

General General Terms and Conditions of Business of PROGAS GmbH & Co. KG

Westfalendamm 84-86, 44141 Dortmund, Germany, for the Aerosol Division

1 General / Scope of application:

All goods and services that we supply shall be governed solely by the following General Terms and Conditions of Business. These shall be incorporated into all contracts that we form with our trade partners (hereinafter called "**Customer**") and shall also apply to all future transactions between the Contracting Parties without any renewed reference to our General Terms and Conditions of Business being required. These General Terms and Conditions of Business shall even apply if we do not specifically mention them in later contracts, particularly if we supply goods and services to Customer without reservation in knowledge of Customer's conflicting terms of business or terms of business that differ from our own.

2 Effectiveness of the order/contract:

- 2.1 All orders and contracts shall only become effective through our written acknowledgement to Customer or on the return of a copy of the contract countersigned by ourselves.
- 2.2 Our written acknowledgement of the order or the copy of the contract with our countersignature shall be authoritative for all legal relations with Customer. Verbal side agreements shall only be binding if we have confirmed them in writing. The same applies to any amendments and additions to the contract, including any amendments or additions to these General Terms and Conditions of Business. To comply with the written form it shall be sufficient to use fax or email.

3 Delivery period, delivery volumes, place of carriage/forwarding route and passage of risk:

- 3.1 The periods and deadlines that we schedule for the delivery of goods and services are only approximate unless a fixed period or a fixed deadline has been explicitly promised or agreed.
- 3.2 The agreed time period for the delivery of the goods or services shall not commence until all technical questions have been clarified. Furthermore, in order for us to punctually comply with our obligations Customer must have properly fulfilled all duties to cooperate in good time. Without prejudice to our rights arising from Customer's default, we shall have the right to extend the periods allowed for the delivery of the goods and services or to postpone the set deadlines by the same amount of time as the time when Customer failed to comply with its contractual obligations towards ourselves. We reserve the right to raise the defence of non-performance.
- 3.3 Customer shall ensure that connections and terminals are provided in good time, cooperate during acceptance tests and notify us in good time of any circumstances making delivery difficult (poor access road, long hose distance etc.).
- 3.4 In the absence of any other agreement between the Parties, the weight or volume of the goods determined at the place of delivery or by the customs office and noted on the delivery note shall be authoritative unless the weight or volume is determined at the place of destination by means of calibrated measuring equipment. Either Party shall have the right to prove that smaller or larger volumes have been delivered.
- 3.5 In the absence of any other agreement, we shall determine the means of transport and the forwarding route.
- 3.6 In the absence of any other agreement between the Parties, the risk of accidental destruction and the accidental deterioration of the goods in commercial transactions shall pass to Customer as soon as the goods are handed over to the carrier, however no later than when the goods leave the distribution centre.
- 3.7 If Customer is in default of acceptance or culpably breaches any other duties to cooperate, we shall have the right to demand compensation for any damage we suffer, including any additional expenses. We reserve the right to assert further claims or rights.
- 3.8 We shall not be liable for impossibility of performance or delayed performance in cases of force majeure or any other events that were unforeseeable and beyond our control at the time when the contract was formed, such as third-party violence against persons or property - also in the case of our subcontractors or suppliers - state intervention, including currency-related or trade-related measures, difficulties in the procurement of energy or materials and any other operational disruptions affecting our business or that of our subcontractors or suppliers, strikes and lawful lock-outs on our own premises or on the premises of our subcontractors or haulage contractors, shortage of manpower, energy or raw materials, difficulties in obtaining the necessary official permits, official measures or complete failure of delivery, incorrect delivery or unpunctual delivery by our own suppliers. If such events make it significantly more difficult or impossible for us to deliver the goods and services and the obstruction is more than merely temporary, i.e. lasting more than 90 days, we shall have the right to withdraw from the contract. In the case of temporary obstructions the delivery periods or delivery dates shall be extended or postponed for the duration of the obstruction plus a reasonable start-up time. If Customer cannot reasonably be expected to accept the goods or services due to the delay, Customer shall have the right to cancel the contract by sending us an immediate written statement.
- 3.9 We shall have the right to make part-deliveries within the agreed delivery period if

- the part-delivery is of use to Customer within the framework of the contractual purpose and
- it is ensured that the remainder of the delivery will be effected and
- this does not involve any significant additional expense for Customer (unless we state that we are willing to bear these expenses).

We undertake to notify Customer of such circumstances in good time and to reduce the invoice amount by an appropriate amount.

- 3.10 Unless otherwise set out above, we shall be in default of performance as from the time stipulated by law. Customer, however, at all events is required to send us a reminder.
- 3.11 If we are in default in delivering any goods or services or if performance becomes impossible, irrespective of the reasons, our liability for damages shall be limited in accordance with clauses 3.12 and 11.
- 3.12 Any delivery dates we promise shall not mean that time is of the essence unless this is explicitly stated in the order acknowledgement. Compliance with agreed deadlines requires that Customer fulfils all obligations; this includes the remittance of an agreed advance payment. If we can be held responsible for failure to comply with a deadline or are in default Customer shall have the right to claim compensation for default amounting to 0.5 % of the invoice value for each week of the delay, but no more than 5 % of the posted order in question.

4 Deliveries qualifying for tax concessions:

- 4.1 If the goods qualify for tax concessions and if formal individual permission is required for the tax-free use of the goods, Customer must send us a valid copy of the permit in good time before the delivery date. We shall not be obliged to deliver the goods if no valid permit has been presented.
- 4.2 In the case of the approved waiver of a permit it must be indicated for what purpose the goods are to be used.
- 4.3 In cases where Customer purchases the goods under excise duty suspension arrangements Customer shall prove its entitlement by sending the excise approval number allocated by the customs authorities to show that Customer has been granted individual permission.
- 4.4 We shall not be obliged to check the validity of the permit or the excise approval number sent by Customer nor whether the legal preconditions for tax concessions have been met.
- 4.5 If the goods are to be exported from the statistical territory, Customer, on reselling the goods, must apply for the goods to be cleared under a new transit procedure in Customer's name as provided for under national or Community law.
- 4.6 Customer shall indemnify us against all damage, expenses, costs and disadvantages arising if the permit proves to be invalid or from the culpable breach of any other legal requirements by Customer. Alternatively, Customer shall reimburse us for such damage, expenses and costs. Customer shall be particularly responsible for ensuring that the goods are used only for their intended purpose under tax and excise law and shall reimburse us for any tax and/or duty that we have to pay due to the goods being used for a purpose other than the one intended.

5 Use

We point out that on the delivery of propane/butane mixtures there may be a vapour pressure tolerance of plus/minus 0.2 bar. Unless otherwise expressly agreed, the goods shall not be delivered with a certain inlet temperature. Prior to the resale or use of the goods for commercial and/or industrial purposes, particularly for the production of or use in products, Customer shall carry out a proper inspection of the goods that we deliver, in accordance with the applicable technical standards in order to ensure that they are suitable for Customer's special processing purposes. We shall deliver an aerosol of the type and quality agreed in the relevant supply agreement. The decision as to whether the type/quality of aerosol ordered is suitable for Customer's purpose is a matter purely for Customer. Unless otherwise expressly agreed, we particularly exclude any advice in relation to the usability and suitability of our goods for Customer's intended purpose.

6 Containers:

Customer may not use the means of transport (e. g. tank wagons, road tankers, bottles) for any purposes other than those agreed by contract. Customer must do all that is necessary in order to ensure that the containers are unloaded or emptied without obstruction and delay (proper unloading conditions). Customer shall particularly ensure that the unloading or emptying of the containers does not entail any safety risks. If we have any objective reasons to believe that the unloading/emptying of the containers involves safety risks, we shall have the right to refuse to effect delivery until Customer has created proper unloading conditions. In such a case the additional expense for a new delivery shall be borne by Customer.

In detail the following applies in relation to the means of carriage:

a) Tank wagons

Customer must empty the tank wagons immediately on their arrival and return them to the shipping point. If delivery has been agreed carriage paid, the tank wagons shall be returned carriage forward; otherwise they shall be returned carriage paid to the shipping point.

If Customer does not empty the tank wagon(s) within 48 hours of its/their arrival at the place of destination and hand them over for return transport, Customer shall reimburse us for the tank wagon rental usual in the locality unless Customer cannot be held responsible for the late return.

If the tank wagon arrives at the place of destination in damaged condition, Customer shall immediately do all that is necessary in order to ascertain the damage (e. g. ascertaining the facts with the rail company responsible for transport) and send us a report. In addition, Customer shall place and store the tank wagon in a place where it is protected against unauthorised access until such time as it is collected.

b) Road tankers

The buyer shall ensure that there are a sufficient number of containers/reception installations in conformity with safety standards, so that the goods can be unloaded and accepted immediately and that road access remains unobstructed.

c) Transportable containers (bottles and drums)

We hire out transportable containers that are not sold with the goods. The monthly rental for the container sizes 5 kg, 11 kg, 33 kg and for the 300 kg drums shall be individually agreed between the Contracting Parties.

Immediately after having being emptied, the containers must be returned in a complete (with cap and cap nut), clean and intact condition and sent carriage paid and free of charge to the reception point we specify. If the works are relocated or closed, Customer must at all costs return the containers in its possession. No compensation shall be paid for any gas remaining in returned containers.

In the case of disruptions and irregularities Customer must immediately close the container valve and notify us or our sales office without delay. Leaky containers must be put outdoors immediately. It is not allowed to make repairs and changes to containers.

Customer must handle the containers with care and insure them against the usual risks such as theft, fire, force majeure etc. at its own expense. We point out that in order to protect its rights under an existing fire insurance policy Customer must notify the insurance company if a liquefied gas system is installed.

d) Customer's own receptacles

If the goods are delivered in transport vehicles, packing or containers belonging to Customer or by third parties at Customer's request, Customer shall be liable for the containers' compliance with the applicable safety standards and other regulations. We may request evidence of this before filling such containers. Customer must send

the clean containers carriage forward and free of charge to the place we specify. In particular if Customer uses its own containers they may not contain any foreign bodies that may lead to the contamination of the products we have to deliver. We are not obliged to check the containers for suitability and cleanliness. The containers shall be shipped at Customer's own risk.

7 Delivery volumes:

- 7.1 Our filling station calculates the net weight of the bottles and drums by means of calibrated measuring and weighing devices. The delivery volumes from road tankers is determined by the vehicle's calibrated measuring device. If delivery is effected with jumbo tankers without discharge of partial amounts or with railway tank wagons, the initial volume shall be determined by a sworn weightmaster using calibrated scales.
- 7.2 Our invoicing will be based entirely on the delivery volume determined in this way and recorded on the delivery note.

8 Terms of payment:

- 8.1 Our deliveries of liquefied gas shall be payable immediately on receipt of our invoice without any deductions. Cheques shall only be accepted on account of payment and their cash value shall not be credited until they have been honoured. Bills of exchange shall only be accepted by special written agreement. If a certain amount of time is to be allowed for payment, this shall require a special written agreement.
- 8.2 The preconditions for default of payment and the legal consequences shall be governed by the statutory provisions. We reserve the right to claim further damages.
- 8.3 Customer may only set off counterclaims or retain payments on the basis of such claims if the counterclaims are undisputed or have been recognised by a final court judgment.
- 8.4 We shall be entitled to carry out or provide outstanding services only in return for advance payment or the provision of security, in departure from the agreements made, and to require that Customer pays the entire outstanding debt immediately if Customer does not pay our invoices on the due date or exceeds a certain time allowed for payment or if, after forming the contract, we become aware of circumstances that call the customer's solvency or creditworthiness into question and which make it uncertain whether our outstanding claims under the contractual relationship in question will be paid by Customer. This particularly applies if Customer ceases payments, if Customer issues a cheque that is not honoured, if insolvency proceedings are instituted against Customer or if an application for insolvency has been filed and proceedings have not been opened due to insufficient assets.

9 Reservation of title

Each consignment shall remain our property until full payment has been remitted and as long as Customer is in arrears with another payment - also under a current account relationship. Consumption in the normal course of business is allowed; any resale of whatever kind is prohibited. If goods under reservation of title are inseparably mixed or combined with other items that do not belong to us, we shall be granted co-ownership of the new item in the same ratio as that between the value of the goods we deliver (final invoice amount including value added tax) and the other items mixed or combined with our goods at the time of mixing or combination. If the goods are mixed or combined in such a way that Customer's item is to be regarded as the main item, it is agreed that Customer shall transfer co-ownership to us on a pro rata basis. Customer shall store this exclusively owned or jointly owned item so produced free of charge on our behalf.

10 Defects/notice of defects:

- 10.1 The obligation to give notice of defects in order to make a justified complaint shall be governed by the statutory provisions.
- 10.2 In addition we give no guarantee for loss of volume or pressure due to defective containers belonging to Customer or any facilities of Customer that are not in proper condition. Customer shall bear the consequences arising from any discrepancies in quality due to foreign materials in the containers or facilities provided by Customer.

11 Liability

- 11.1 Our liability is unlimited in the case of intentional acts and gross negligence. Irrespective of the legal basis, we shall only be liable for damage caused through ordinary and slight negligence if this is due to breach of duties that are essential for the proper performance of the contract and on whose fulfilment the customer may usually rely (fundamental contractual obligations) and in these cases our liability shall be limited to the typical foreseeable damage. Our liability shall otherwise be excluded irrespective of the legal basis.
- 11.2 The exclusion of liability under clause 11.1 above shall apply in the same way to damage caused through gross negligence or intentional acts on the part of our employees or agents unless they are among our managing directors or executives. We shall not be liable for indirect damage suffered by Customer due to third parties asserting claims for contractual penalties.
- 11.3 The aforementioned exclusion of liability under clauses 11.1 and 11.2 shall not affect liability in the case of injury to life, limb or health, the fraudulent concealment of a defect, in exceptional cases in which we have given a guarantee and in cases of mandatory liability under the Product Liability Act.

12 Limitation period

- 12.1 If the goods and services we provide prove to have material defects or defects of title, Customer's claims - including claims for damages and claims for the reimbursement of futile expenditure due to a breach of duties - shall become time-barred within one year of the commencement of the statutory limitation period unless otherwise agreed hereinafter.
- 12.2 The aforesaid provision in clause 12.1 shall not apply to the limitation of claims due to injury to life, limb or health nor claims under the Product Liability Act. Nor shall this affect the special statutory provisions governing bad faith. In the cases mentioned in this clause 12.2 these claims shall become time-barred in accordance with the statutory limitation periods.

13 Final provisions

- 13.1 Any assignments of Customer's rights and obligations under the contract with ourselves shall require our written consent in order to be effective.
- 13.2 These General Terms and Conditions and all legal relations between Customer and ourselves shall be exclusively governed by the law of the Federal Republic of Germany as applicable between German businesses. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 13.3 The place of performance and the sole place of jurisdiction for all claims arising between Customer and ourselves shall be Dortmund in as far as Customer is a business, a legal entity under public law or a separate public sector fund unless otherwise expressly provided for by law. However, we have the right to bring an action against Customer in Customer's statutory place of jurisdiction.
- 13.4 We will save Customer's data within the framework of our mutual business relationship subject to the rules set out in the German Federal Data Protection Act (*Bundesdatenschutzgesetz, BDSG*).
- 13.5 If any parts of these terms and conditions should be ineffective or unenforceable or prove to have an omission, this shall not affect the validity of the remaining provisions. The ineffective or unenforceable provisions shall be replaced by a complete and lawful provision that comes closest to what the Parties would have agreed if they had known of the provision's ineffectiveness, unenforceability or incompleteness.

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