

# Technical and commercial terms and conditions for products in portable containers, dry ice and equipment

Valid from 01.02.2024

## 1. Scope

**1.1** Unless expressly agreed otherwise in writing, these technical and commercial terms and conditions (hereinafter Terms and Conditions) shall apply to all deliveries and services for gases in portable containers (see Clause 20 – Containers for the storage and dispatch of gases), as well as for dry ice and other equipment from AIR LIQUIDE AUSTRIA GmbH (hereinafter AL).

**1.2** We do not recognise the authority of the Customer's general Terms and Conditions. They only become part of the Contract if we have expressly agreed to them in writing. Our Terms and Conditions also apply if we provide the service to the Customer unconditionally whilst aware that this conflicts or deviates from the Customer's Terms and Conditions.

## 2. Offer, conclusion of the contract, prices

**2.1** Our offers are not binding. Written and verbal orders and other agreements, as well as additional verbal agreements, only become effective and binding if we have confirmed them in writing. In the case of an immediate supply, the dispatch of the goods is considered to be a confirmation of the order. We are entitled to only accept parts of orders or to reject them without justification.

**2.2** Our contractual obligations as well as those of the Customer are based solely on the concluded written contract.

**2.3** Products and services other than those listed in the Contract are invoiced at the prices valid at the time the order is placed. Gas prices are ex-works from the production plant, prices for devices and accessories are ex-works from the respective supplier's plant as specified in the order confirmation. The prices do not include packaging or the statutory turnover tax. Prices are quoted in euros.

**2.4** We are entitled to invoice the Customer for new taxes and duties and to pass on costs to the Customer that we incur after having to implement new, legally mandatory safety regulations.

**2.5** If special agreements have been agreed upon for the Customer, these only apply on condition that the Customer properly fulfils his contractual obligations. If he fails to comply, we are entitled to revoke the special agreements with immediate effect.

## 3. Determining the amount of gases

In the case of compressed gases, the quantity is determined on the basis of a temperature of +15 °C. The gas volume (m<sup>3</sup>) quoted in price lists and sales documents is calculated using the internal volume of the transport container (usually a gas cylinder) and the nominal filling pressure (bar) without taking into account the special factors of the respective gas. "Gases that are liquid at room temperature" and dry ice are calculated according to weight (e.g. carbon dioxide, nitrous oxide and dissolved gases, e.g. acetylene). Unless otherwise agreed, oxygen, nitrogen and argon are calculated at a temperature of +15 °C and a pressure of 98,07 kPa (0,98 bar).

## 4. Delivery, transfer of risk

**4.1** The gases are supplied at the contractually agreed time, otherwise immediately after the order confirmation has been issued. We are entitled to make partial deliveries. Unless otherwise agreed, the choice of routes and means of transport is made at our discretion. The customer bears the transport costs, including the road toll for heavy goods vehicles.

**4.2** Unless otherwise agreed, the portable containers will be supplied to the first possible supply limit. The first possible supply limit means, among other things:

- the delivery location can be accessed by a lorry,
- the access is built on solid ground (asphalt/concrete),
- it is on a flat surface all at the same level.
- Loading/unloading zone provided by the Customer – unloading within a 10 m radius of the AL transport vehicle. The supply limit or the unloading area must be safely accessible (free of snow and ice, without trip hazards, etc.).

**4.3** Each delivery and/or collection must be guaranteed by the Customer without waiting times for the carrier. Furthermore, the Customer shall ensure a member of staff is on hand to check the delivery and sign the delivery papers.

**4.4** The risk is transferred to the Customer when the goods are handed over to the carrier or another transporter.

**4.5** If the Customer or a carrier commissioned by him picks up the goods, the goods that are reported as ready for dispatch must be picked up immediately. If he fails to do so, we are entitled to ship these goods at our discretion at the Customer's risk and expense or to store them at our own discretion and invoice them immediately. The transfer of risk begins when the goods are ready for dispatch. The customer is accountable and responsible for the reliable and safe handling during loading and unloading. If we choose to assist in this process, it is merely an act of courtesy.

## 5. Delivery time

All delivery dates are non-binding, unless the delivery and execution deadlines have been specified separately in special written agreements. Only once all commercial and technical requirements for the execution of the order have been definitively determined will such deadline periods begin. Compliance with our delivery obligation further requires the timely and proper fulfilment of the Customer's obligation.

## 6. Force majeure

In cases of force majeure, in particular in the event of war, natural disasters, strikes, lock-outs, riots, official measures, machine damage (despite proper machine maintenance), late or incorrect deliveries from our upstream suppliers, disruptions in the supply of energy and raw materials, unusual traffic and road conditions as well as other operational disruptions through no fault of our own, we are entitled to postpone the delivery for the duration of the hindrance or, if an end of the hindrance is not foreseeable, to withdraw from the Contract in whole or in part without further obligations.

## 7. Assurance

**7.1** Descriptions of our products and their possible uses, especially in brochures, programmes, price lists and assembly instructions, are for information purposes only. Specific properties and areas of application are not guaranteed. We only provide a guarantee if the Customer observes the regulations and standards applicable for AL products.

In any case, we do not guarantee the suitability of our products to achieve specific results, which are based on false expectations as a result of insufficient information or inadequate testing.

**7.2** The Customer is obliged to check the delivered goods immediately and to notify us of any defects in writing no later than seven days after the date of delivery (§ 377 of the Austrian Commercial Code, UGB). No warranty is granted if the goods have been converted or supplied at a reduced price. If any of the duties and obligations contained in this paragraph are not complied with, AL is under no obligation to uphold the warranty or pay compensation.

**7.3** If AL delivers a quality of gas that supersedes that agreed upon, the Customer is not entitled to the continued supply of the superior quality.

**7.4** In the case of repair work, we only guarantee the correctness and professionalism of the work we have carried out, and that the parts we have delivered are free from defects.

## 8. Liability

**8.1** The Customer expressly declares that he or the Party entrusted by him is familiar with the handling of gases, gas cylinders, technical equipment, systems and accessories and knows the properties of the individual gases. We are happy to provide product sheets and instructions for use at any time.

**8.2** In accordance with the statutory provisions, we are liable if the Customer makes a claim for damages based on intentional or gross negligence, including on the part of our representatives or agents, and also in the event of a culpable breach of an essential contractual obligation. Essential contractual obligations are obligations that must be fulfilled so that the contract may be properly executed and that the Customer may consistently depend upon to be compliant. In the case of the supply of gases, our essential contractual obligations are limited to the supply of the gases in compliance with the specifications. Insofar as we are not accused of an intentional breach of contract, i.e. in the case of gross negligence and the breach of an essential contractual obligation, our liability is limited to the foreseeable damage that usually arises. Liability for property, consequential and other immaterial damages is not covered by the foreseeable loss that is usually experienced in the given circumstances.

**8.3** We are specifically not liable

- for damages caused by excessive use, faulty, negligent or incorrect handling, wear and tear due to use, inadequate maintenance by the Customer, harmful chemical or electrical influences or circumstances outside of normal operating conditions.
- if repairs or other manipulations were carried out by parties not commissioned by us.
- if the Customer or user does not give us the necessary time and opportunity to repair or replace defective supplies or parts.
- Liability for damages in excess of the provisions referred to above is excluded. This does not affect claims based on physical or personal injury or ill health as well as mandatory provisions regarding liability.

## 9. Payments, default interest, late payment

**9.1** Unless otherwise agreed in writing, invoices are due immediately and without deductions.

**9.2** Payments can always be credited against the oldest outstanding claims of the respective supply relationship, even if the Customer has allocated the payment to a different claim.

**9.3** The Customer may not offset payments against counterclaims that are contested or not legally justified or withhold payment based on such claims.

**9.4** If a justified objection to our invoice has not been made within 2 weeks of the invoice date, it is considered as approved.

**9.5** The Customer gives his revocable consent to invoices being sent in electronic form. As the recipient of the invoices, the Customer must ensure that electronic invoices can be properly delivered and that technical equipment, such as filter programs and firewalls, are set up appropriately. In the event of any changes to the communication data, the Customer must immediately notify us of them in writing. Invoices sent to the last correspondence address provided by the Customer are deemed to have been received.

**9.6** In the event of a default in payment, we are entitled to charge a default interest of 1% per month to offset the invoice amount. We are, furthermore, entitled to charge all expenses associated with the monitoring and enforcing of the late payment claim, such as collection expenses. Ultimately, a default in payment entitles us to withhold other deliveries to the Customer until the invoice amount has been paid in full. The Customer may not offset payments or withhold payment as part of any counterclaims he has against claims by AL.

**9.7** In the event of a default on payment, we are also entitled, without prejudice to further rights, to only make any outstanding deliveries against advance payment, to demand securities or to withdraw from contracts or to demand compensation after a reasonable period of grace.

## 10 Retention of title

**10.1** The delivered products remain our property until they have been paid for in full by the Customer. Should third parties make claims to the products (in particular through seizure), the customer is obliged to inform us immediately so that we may protect our rights. If the Customer violates this obligation, he is liable to pay the outstanding amount invoiced, irrespective of the obligation to compensate for more damages.

**10.2** If the Customer continues to default on his payments despite a reminder and a one-week grace period, we are entitled to collect the items we own from the Customer at the Customer's risk and expense, and to store these until the original invoice amount has been

paid in full, including interest, expenses and costs for their collection, storage and re-delivery to the Customer. Even in the event of accidental loss, the Customer is still obligated to pay the aforementioned costs and amounts. During transport and storage we are only liable for loss and damage resulting from gross negligence. If the Customer refuses delivery of the property owned by AL, we are entitled to withdraw from the Contract. In this case, the Customer is – insofar as it pertains to gases – obligated to pay a contractual penalty equal to double the invoice amount, irrespective of the continuing obligation to return the items under our ownership. As far as other items owned by AL are concerned, the Customer must pay a usage fee, at AL's applicable rates at the beginning of the defaulted payment, instead of the aforementioned contractual penalty.

**10.3** From the time of the takeover, the Customer transfers all claims against third parties that arise from the onward delivery of unpaid products belonging to AL on account of payment to us. The Customer is obliged to notify the third party of this transfer of claims.

**10.4** If products to which AL reserves ownership are processed or mixed with other items, the resulting product is then jointly owned by AL at the ratio of the prices at which the items were processed or mixed together. The Customer already assigns his claims against third parties to us at the ratio of AL's share of joint ownership, for all payments arising from the sale or utilisation of the new product.

**10.5** The Customer has no right of retention on rented gas cylinders.

**10.6** We reserve all proprietary rights and copyrights to images, plans, drawings, calculations, execution instructions, product descriptions and other documents that we have prepared for the Customer, regardless of the medium.

#### **11. Prohibition of assignment**

The Customer is not entitled to transfer rights or claims to third parties or to assign them to third parties.

#### **12. Transfer rights**

AL is free to transfer all or part of its rights and obligations under this Agreement to third parties.

#### **13. Legal succession**

The customer is obliged to notify us without solicitation, of any change, in particular any that relate to his company name or legal form. The Customer is liable for any losses resulting from failure to notify us or not doing so in time.

#### **14. Safety regulations**

Our products are subject to special regulations for medical and technical gases and hazardous substances. We are happy to provide safety data sheets at any time or these can be downloaded at <https://datenblatt.online/>. The Customer may request further information about the applicable safety regulations from us at any time.

#### **15. Consent to advertising and information, data protection**

The personal data provided by the Customer (name, company, address, sales tax identification number, e-mail address, telephone number) are stored and processed by means of EDP for the purposes of fulfilling the contract. The Customer gives his consent, which can be revoked at any time, for his personal data to be used for the purpose of sending information about products and services from AL by post and e-mail, as well as for the purpose of sending electronic invoices. In accordance with the Data Protection Act, customer data is stored exclusively for business purposes. The provisions of our Privacy Policy can be found at <https://industrie.airliquide.at/datenschutz>.

#### **16. Anti-corruption clause**

The customer undertakes to comply with all applicable legal provisions to fight corruption. This obligation always includes the prohibition of the unlawful acceptance of gifts and other benefits, as well as the unlawful payment or granting of other unlawful advantages to public officials, business partners, their employees, family members or other persons.

#### **17. Code of conduct**

AL expressly refers to the applicable Code of Conduct of Air Liquide Austria GmbH - see [airliquide.com/code-of-conduct](http://airliquide.com/code-of-conduct). Contact options for reporting centres on corruption, fraud, human rights violations, etc: Ethical Hotline: 00800 7233 22 55; E-mail hotline: <https://www.safecall.co.uk/clients/ethical/>). AL expects its business partners to conduct themselves in accordance with the regulations and principles contained therein.

#### **18. Applicable law and place of jurisdiction**

Our legal relationships with the Customer are governed exclusively by Austrian law with the exclusion of international sales law and the UN Sales Convention. The exclusive jurisdiction of the relevant regional court in Korneuburg is agreed for disputes arising from this contractual relationship.

#### **19. Application of the terms and conditions for consumers**

If there is a consumer transaction within the sense of § 1 para 1 of the Consumer Protection Act (KSchG) and if mandatory provisions of this federal law conflict with the effectiveness of the provisions of these Terms and Conditions, it is agreed that the relevant provisions of the Terms and Conditions will be replaced by the relevant mandatory standards of the KSchG. However, all other provisions of these Terms and Conditions continue to apply in full.

#### **20. Additional provisions for portable containers**

In the following, the term portable container refers to trailers, bundles of cylinders, gas cylinders, cans, dry ice boxes, cryogenic receptacles and other containers for the storage and consignment of gases as well as transport aids such as transport pallets.

##### **A. Provision of the portable container**

**A.1** Air Liquide supplies portable containers marked with barcodes for the purposes of clear identification and tracking.

**A.2** Unless otherwise agreed, the portable containers delivered by us will only be rented and not sold. We shall conclude a rental agreement with the customer for the delivered portable containers. The signature of the Customer or his assistants on the delivery note verifies the conclusion of this rental agreement.

**A.3** The rate of the rent depends on the applicable rental rates and systems. Corresponding price lists are available from our sales offices and AL sales partners and can be sent to the Customer at any time on request. The rent is due for payment unless an agreement to the contrary/contrary has been made.

**A.4** Independently of the agreed rent for the portable container, we reserve the right for gas cylinders and cylinder bundles that have been in the Customer's possession for more than 18 months since the last filling, or to have them returned to an AL supplier at the Customer's risk and expense. The Customer is informed in advance and has to have the gas cylinders and cylinder bundles ready for collection. No compensation will be made for residual gas contents left in gas cylinders and cylinder bundles.

**A.5** The portable containers are only handed over to the Customer so he can withdraw the gas filling we have delivered. Any other use or manipulation of the portable container is strictly prohibited, especially for security reasons. The Customer may only pass the portable containers on to third parties with our prior written consent.

**A.6** The customer must check the invoices and the final visible fill level in the cylinder for their correctness and notify us in writing of any complaints no later than 10 days after receipt of the invoice. After this period has elapsed, no complaints may be filed and the invoice balance or rental balance shall be deemed to have been accepted, unless it has not been possible to check the invoice or inventory through no fault of the Customer.

**A.7** The obligation to pay and the payment period continue to apply even if the Customer lodges a complaint.

**A.8** We can request information from the Customer at any time regarding the location of the portable containers and view the corresponding records. The Customer may request that the inspection be carried out by a neutral third party.

##### **B. Securities**

**B.1** We are entitled to collect an advance payment for the rent in the form of a deposit from the Customer before loading or delivering the portable containers. After returning the portable containers, the rent incurred until then as well as any repair costs will be deducted from the deposit and the difference will be given to the Customer.

##### **C. Complaints**

**C.1** If the portable containers supplied to the Customer appear to be faulty, they must be clearly marked and returned immediately to the agreed AL plant or the agreed AL sales partner. For operational reasons, we cannot accept complaints that are processed in any other way.

**C.2** Portable containers and devices that are the subject of a complaint or appear to be defective must not be used.

##### **D. Returning the portable containers**

**D.1** The portable containers must be returned immediately to the AL plant or the sales partner with all the accessories and in proper condition after the gases have been withdrawn and with the residual pressure indicated on the cylinder label.

**D.2** The returns are made against a delivery note or a barcode receipt. If the Customer is a trader, he can only provide proof of return by presenting the delivery note / barcode receipt.

**D.3** If the Customer returns a portable container we did not deliver to him, this does not exempt the Customer from paying his rental and the obligation to return our portable container.

**D.4** If the portable container provided is not returned by the Customer or a third party commissioned by him, we will credit the customer, to whom the portable container should actually be credited, with the returned container and charge a processing fee for each container. The same applies if the portable container is returned by a different recipient of the goods than the one to whom the portable container is actually credited. The rent for the returned container is payable until the time it is returned.

**D.5** If the Customer defaults on payments, we are entitled to request that he returns the portable containers at any time. In this respect, the Customer has no right of retention on the portable container.

**D.6** No credit is issued for fully filled portable containers returned by the Customer.

##### **E. Damage or loss of portable containers**

**E.1** The Customer is liable for the portable containers and accessories provided to him, even in the event of accidental damage or loss.

**E.2** If the Customer does not return the portable containers or parts thereof or if they are in a condition that impedes the resumption of operational readiness with appropriate means, the Customer must refund the replacement value of similar new portable containers or parts thereof. The Customer has the option of proving that the damage incurred is much lower.

##### **F. Handling of customer's own cylinders**

**F.1** We are obliged to check the customer's portable containers (in particular cylinders he owns) that are due for inspection in accordance with the shipping container ordinance, before filling them. The Customer is obliged to reimburse us for the additional expenses incurred for tests and repairs, even if an express order has not been placed, at the rates applicable on the invoicing date. This also applies to portable containers in need of repair.

**F.2** The customer's portable containers reported as ready for dispatch must be collected immediately. If he fails to do so, we are entitled to send these goods at our discretion at the Customer's risk and expense and to charge storage fees with immediate effect. If the storage fee reaches or exceeds the current value of the portable containers as determined by AL, we are entitled to sell, rent or otherwise utilize the cylinder and use the proceeds to cover the storage fee.

**F.3** The Customer is responsible for marking the portable containers as his property. We do not accept any liability should any unmarked portable containers go missing. The burden of proof for the labelling lies with the Customer.

##### **G. Rental of technical equipment**

**G.1** The rent for the "technical equipment" is based on the applicable rental rates. The "technical equipment" we lease is marked as the property of AL and bear our logo.

**G.2** The Customer is obliged:

- to handle rented "technical equipment" with care in compliance with the provisions set out by us and in particular not to carry out technical work or other changes to the equipment or fill it with gas products from suppliers other than AL.
- to notify us immediately of any damage, loss or claims by third parties. If the Customer violates the obligation to report, he is obliged to pay a contractual penalty equal to the amount of the replacement value of the "technical equipment" leased. Irrespective of fault, the Customer is liable to the extent of the replacement value.

**G.3** If during the rental period third parties incur losses for the replacement of the "technical equipment" through the fault of the Customer, while installing or operating the "technical equipment", the Customer undertakes to indemnify us and hold us free from blame.

**G.4** We are entitled to exchange the "technical equipment" at any time during the rental period without having to justify our motives.

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**These technical and commercial Terms and Conditions for products in portable containers, dry ice and equipment can be downloaded at [www.airliquide.at/agb](http://www.airliquide.at/agb)**

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