take place until takeover.

## **7. Delivery period**

7.1 The delivery period indicated in the purchase order and all other dates/times stated by the supplier shall be binding.

7.2 The timeliness of deliveries shall depend on the date of receipt at the place of receipt specified by AIR LIQUIDE, and the timeliness of deliveries involving erection or assembly and of services shall depend on their acceptance.

7.3 The supplier shall be obliged to immediately inform AIR LIQUIDE in writing where circumstances come about or apparently indicate to him that it will not be possible to observe the agreed delivery period.

7.4 In the event of default in delivery AIR LIQUIDE shall hold the statutory rights in this regard. AIR LIQUIDE shall in particular be entitled, following fruitless expiry of an additional period of time of reasonable length, to demand compensation in lieu of performance.

7.5 Our prior consent shall be required for deliveries effected ahead of time or outside the hours specified by AIR LIQUIDE for goods receipt and for partial or additional deliveries.

## **8. Delivery control**

The ordering party shall in the course of manufacturing and up to delivery of the ordered items inspect materials, production processes and other works involved in rendering of the contractual performance. Where such inspection is not permitted without good cause, the ordering party shall be entitled to cancel the contract without the supplier being entitled to claim compensation. The ordering party may refuse to effect payment for the service rendered by the supplier up to the time of cancellation where the acceptance of such partial performance is of no interest to him. This shall also apply where defects or divergence from the contractual agreements already ensue on inspection. The ordering party shall also be entitled to request immediate contractual performance in lieu of cancellation. The ordering party may at any time ask for a report in relation to the items he has ordered, above all regarding the status of manufacture. The right of control enjoyed by the ordering party shall not affect the obligations of the supplier, in particular as regards the warranty and liability.

**9. Transfer of risk - Shipment and accompanying documents**

- 9.1 Delivery shall be effected carriage paid, unless otherwise agreed in writing.
- 9.2 In the case of deliveries involving erection or assembly and for services the transfer of risk shall take place on acceptance, and with deliveries not involving erection and assembly on receipt at the place of receipt specified by AIR LIQUIDE.
- 9.3 All consignments shall include a packing slip or a delivery note with information showing their contents and stating the purchase order number in full. Identification and consignee markings stipulated by AIR LIQUIDE must be clearly marked on each part of the consignment and in the accompanying documents. Any costs incurred through failure to comply shall be reimbursed by the supplier. Where information is missing, any delays with further processing shall not be attributable to AIR LIQUIDE.
- Partial or outstanding deliveries shall be identified as such.  
Consignments shipped cash on delivery will not be accepted. The assignment of receivables shall be subject to our written consent.
- 9.4 Shipment must always be affected in accordance with our instructions. Partial deliveries which have not been explicitly requested by AIR LIQUIDE may only be shipped to the relevant consignee carriage prepaid, including where the freight costs are to be borne by AIR LIQUIDE itself under the terms of contract; the transfer of risk shall at all events not take place until handover to AIR LIQUIDE or to the consignee specified by AIR LIQUIDE.
- 9.5 Where drawings, official acceptance, works and test certificates, company regulations, spare parts lists, etc. are necessary or customary for utilisation and maintenance of an article, they shall form an integral part of our order and must be submitted to AIR LIQUIDE in duplicate at the latest on takeover of the deliveries or services.

**10. Takeover of goods**

With the acceptance of deliveries AIR LIQUIDE shall not be subject to the requirement to inspect the goods on receipt and give notice of any defects immediately. Major defects must also be recognised by the supplier where notice is not immediately given until after usage of the delivered goods.

Payment of the invoice does not imply due acceptance of the delivery.

The acceptance of deliveries and services shall not take place until inspection has been carried out at the place of performance.

**11. Place of performance**

The place of performance for deliveries shall be the shipment address specified in each case, for work performance the site at which the works are performed, and in the case of payments Schwechat.

**12. Guarantees**

The supplier shall at our request furnish down payment guarantees and performance and/or warranty bonds for our benefit.

**13. Safety and accident prevention regulations**

- 13.1 The deliveries and services must in each case comply with the following provisions applicable to AIR LIQUIDE Austria GmbH: legislation, safety and accident prevention regulations and necessary approvals, in particular the provisions of the equipment and product safety laws, the regulations governing industrial safety, accident prevention, electrical equipment installed in hazardous areas, the regulations of the Austrian Electrotechnical Association (OVE) with the TRAC Technical Rules and ÖNORM standards, in addition to the specifications included in the purchase order, drawings and other information and shall be checked by the supplier in this regard. The supplier shall himself ensure that he is in possession of all necessary approvals, permits and licences which are stipulated for proper performance of his works.
- Before commencing performance, the supplier shall enquire about all relevant company regulations of AIR LIQUIDE Austria GmbH.
- 13.2 Any amendments to the above provisions due to changes in legislation must be taken into consideration independently by the supplier until the transfer of risk.

**14. Environmental and quality assurance agreement**

- 14.1 The supplier's company should conform to acknowledged and relevant environmental and management systems, in particular ISO 9001 and ISO 14001, as well as any alternative provisions that are relevant (ISO 13485 or ISO 22000). The supplier shall submit evidence of certification at our request.
- 14.2 AIR LIQUIDE reserves the right to audit the company of the supplier and of relevant sub suppliers.

14.3 In case of any doubt regarding the existence of a functioning environmental and quality management system, AIR LIQUIDE furthermore reserves the right to procure products and services only from delivery facilities of the supplier which have been approved by AIR LIQUIDE Austria.

#### **15. Labeling**

Where a CE mark is required, the CE mark must be affixed in such manner as to be clearly visible, and the declaration of conformity must also be enclosed.

#### **16. Packaging**

The delivery item must comply with the material specifications designated by the ordering party, in addition to those of ÖNORM/ÖVE and similar regulations. Hazardous substances shall be packaged and labelled in accordance with the applicable legislation, and the relevant safety data sheets must also be enclosed. Hazardous materials must likewise be packaged and labelled in accordance with the applicable legislation, whereby the relevant dangerous goods classification or a note stating that the goods are not dangerous should be included on the delivery note. Packaging materials must be produced without CFCs and be chlorine-free, chemically inert and non-toxic when burnt and must not contaminate groundwater. Packaging materials must be marked with recognised recycling or materials symbols. The supplier undertakes to maintain a compliance agreement with ARA AG. At the request of AIR LIQUIDE the supplier undertakes to process his waste, packagings, etc. on his own responsibility and free of charge to the consignee and the ordering party. Where the supplier fails to comply with this agreement, disposal shall be carried out at the supplier's expense without further setting of a deadline.

#### **17. Warranty**

17.1 The goods shall be inspected for any deviations in terms of quality and quantity and for divergence from relevant standards and regulations within a reasonable period of time. The requirement to give immediate notice of defects shall be deemed to have been given in a timely manner where it is mailed by AIR LIQUIDE within a period of 5 working days, in the case of obvious defects from goods receipt, or in the case of latent defects, from discovery. The date of the postmark shall decide. Where a defect is ascertained in the framework of inspection, the costs of this inspection shall also be borne by the supplier irrespective of the assertion of other claims.

17.2 AIR LIQUIDE shall hold the statutory warranty rights to their full extent. Irrespective of this, AIR LIQUIDE shall be entitled to ask the supplier to effect the rectification of defects or substitute delivery, as it prefers. In this case the supplier shall be obliged to bear all expenses required to effect the rectification of defects or substitute delivery. Where non-conformities are not rectified despite the granting of an additional period of time by AIR LIQUIDE, AIR LIQUIDE shall be entitled to arrange for reworking by a third party at your expense or to procure replacement parts at your expense. The right to claim compensation shall be explicitly reserved, in particular the right to compensation in lieu of performance.

17.3 The warranty period shall be 24 months from the transfer of risk, unless otherwise agreed in the purchase order.

17.4 Reworking may be performed at the suppliers' expense without the setting of a deadline where delivery is effected after the occurrence of default and AIR LIQUIDE has an interest in immediate reworking to avoid default on its own part or other urgent situations.

17.5 Non-conformities affecting a delivery or performance shall entitle AIR LIQUIDE to cancel all contracts with the supplier which involve the regular delivery of good or the regular rendering of services or work performance where there are legitimate grounds to fear that non-conformities or defects affecting a delivery or service may also have a long-term effect on other deliveries or services. This does not apply where the supplier is able to plausibly demonstrate that non-conformities of this type are no longer to be feared in the future.

17.6 Performance parameters specified by the supplier are deemed to be warranted.

17.7 The supplier undertakes to keep an available stock of spare parts for the goods he has supplied for a period of 15 years.

#### **18. Product liability - Indemnification - Public liability insurance**

18.1 The supplier shall be liable for all prejudice ensuing to AIR LIQUIDE from late or defective delivery and / or performance due to fault on his part or that of agents entrusted with contractual performance by the supplier. Liability for consequential damage due to defects shall not be excluded, including where this is permitted by law.

18.2 Where the supplier is responsible for a product defect, he shall be obliged to indemnify AIR LIQUIDE in respect of third-party claims for compensation on first request insofar as the cause lies within his sphere of control and organisation and he himself bears liability vis-à-vis third parties.

18.3 In the framework of his liability for losses as defined by item 17.1 the supplier shall also be obliged to refund any expenses which come about due to or ensue in association with a product recall campaign staged by AIR LIQUIDE. AIR LIQUIDE shall inform the supplier about the content and scope of the recall measures to be performed - where possible and can be reasonably expected of same - and shall offer him the opportunity to comment in this regard. Other statutory rights shall remain unaffected thereby.

18.4 The supplier undertakes to take out product public liability insurance with cover of five million euros per claim for bodily injury / damage to property (lump sum) and to submit evidence of same at our request. Where AIR LIQUIDE holds further claims to compensation, they shall remain unaffected thereby.

## **19. Property rights**

19.1 The supplier vouches that no third-party rights will be infringed in association with his supply within the Federal Republic of Austria.

19.2 Should claims be asserted against AIR LIQUIDE by a third party, the supplier shall be obliged to indemnify AIR LIQUIDE on first request in writing in respect of such claims. AIR LIQUIDE shall not be entitled to conclude any agreement whatsoever with the third party without the supplier's consent, in particular to reach a settlement.

19.3 The obligation of indemnification on the part of the supplier shall relate to all expenses which are incurred of necessity by AIR LIQUIDE due to or in association with claims asserted by a third party.

## **20. CORPORATE SOCIAL RESPONSIBILITY (CSR)**

### **20.1 Corporate Social Responsibility (CSR)**

The Client undertakes to comply with human rights and employment law as well as the environmental protection regulations and attaches increasing importance to the ability of our suppliers to support this corporate strategy oriented towards social responsibility and sustainability.

### **20.2 Code of conduct for suppliers**

The code of conduct for suppliers is published on the Client's website as follows: in German at <http://www.airliquide.de> and in English at <http://www.airliquide.com>

The Client expects the Contractor to uphold his business responsibility with integrity and transparency and to adhere to the rules set forth in the code of conduct for suppliers. The Contractor undertakes to comply with the suppliers' code of conduct and to ensure that all his employees and subcontractors do so likewise.

### **20.3 The Contractor undertakes during the term of contract to introduce an action plan to:**

- register at each plant the number of employees and those who enter and leave it;
- to register the number of accidents entailing a loss of man-hours and the number of accidents without any such loss, as well as of the frequency rate of accidents sustained by employees, subcontractors and temporary staff;
- to measure and optimise water and energy consumption levels;
- to measure and optimise greenhouse gas emissions;
- to measure and reduce harmful emissions of nitrogen oxide (NOx), sulphur oxide (SOx), and volatile organic compounds (VOC);
- to measure and reduce the discharge of oxidisable substances and suspended particles in water bodies.

The Contractor gives his consent to allow for the evaluation of his performance in terms of CSR by the Client or a third party nominated by same at his own expense. Should the result of such evaluation be lower than or equal to 44/100,

- the Contractor undertakes to introduce the appropriate corrective measures within 18 months;
- the Contractor undertakes after a period of 18 months to allow for re-evaluation at his own expense by the Client or a third party nominated by same.

20.4 **For the sake of clarity**, any breach of the obligations listed in this section by the Contractor or by one of his subcontractors shall be deemed a substantive breach of the present agreement, which shall give rise to termination at the sole discretion of the Client.

## **21. Reservation of title - Provision of parts**

21.1 Where AIR LIQUIDE provides the supplier with parts, AIR LIQUIDE shall reserve the title to same. Processing or transformation shall be carried out by the supplier for AIR LIQUIDE. Where goods subject to reservation of title are processed with other items which do not belong to AIR LIQUIDE, AIR LIQUIDE shall acquire co-ownership to the new article in the ratio of the value of the supplied article (purchase price plus VAT) to the other processed items at the time of processing.

21.2 Where the article supplied by AIR LIQUIDE is inextricably commixed with other items which do not belong to AIR LIQUIDE, AIR LIQUIDE shall acquire co-ownership to the new article in the ratio of the value of the article subject to reservation of title (purchase price plus VAT) to the other commixed items at the time of commixtion. Where commixtion takes place in such a manner that the article of the supplier can be considered as the principal item, it is deemed to be agreed that the supplier will

grant co-ownership to AIR LIQUIDE on a pro-rata basis. The supplier shall retain items in sole or co-ownership on behalf of AIR LIQUIDE.

**22. E-procurement**

The supplier undertakes to process purchase orders generated via automatic electronic ordering systems with AIR LIQUIDE.

**23. Force majeure**

Where the parties are hindered in complying with their deadlines by force majeure, said deadlines shall be extended by the duration of the impediment plus a reasonable lead time. Only war and natural disasters shall constitute force majeure.

**24. Secrecy**

The supplier undertakes to utilise confidential information solely within the framework of joint cooperation, to treat such information as strictly confidential, to take all reasonable steps to preserve its confidentiality and to refrain from making it accessible to third parties in any manner whatsoever, unless this involves employees who need to know such information for the purposes of the present agreement.

**25. Data storage**

The supplier notes that data are stored by AIR LIQUIDE for the purposes of automatic processing.

**26. Supplementary / Final provisions**

26.1 Where a provision is not included in our terms and conditions of purchase, the statutory regulations shall apply.

26.2 Should any provision of these terms and conditions be or become invalid or should they prove to contain an omission, the validity of the other provisions shall remain unaffected thereby.

**27. Jurisdiction**

The sole legal venue for all disputes ensuing from the business relationship between the supplier and AIR LIQUIDE shall be the Provincial Court at Korneuburg.

**28. Applicable law**

Only Austrian law shall apply, to the exclusion of UN Law on the International Sale of Goods.