

## I. General

### 1. Conclusion of contract, Contractual Language

1.1. All supplies by MGA shall be exclusively governed by the German version of following General Terms and Conditions (GTC). Deviations from them as well as any supplementary agreements with the customer shall only be valid if confirmed in writing by MGA. Declarations made to MGA must be in writing (also by fax) to be legally valid. Upon placement of an order with MGA, however upon acceptance of our delivery at least, our GTC shall be deemed accepted by the customer.

The prevailing language for the contractual relationship with the customer is German. This translation of our GTC in the English language, in addition to the German language ([www.messer.at](http://www.messer.at)), is merely done for Customer's convenience (I.7).

1.2. Terms and Conditions of the customer will not be accepted by us, unless otherwise expressly agreed in writing with us. No special objection to the GTC of the customer by MGA shall be required.

1.3. Oral orders and agreements as well as oral ancillary agreements and warranties must be confirmed in writing by MGA to be valid and binding.

1.4. Special conditions granted to the customer shall only apply if the customer duly fulfils his contractual obligations. If the customer fails to fulfil them, MGA shall be entitled to cancel the special agreements with immediate effect and to claim retrospective payment of additional amounts.

1.5. If goods are ordered electronically, we will confirm the receipt of the customer's order. However, the confirmation of receipt per se does not constitute a binding acceptance of the order.

1.6. If individual provisions of these Terms and Conditions are invalid, the validity of the remaining provisions and the contracts concluded on their basis shall not be affected thereby.

1.7. Where reference is made in these Terms and Conditions to the **price list**, it shall mean the price list as posted by MGA and applicable on the delivery date.

### 2. Prices, terms of payment, reservation of title

2.1. Our prices are net prices ex works and exclude the statutory VAT. If no price is indicated in individual cases, the price shall be calculated pursuant to the current **price list** (I.7). In the case of 'ex-warehouse' deliveries, the applicable warehouse surcharge will be charged. The gases including their containers will be shipped ex works or ex warehouse (= point of delivery) at the customer's cost and risk; likewise, empties will be shipped to the point of delivery at the customer's cost and risk.

2.2. The purchase price shall become payable immediately upon delivery of the goods or services and without deduction, unless special terms of payment have been agreed upon in individual cases. Without prejudice to a term for payment granted, MGA shall be entitled to perform all deliveries still outstanding only in return for immediate cash payment if the customer defaults in payment of any amounts due or MGA becomes aware of circumstances which suggest that the customer's financial situation has materially deteriorated after conclusion of the contract. In addition, the terms of payment set out in the **price list** (I.7), and/or, in the case of a special agreement, in the invoice apply.

2.3. If the customer defaults in payment of any indebtedness to MGA when due without fault, default interest of 10% p.a. or higher statutory default interest will be charged. In addition, the customer shall reimburse MGA for any reminder fees and collection costs incurred in so far as they are necessary for bringing appropriate legal action, including - for the purposes of Sect. 1333 ABGB - in particular the costs of reminders pursuant to the price list (I.7) and the costs of a reminder drawn up by a lawyer entrusted with the collection of the outstanding amount pursuant to the Independent Fee Guidelines (*Autonome Honorar-Kriterien*) (AHK 2005 or similar fee regulations). MGA reserves further rights and claims. If payment by instalments has been agreed, MGA shall be entitled to demand immediate payment of the entire debt outstanding (loss of right to pay by instalments) if the customer fails to pay instalments or ancillary claims in time.

2.4. The customer may set off his claims against claims MGA has against the customer only if these counterclaims have been accepted in writing by MGA or if they have been established by a court judgement.

2.5. The gases supplied by MGA and any accessories sold with them shall remain the property of MGA until the purchase price and all ancillary claims have been fully paid. The gas bottles in which the gases are supplied shall always remain the property of MGA.

### 3. Delivery

3.1. Stated delivery periods are approximate and not binding, unless they have been expressly agreed upon as having binding force. Partial deliveries shall be permissible.

3.2. If delivery/performance by MGA (or its sub-suppliers) is delayed for reasons not attributable to MGA, and in the event of force majeure and other unforeseeable events that cannot be avoided by reasonable measures, such as strikes, breakdowns, disruption to traffic and acts of government authorities, the obligations of delivery and acceptance shall be suspended for the time and to the extent the cause of non-compliance with time limits continues and the delivery period shall be extended accordingly. Where such delays last for longer than 3 months, the customer and MGA shall be entitled to withdraw from the contract.

3.3. If MGA has committed itself to adhere to a specific deadline and failed to comply with it, the customer may only withdraw from the contract if it has granted MGA a grace period of at least 14 days in writing and that period has expired with no action having been taken by MGA. The customer shall not be entitled to claim damages for non-performance or default if the ensuing damage has not been caused intentionally or gross negligently by MGA and/or a point of delivery. No compensation is provided for lost profit and other purely financial losses.

### 4. Warranty

4.1. Drawings, illustrations, measures and weights are only approximate, unless they have been expressly designated as binding. Production-related deviations must be accepted by the customer if the underlying sample has been approved or the deviations are not significant.

4.2. The customer shall notify us in writing of any defects specifying them immediately upon receipt of delivery; hidden defects shall be notified to the competent point of delivery immediately after they have been identified; otherwise, the goods shall be deemed accepted and free from defects. In that case, the customer shall not be entitled to pursue any claims, including the claim to avoid the contract on account of mistake. In the event of defective deliveries in gas bottles and/or in the event of faulty gas bottles, the gas bottles concerned shall be marked by a tag to be affixed to the gas bottle valve below the cap specifying the exact address of the customer and the reason for the complaints and returned immediately in an unchanged condition to the point of delivery for inspection by MGA. Gas bottles appearing to be defective must not be used. Complaints raised for other reasons cannot be taken into account for operational reasons.

4.3. If gas supplied is defective or if the gas supplied deviates from that ordered in terms of type or quantity, MGA will - at the customer's choice - either provide for its replacement or credit the customer's account with a compensation for the deviation.

4.4. The warranty period shall be 6 months from the time of delivery. The right to charge MGA retrospectively for damage incurred by the customer pursuant to Sect. 933b (1) ABGB shall expire six months after delivery by MGA, after which MGA shall cease to be liable under any duty to provide compensation retrospectively for damage incurred by the customer. Complaints shall not entitle the customer to withhold the entire, but only half of, the purchase price for the defective delivery until the defective delivery has been replaced.

### 5. Liability

5.1. Any liability of MGA for property damage and pecuniary losses of the customer, no matter whether direct or indirect damage, lost profit, damage resulting from the defect itself or consequential damage, shall be excluded in cases of minor negligence. This exclusion of liability shall also apply in favour of MGA's staff, legal representatives and agents. It shall not apply to personal injuries and in the event of any liability under the PHG (*Produkthaftpflichtgesetz* - Product Liability Act). Any claims for damages customers or third parties may raise under the PHG against MGA shall be excluded, unless the party claiming compensation for such damages proves that the defect was caused by MGA acting at least gross negligently.

5.2. In cases of gross negligence, MGA shall be liable for property damage and financial losses incurred by the customer only in so far as such damage is covered under its public liability and product liability insurance policies, i.e. up to the insured sum paid out, the amount of which is set out in the current **price list**

(I.7). It is up to the injured party to prove that MGA has acted with gross negligence. Liability for purely financial losses is excluded, unless intent on the part of MGA is proven.

5.3. The customer shall comply with the regulations governing the use of gases as well as with the generally accepted technical rules and bear the related risks by taking out adequate insurance. The customer is aware of the risks typically related to the use of gases and agrees to use them at his own risk. He is also aware that property damage may occur as a result of unforeseeable and atypical risks, in particular misuse by third parties. Where the customer is entitled to insurance benefits for any damage incurred, such benefits shall be fully credited to any claim for damages raised against MGA.

5.4. MGA expressly points out that no product liability insurance exists for goods used in safety-related areas of the aeronautical and aerospace and atomic industries (exclusion of cover). Any use of MGA gases in the aforesaid industries shall therefore be at the customer's own risk. MGA's liability for property damage and pecuniary losses in this connection shall be excluded, unless MGA is proven to have acted intentionally.

5.5. The customer shall claim damages within 12 months after the occurrence of the damage, failing which any such claims shall be precluded.

### 6. Quantities

Indications of quantities for condensed/liquefied gases relate to a gas condition of +15°C and 1 bar; "m<sup>3</sup>" relates to a gas condition of +15°C and 1 bar. All gas bottles returned to the point of delivery will be emptied into the atmosphere for safety reasons; any remaining quantities will not be remunerated.

### 7. Place of performance, governing law

Any disputes arising in connection with this contract shall be exclusively settled by the court having subject matter jurisdiction in the first district of Vienna. Apart from that, MGA shall be entitled to sue the customer at his place of general jurisdiction. The contract and any claims derived from it shall be governed by Austrian substantive law without regard to the UN Sales Convention. In case of any dispute regarding the interpretation of this GTC, the German version ([www.messer.at](http://www.messer.at)) shall prevail.

## II. Additional special terms and conditions for gas supplied in gas bottles and the granting of use of gas bottles and pallets

### 1. Returnable gas bottles and returnable pallets

1.1. Pallets and gas bottles of MGA may be used by the customer only for using gas fillings purchased from MGA and shall remain the property of MGA. The customer shall always disclose MGA's ownership of these pallets and gas bottles to third parties. Any other use - also for safety reasons - is not permitted. A right of retention to our gas bottles/pallets is excluded by analogy to Sect. 1140 ABGB.

1.2. The customer shall be liable for the use of the gas bottles/pallets in accordance with the applicable safety standards and technical rules from their delivery to their return to the point of delivery. He shall inform the point of delivery about any losses, internal contamination and other damage to gas bottles/pallets as soon as they become known to him. Gas bottles complained about must be clearly marked. The customer shall be liable without fault up to the cost of replacement for missing, contaminated or other damaged parts of the gas bottles/pallets as well as for unusable and not returned gas bottles/pallets. Gas bottles/pallets may not be passed on to third parties, in particular for taking gas and/or filling gas without our prior written consent. The customer shall return the gas bottles/pallets in good order at his risk and cost immediately after emptying them. The gas bottles/pallets shall only be deemed returned if their return has been confirmed in writing by the competent point of delivery.

1.3. For the period up to the return of the gas bottle/pallet, a compensation for use will be charged from delivery, which will be calculated pursuant to the posted **price list**. The customer shall verify the bottle and pallet inventories stated in the invoices and raise any objections in writing within 10 days of receipt of invoice, failing which the stated bottle and pallet inventory shall be deemed accepted and may not be disputed at a later stage. Any fees and charges related to the granting of use shall be borne by the customer. MGA shall be entitled to charge an interest-free security deposit in the amount of the bottles' or pallets' replacement cost for gas bottles/pallets provided until their proper return.

1.4. If gas bottles/pallets are not returned to the point of delivery within the period stated in the applicable **price list**, MGA shall be entitled to charge an overtime surcharge in accordance with the current **price list** (I.1.7). The compensation for use and the overtime surcharge will be charged until the day of return of our gas bottles/pallets.

1.5. Violations of the above terms of use, including the compensation for use, by the customer entitle MGA to take back the gas bottles/pallets supplied and release MGA from any obligation to supply additional gas bottles.

### 2. Customer's gas bottles

Unless otherwise agreed, gas bottles of the customer received at the point of delivery will be filled by MGA and delivered to the customer at the customer's risk and cost. MGA will charge an 'own bottle surcharge' in accordance with the **price list** (I.1.7) for filling gas bottles of the customer. The customer expressly agrees that the filling plants take delivery of or repair gas bottles requiring TÜV approval or needing repair in accordance with the current legislation before filling them, where necessary. The customer's gas bottles must be marked with the name of the bottles' owner; otherwise, MGA accepts no liability for their proper return, unless the customer proves that MGA has acted intentionally. If the customer fails to pick up his gas bottles within the period specified in the current **price list** (I.1.7) after delivery to us, MGA shall be entitled to charge storage costs in accordance with the current **price list** (I.1.7).

## III. Consumers

Clause I.1.3 shall apply insofar as the validity of declarations lacking form by MGA or its representatives cannot be excluded to the detriment of the consumer (Sect. 10 KSchG). The loss of the right to pay by instalments pursuant to Clause 2.3 and the restriction on the right to set-off pursuant to Clause 2.4 shall apply to contracts with consumers governed by the Consumer Protection Act only in accordance with the provisions contained therein. Clause I.4.2. first sentence, Clause I.4.4., Clause I.5.2, Clause I.5.4, Clause I.5.5, Clause I.7 first sentence, Clause II.1.3 third sentence and Clause II.2. fourth sentence do not apply to contracts with consumers.

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