General Purchasing Conditions of AIR LIQUIDE Electronics GmbH

1. General information - scope of application
1.1. Our purchasing conditions apply exclusively. We do not recognise any conditions of suppliers that conflict with or differ from our purchasing conditions unless we have expressly agreed to their validity in writing. Our purchasing conditions apply even if we accept the supplier's delivery without reservation whilst aware of conflicting or differing conditions of the supplier.
1.2. All agreements reached between us and the supplier for the purpose of executing this contract must be laid down in writing in this contract. Verbal agreements are only valid if they have been confirmed by us in writing.
1.3. Our purchasing conditions also apply to all future business transactions with the supplier.

2. Offer documents
2.1. Offers from suppliers are considered binding; they must be prepared in full and comprehensively. The supplier must learn about the local conditions before proposing a quote. Additional costs resulting from the failure to comply with this obligation are borne by the supplier.
2.2. Any additional expense that becomes necessary after additional orders have been placed is not determined or approved under the basic order but must be fixed and negotiated separately.
2.3. The supplier is obliged to refer us to alternatives that are more cost-efficient, innovative or more appropriate from a technical perspective.
2.4. We reserve the property rights and the copyrights in respect to illustrations, drawings, calculations, designs, sample and other documents. The supplier is not made accessible to third parties without our express written consent. They must be used exclusively for production purposes based on our order. They must be returned to us after processing the order without exception. Any further use must be kept confidential from third parties. The confidentiality obligation applies even after this contract has been executed if and when the production knowledge contained in the illustrations, drawings, calculations and other documents provided has become general knowledge.
2.5. All rights of use and economic rights with regard to documents provided to us by the supplier are transferred to us.

3. Order and order confirmation; contractual obligations
3.1. The supplier is obliged to confirm our order in writing within a period of five days, or to fully execute it (acceptance) without reservation in particular by dispatching the goods.
3.2. Orders and agreements are only binding if they are issued or confirmed by Procurement in writing. Services for which a written order is not issued do not bind us and will not be paid for even if such services are provided at the request of our staff. Subsequent agreements must be confirmed in writing by the supplier in order to be binding. The execution of the order is deemed to constitute the supplier's acceptance of these purchasing conditions. The supplier vouchers for the purchaser's adherence to all contractual obligations.
3.3. The supplier bears the procurement risk for its services unless otherwise agreed in individual cases.
3.4. The supplier is not entitled to have the services for which it is responsible carried out by a third party (e.g., a sub-contractor) without our prior written consent. The supplier is responsible for the behaviour of third parties should any breach occur.

4. Prices
4.1. The price stated in the order is binding. If no deviating written agreement exists, the price covers free delivery to the delivery address specified by us, including packaging and any ready-to-use installation. The supplier must remove the packaging material at its own cost, as required.
4.2. This price covers all the services and ancillary services which are part of the ready-for-receipt acceptance of the entire service specified in the contract in accordance with the offer, documents and drawings of the supplier. The supplier is also responsible for the sales tax.
4.3. Invoices are rendered for prices by weight in the absence of our own weighing arrangements.

5. Confidentiality
5.1. The supplier is obliged to maintain confidentiality with regard to all information of which it becomes aware in the course of the business relationship. The supplier is obliged to sign a separate confidentiality agreement at our request.

6. Invoices
6.1. Invoices must not be enclosed with the goods but be sent separately by post and include the order number.
6.2. The purchase order reference as well as the number of each individual item must be specified in the invoice. Invoices are not payable if this information is missing. Copies must be marked as duplicates, VAT must be indicated separately.

7. Payments
7.1. Unless otherwise agreed, payments are made
   • within 14 days with a 2% discount
   • on 60 days without any deduction.
7.2. The payment period begins as soon as the delivery or service is completed and a correctly issued invoice has been received. Where the supplier has to provide material tests, inspection reports, quality documents or other documents, the completeness of the delivery and service also requires a receipt of these documents. A discount is also permissible if the purchaser offsets or withholds payments of a reasonable amount due to defects. The payment period begins after all defects have been remedied.
7.3. We do not owe any interest on arrears. The default interest for our delay amounts to an annual five percentage points above the base interest rate. Statutory provisions apply in the event of a delay on our part with the deviation, where appropriate, that a written warning from the supplier is required in each case.

8. Delivery time
8.1. The delivery time specified in the order as well as all other dates specified by the supplier are binding.
8.2. The deadlines of deliveries depend on the receipt by the receiving location specified by us; the timeliness of deliveries with installation or assembly as well as of services depends on their acceptance.
8.3. The supplier undertakes to inform us immediately in writing if circumstances occur or become apparent to it that indicate that the agreed delivery date cannot be adhered to.
8.4. If the supplier is in default, we may — in addition to further legal claims — claim a compensatory compensation for the damage incurred by us due to the delay in the amount of 1% of the net price per full calendar week but no more than 5% of the net price of the goods delivered late. We reserve the right to prove that we incurred greater damages. The supplier has the right to provide evidence that we incurred no or considerably lower damage.
8.5. Early deliveries, deliveries outside the hours indicated by us for receiving goods as well as partial or multiple deliveries require our prior consent. Statutory provisions apply in the event of a delay in acceptance. However, the supplier must then expressly offer us the service even when a specific or identifiable calendar time is agreed for delivery on our side (such as the provision of material). If we find ourselves in default of acceptance, the supplier may claim the reimbursement of additional expenses in accordance with statutory provisions (§ 304 of the German Civil Code). If the contract relates to a unique item made by the supplier (custom made), the supplier is only entitled to further-reaching rights if we committed a gross breach of contract and have not cooperated and are responsible for the failure of the cooperation.

9. Delivery control
We may check the materials, manufacturing processes and other work performed to provide the contractual service both during manufacturing and up to the delivery. If the inspection is not allowed without an important reason being given, we are entitled to withdraw from the contract without the supplier being able to claim compensation for damages. We may refuse payment for the service rendered by the supplier up to the date of the withdrawal if the acceptance of this partial performance is of no interest to us. The same applies if the inspection reveals defects or deviations from the contractual agreements. Instead of withdrawal, we are also entitled to request the immediate performance of the contract. We may at any time request a report on the goods ordered by us, especially in relation to the manufacturing process. This right of control does not affect the supplier's obligations, particularly in terms of warranty and liability.

10. Transfer of risk and shipping
10.1. Delivery must be free, unless otherwise agreed in writing.
10.2. For deliveries which include installation or assembly for services, the risk is transferred upon acceptance, for delivery without installation or assembly, upon receipt by the receiving location specified by us.
10.3. All shipments must contain a copy of the delivery note with details of the contents as well as all order references. Otherwise, we are not responsible for any processing delays. Partial or remaining deliveries must be identified as such. In addition, dispatch notes must be sent to the procurement department as well as to the delivery address specified on the day of dispatch.

10.4. The supplier must take out transport insurance. For shipping orders with carriers, it must be noted that hausteile logistics and storage (HLS) indemnity insurance need not be taken out because the supplier is considered a waiver customer according to Section 27 of the General German Freight Forwarders' Terms and Conditions (ADSp). For the transportation of heavy goods, the HLS, liability and heavy-goods liability insurance must be taken out by the freight forwarders or crane companies on its behalf.

11. Securities
The supplier must obtain performance or warranty guarantees in our favour as well, in the case of advance payments, advance payment guarantees.

12. Safety and accident prevention regulations
12.1. Deliveries and services must correspond to the legal and safety regulations that apply for us as well as any required permits and approvals.
12.2. Modifications of the above provisions due to changes and adjustments must
be independently considered by the supplier until the risk has been transferred.

12.3. Upon acceptance of the order, the contractor also undertakes to observe the following European regulations:
- the EU Electromagnetic Compatibility Directive,
- the EU Machinery Directive 2000/14/EC of 17 May 2006,
- other applicable EU directives (e.g. the PPRD and ATEX Directives),
- harmonised European standards applicable to the machinery ordered.
In the absence of harmonised European standards for the ordered machinery or equipment, the contractor undertakes to observe the German standards and technical specifications.

If there is a deviation from the harmonised European standards or German standards and technical specifications in justified cases, the achievement of the same level of safety must be demonstrated and documented by other means.

The obligation implies that:
- a CE marking is placed on a ready-to-use machine (system or system component);
- an EU declaration of conformity in German is included for a machine with a CE marking in accordance with Annex II A to EU Machinery Directive 2000/14/EC;
- a declaration of incorporation and assembly instructions are added to an incomplete machine in accordance with Annex B to EU Machinery Directive 2000/14/EC. The wording of the quality requirements of relevant input and market directives is – as far as possible within the scope of supply – made a condition and must be certified;
- a certificate of conformity in Annex IV to EU Machinery Directive 2000/14/EC, a certificate from an authorised testing and certification body is presented (if necessary, proof of the EU-type-examination);
- operating instructions, a significant determinant of the financial situation of the supplier occurs or is likely to occur, thereby jeopardising the fulfilment of a delivery obligation to us, the supplier is in insolvency or insolvent, or the supplier requests the opening of insolvency proceedings over its assets or a similar procedure to settle debts; or the supplier suspends its payments.

12.9. If the supplier has already provided part of its service, we will only be entitled to withdraw from the whole contract if we have no interest in the partial service.

12.10. If, based on the above contractual withdrawal or termination rights, we withdraw from or terminate the contract, the supplier must reimburse us for the resulting damage unless it is not responsible for the emergence of the withdrawal or termination rights.

12.11. Formal acceptance
12.10.1. The supplier's performance of work is only formally accepted after full completion. This also applies to the acceptance of subsequent work following a complaint.

12.10.2. Partial services no longer visible or accessible by the time of acceptance must be checked immediately after their completion and reported to the purchaser in writing. A written record must be made of this. Such checks and reports do not constitute partial acceptance. A reversal of the burden of proof is not associated with this arrangement.

17. Product liability – indemnity – liability insurance
17.1. Where the supplier is responsible for a product defect, it is obliged to indemnify us from claims for damages by third parties on first request as the cause lies within the supplier's sphere of control and organisation and it is feasible with respect to time.

17.2. In the context of its liability for damages within the meaning of Section 17.1, the supplier is also obliged to reimburse any expenses in accordance with Sections 823, 823, 824, 828 and 828 if any legal action arising from or in connection with a recall operation instigated by us. Where feasible and reasonable, we will inform the supplier about the content and scope of the recall measures to be implemented and give it the opportunity to comment. This does not affect any other legal claims.

17.3. The supplier undertakes to take out product liability insurance with an insured sum of five million euros per person per property damage – lump sum – and to demonstrate this at our request, if we are entitled to any further claims, these remain unaffected.

18. Property rights
18.1. The supplier guarantees that no third-party rights are violated within Germany in connection with its delivery.

18.2. If a third party should make a claim against us, the supplier is obliged to indemnify us from these claims on first written request. We are not entitled to enter into any agreements with third parties without the supplier's consent, particularly to conclude a settlement.

18.3. The supplier's indemnification obligation refers to any necessary expenses incurred by us as a result of, or in connection with, a third-party claim.

19. Retention of title – provision
19.1. We reserve the title to all parts we provide to the supplier. Such items must – as long as they are not processed – be stored separately at the expense of the supplier, identified as belonging to the purchaser, and insured to an appropriate extent against destruction and loss. The processing or transformation by the supplier is performed for us; if the good subject to retention of title is processed with other items not belonging to us, we will acquire joint ownership of the new item at the ratio of the value of our item (purchase price plus VAT) to the other items processed at that time.

19.2. If the item provided by the supplier is transformed or processed in a manner not belonging to us then we acquire joint ownership of the new items at the ratio of the value of the good subject to retention of title (purchase price plus VAT) to the other items at the time they are intermixed. If the mixing is done
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in a way that the supplier’s item can be regarded as the main item, it is agreed that the supplier assigns proportional joint ownership to us. The supplier preserves sole or joint ownership for us.

19.3. The transfer of ownership of these goods to us must be carried out unconditionally and regardless of the payment of the price. However, if we accept an offer from the supplier to transfer ownership conditional on the payment of the purchase price in individual cases, the retention of title of the supplier expires upon payment of the purchase price for the delivered goods at the latest. We also remain authorized in the ordinary course of business before the term of the purchase price to resell the goods under advance assignment of the resulting claim (alternative application of the simple retention of title extended to the resale). This therefore excludes all other forms of retention of title, especially expanded, transferred or extended to further processing.

19.4. We retain ownership and intellectual property rights to illustrations, drawings, calculations, plans, executive statements, product descriptions and other documents. Such documents must be used exclusively for contractual performance and be returned to us after execution of the contract. The documents must be kept confidential from third parties, even after termination of the contract. The confidentiality obligation is void if and insomuch as the knowledge contained in the documents provided has become generally known.

20. Long-term supplier’s declarations

The supplier will in principle only provide products from the European Union as well as from countries with preferential agreements in place, and will provide long-term supplier’s declarations at our request in relation to the purchase price and the supplier is entitled to do so. It underlines to inform us of this immediately after receiving our order.

21. e-procurement

Where the parties are prevented from meeting their deadlines due to a force majeure, the deadlines are extended by the duration of the hindrance plus a reasonable lead time. Only war and natural catastrophes are considered force majeure.

22. Supplier Qualification; Audit

23.1. All suppliers are required to sign our “guidelines for contractors” prior to start a working relationship.

23.2. Suppliers delivering goods and services classified as “critical” to the purchase have to participate in the purchaser qualification process. A successful completion of the process is mandatory for further business relations.

23.3. The purchaser reserves the right to audit the supplier even without prior notice within ordinary business hours.

24. Corporate social responsibility (CSR)

We undertake to respect human and labour rights as well as environmental protection regulations, and attributes increasing importance to the capacity of our suppliers to support this corporate strategy geared towards social responsibility and sustainability.

24.1. Code of conduct for suppliers

The code of conduct for suppliers is published on our website: the German version can be found at http://www.airliquide.de and the English version at http://www.airliquide.com. We expect our suppliers to meet their business responsibilities with integrity and transparency, and to adhere to the rules set out in our code of conduct for suppliers. The supplier undertakes to comply with the supplier’s code and to ensure that all of its employees and subcontractors do the same.

24.2. The supplier undertakes to implement an action plan during the contract period in order to:
- register for each piece of work the number of its employees and those who assist them;
- register the number of accidents involving a loss of working hours and the number of accidents not involving the loss of working hours as well as the accident frequency rate of employees, contractors and temporary workers;
- measure and optimise water and energy consumption;
- measure and optimise the greenhouse gases emitted;
- measure and reduce emissions of nitrogen oxides (NOx), sulphur oxide (SOx), and volatile organic compounds (VOC);
- measure and reduce the discharge of oxidizable material and particle matter in water;
- maintain a high level of safety at the workplace;
- ensure the appropriate disposal of waste and packaging.

24.3. The supplier agrees to be evaluated by us or a third party designated by us with respect to its CSR performance on its own cost. If the result of this evaluation is below or equal to 44/100:
- the supplier undertakes to take the appropriate corrective action within 18 months;
- the supplier commits to being evaluated again after a period of 18 months at its own expense by us or a third party designated by us.

24.4. The supplier commits himself to comply with all applicable laws and regulations, especially those to fight corruption, while carrying out the duties contractually owed.

24.5. For the sake of clarity, the violation of one of the obligations referred to in this paragraph by the supplier or one of its subcontractors constitutes a material breach of this agreement which gives Air Liquide cause for termination at its sole discretion.

25. Minimum wage

In particular, the Contractor undertakes

25.1. to pay the statutory minimum wage applicable to his employees and, where necessary in individual cases, to pay contributions to a communal scheme for employees to parties to a collective agreement pursuant to Section 8 MiLOG (Mindestlohngebietergebiet: German Minimum Wage Act) at the time the order is executed and, upon the Client’s request, has to prove that he has done so by furnishing an attestation provided by an expert third party who is under a particular obligation of discretion and confidentiality (lawyer, accountant, auditor).

25.2. to ensure and contractually have each of his contractual partners confirm and, on a case-by-case basis, prove that they and their further subcontractors who provide their employees with employment in Germany (including transit, border and catalogue traffic) also pay the statutory minimum wage applicable at the time the order is executed and, if required in individual cases, contributions to a communal scheme for parties to a collective agreement pursuant to Section 8 MiLOG.

25.3. to fulfill all the duties of disclosure and documentation required by the MiLOG.

25.4. to keep all documents required to prove compliance with the obligations under the MiLOG for at least two years and, in the event of the Client’s legitimate interest, to submit and make them available to an independent expert third party who is under a particular obligation of discretion and confidentiality for the purpose of verifying compliance with the above-mentioned conditions at any time.

25.5. to indemnify the Client from all claims asserted by third parties in the event of any breaches of the previously described obligations and to compensate any resulting damage. This indemnity obligation also applies to all sanctions, fines or other measures or claims asserted by authorities or other organisations as a result of any possible violations against the MiLOG committed by the Contractor or subcontractors employed by him. The indemnification obligation also covers all costs incurred in connection with the legal defence on the Client’s part.

25.6. Furthermore, the Contractor undertakes to pay a contractual penalty to the Client amounting to € 5,000.00 for each case of the breach of his obligations under the MiLOG or this agreement, which lead to recourse against the Client.

25.7. The Client has the right to terminate the agreement extraordinarily and to assign orders elsewhere in the event of significant breaches of the Contractor’s obligations under this agreement. The Contractor shall bear any resulting additional costs.

26. REACH and RoHS

The supplier commits himself, if applicable, to comply with all legal requirements of EU Regulation N° 1907/2006 for Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), as amended. Furthermore, the supplier commits himself, if applicable, to comply with all legal requirements of EU Directive N° 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) in accordance with national implementations, as amended.

27. Data Protection Declaration

Air Liquide is obliged to inform suppliers about processing of personal-related data acc. to Art. 12, 13 General Data Protection Regulation, the data protection declaration is available under the link “Datenschutz” on Air Liquide’s website. (www.qliuide.de/datenschutz)

28. Export control clause

28.1. The parties agree that all transactions correspond at all times to applicable export controls, customs and foreign trade laws as well as any relevant changes and adjustments of these. In particular, the supplier must procure all of the export licenses needed for the products supplied, unless otherwise agreed.

28.2. The supplier must produce in writing all of the information and data with regard to the products delivered that are needed by Air Liquide to comply with the export control laws and regulations applicable in the country of export and import.

28.3. If these rules are breached, the supplier is fully liable irrespective of any other liability provision agreed with Air Liquids.

29. Supplementary and final provisions

29.1. Unless our purchasing conditions contain a relevant regulation, the statutory provisions apply.

29.2. If provisions of this contract are or becomes invalid, or if a gap in the conditions emerges, the validity of the remaining provisions is not affected by this.

30. Place of fulfilment and jurisdiction

30.1. Unless otherwise indicated in the order, the place of performance is the location of our registered office.

30.2. The jurisdiction for any disputes arising from the business relationship between us and the supplier is Düsseldorf.

31. Applicable law