

General Terms and Conditions for Gas Deliveries in Containers of Messer Schweiz AG

1 Scope of application

All deliveries are subject to the following General Terms and Conditions. Other terms and conditions shall only be accepted if they do not extend the customer's statutory rights and do not contradict or restrict these General Terms and Conditions for Gas Deliveries. This also applies if Messer Schweiz AG, hereinafter "MESSER", does not contradict other conditions or carries out the delivery without contradiction.

These "General Terms and Conditions" shall enter into force on 26th of November 2019 and replace the previous Terms and Conditions.

2 Prices and terms of payment

Deliveries and services of MESSER are always based on the prices valid at the time the order is placed. If the period between placing the order and delivery is more than four months, MESSER shall be entitled to invoice the customer for the prices applicable at the time of delivery or performance.

Unless otherwise agreed, all prices are quoted from the agreed delivery point plus the flat-rate transport charge and plus the applicable statutory value-added tax.

MESSER is entitled to invoice the customer for new taxes and duties. MESSER is also entitled to pass on any costs arising from the implementation of new legally binding provisions after conclusion of the contract to the customer.

Should the customer's requirements change considerably or the quantity purchased deviate by more than 20 % from the specified quantities required, MESSER is entitled to adjust the conditions accordingly.

All invoices are payable strictly net within 30 days of receipt. Unauthorized cash discounts and other deductions will be charged subsequently. Objections to the invoiced claims must be raised by the customer within 14 days of the invoice date, otherwise the claim is deemed accepted. Such objections do not prevent the undisputed invoice amount from becoming due.

In the case of cash payment, the customer receives a confirmed delivery note. In the case of sale on credit, invoicing is usually carried out on a monthly basis, whereby all gas deliveries are combined on one invoice wherever possible. Delivery notes, dispatch notes, bills of lading and container control serve as the basis for invoice control.

3 Quality and warranty

MESSER guarantees commercial and customer-specific gas purity as well as correct container filling. No liability can be accepted for contamination by other substances that enter the container outside the filling plant.

MESSER's warranty is valid for a period of 12 months from the delivery of the gas concerned, provided that the gas has a regular stability of at least 12 months in a defect-free condition.

If a gas delivery is defective or deviates from the type or quantity ordered, MESSER shall, at its discretion, either replace the delivery not in accordance with the contract or release the customer from the obligation to pay the purchase price. This section shall apply accordingly to the replacement delivery. If a replacement delivery is not in accordance with the contract, the customer can cancel the delivery by issuing a credit note for the full purchase price; the issue of a credit note is not dependent on a follow-up order.

The customer must immediately notify the delivery point in writing of any defects in a gas delivery.

Complaints due to defective valves or incorrectly filled containers must be made immediately, but at the latest within five days of receipt of the goods. Deviations in the quality of gases must be reported immediately after their detection and the vessel must be handed over to the MESSER laboratory for testing. Any claims for compensation are limited to the gas loss.

4 Liability

MESSER is liable for claims for damages of the customer - on whatever legal grounds - up to an amount of 1 million Euros per damage event.

Deviating from this, liability exists in the event of delay up to the amount for the delayed delivery or service.

Liability for loss of production, loss of profit or other indirect or consequential damage is excluded.

These limitations of liability do not apply:

- intentional or grossly negligent causation of damage and fraudulent concealment of defects;
- culpable injury to life, limb or health;
- breach of warranty;
- defects in the supply of gas which cause personal injury or property damage to privately used objects exceeding 500 Euros.

Liability for deliveries used in the aerospace and nuclear industries is excluded.

The above liability regulations also apply in favour of MESSER's employees and legal representatives.

5 Uses

Unless expressly sold as medical gas, the products supplied by MESSER may not be used on humans or animals for healing and therapy purposes.

6 Delivery and transport

The gas is delivered as soon as possible from the depot, depending on the stock of the required bottle sizes. The customer's own bottles given for filling are returned in the same way at the next opportunity. The customer's own bottles delivered by him which are not collected within one month can be returned at the customer's expense.

Without a separate agreement, delivery of the products shall be subject to a charge to the place specified by the customer. The transfer of ownership and risk shall take place upon handover to the customer.

EXW (Incoterms 2010) applies to collection by the customer. The transfer of ownership and risk shall then take place when the goods are handed over to the customer or forwarding agent of the customer.

When transported by road, the official regulations according to ADR/SDR must be observed both by Messer and by the customer.

MESSER certifies that the goods handed over for carriage are approved for carriage by road in accordance with the provisions of ADR/SDR and that their condition, quality, packaging (such as containers and tanks) and labelling comply with the provisions of ADR/SDR.

MESSER's trucking service is designed for delivery from the delivery point to the customer's domicile to a central, easily accessible location, where the empty containers to be collected must also be provided. For delivery by lorry, the agreed transport lump sum or, in the absence of an agreement, the transport lump sum will be charged in accordance with the respectively valid rates as well as the respectively valid LSVA tax. The same applies to the supply to the railway stations. The transport of the containers within buildings and the installation of pressure reducing valves are the responsibility of the customer.

7 Unavoidable events

In the event of unforeseen events which cannot reasonably be avoided by MESSER or its subcontractors, including mobilization, war, riots, strikes, operational disruptions, difficult procurement of raw materials and operating materials and orders from a high authority, the delivery and acceptance obligations relating to the delivery shall be suspended as long and insofar as such obstacles exist. The aforementioned circumstances are also not to be represented if they occur during a delay.

8 Indication of quantity

The gas content shall be determined in accordance with the usual method of calculation specified by MESSER for the gas types and containers concerned. The pressure specification is always based on the test pressure gauge of the filling plant. The reference temperature is 15 °C at an ambient pressure of 1 bar.

9 Containers

The rental containers are the property of MESSER and may not be filled or exchanged in any other factory or sold or pledged or lent or transferred to third parties without the consent of MESSER. The customer is liable for the returnable containers entrusted to him and is responsible for the proper handling of the returnable containers. The returnable containers must be handled with care and insured against fire and explosion. The customer must take all precautions to ensure that no foreign gases or liquids can get into the returnable containers due to faulty manipulation. Damage to the returnable containers or their valves which is detected on return or immediately thereafter, the cleaning of contaminated returnable containers and the replacement of non-returned container components shall be at the customer's expense. Damage to returnable containers must be reported to MESSER immediately.

When filling the customer's own containers, the filling plant is entitled, without a special order, to have the customer's own containers requiring inspection or repair checked and repaired prior to filling at the expense of the customer who also has to be the owner and to make any necessary changes.

10 Rent

Returnable containers can be obtained in two different ways:

- Against payment of a rent per container (bottles, bottle batteries and liquid containers) and day from a certain rent-free period up to the return of the container. Invoices are usually issued monthly.
- By concluding a flat-rate rental contract, which entitles the renter to acquire, use and replace a bottle or battery of any size of the same type of container during its term. Invoices are issued upon conclusion of the contract and before the start of each additional contract period.

11 Gas return

Returned containers which have been delivered within the last 6 months and have been fully returned undamaged due to non-use will be credited to the customer after deduction of the transport costs and a handling charge.

No credit note will be issued for residual content. Special regulations are possible for reusable ultra-pure gases.

12 Customer's own bottles

12.1 Customer's own bottles in the sense of these General Terms and Conditions are bottles of which the customer is the owner. The customer is responsible for embossing the bottles as his property. MESSER is not liable for the loss of unembossed bottles. The burden of proof for the ownership lies with the customer.

12.2 If the bottles handed over for filling are not collected by the customer within a period of 1 month, MESSER is entitled to forward them back at the customer's expense or to scrap them after 3 months. Unless otherwise agreed in writing, the gas cylinders handed over by the customer for filling are filled by MESSER and made available for collection.

12.3 MESSER will check the customer's own cylinders handed over for filling to determine whether they are generally suitable and legally approved for filling with the corresponding gas. If this is not the case, Messer can refuse filling.

12.4 Without the need for a separate order, MESSER is entitled but not obliged to inspect or have repaired customer bottles requiring inspection or repair before they are filled at the owner's expense within the framework of the statutory provisions.

12.5 MESSER guarantees that the quality and purity of the gases used for filling are maintained at the time the bottle is filled (transfer of risk). Proof of purity is provided by the measurement reports required by law at MESSER.

12.6 The customer is obliged to return only bottles used for filling in accordance with their intended purpose and with due care. By handing over the bottles, he confirms that no foreign gases or liquids have entered the bottles as a result of improper use. Furthermore, he confirms that neither he himself nor third parties nor other persons not authorised for this purpose by law have carried out manipulations, repairs or maintenance work on the container and valve. Only apparently technically perfect bottles are filled. In the event of a breach of the above obligations, any warranty obligation on the part of MESSER shall lapse.

12.7 For repairs and maintenance work carried out by MESSER on the customer's own cylinders, MESSER only warrants the measures it carried out competently and correctly as well as that the parts supplied by it are free from defects in accordance with MESSER's General Terms and Conditions of Business.

12.8 The customer expressly declares that he or the persons entrusted by him are familiar with the handling of the gases, gas cylinders, technical equipment, systems and accessories and know the properties of the individual gases.

12.9 In particular, MESSER shall not be liable:

- for the suitability of the gases to achieve certain results and expectations;
- for damage caused by excessive use, incorrect, negligent or improper handling, wear and tear due to use, defective maintenance by the customer, harmful chemical or electrical influences or circumstances outside normal operating conditions, as well as for damage caused by contamination in the bottle due to improper use and filling;
- If repair work or other manipulations have been carried out by the customer himself or by third parties not commissioned by MESSER.

13 Data privacy

MESSER processes personal data provided by the customer. Further information on the processing of personal data is contained in Messer's data protection notice, which is made available on request at any time and can be called up on Messer's website (<https://www.messer.ch/datenschutz>) in its current version at any time.

14 Other

The GTC were written in three (3) language versions, German, English and French. In the event of discrepancies between the language versions, the German version shall prevail.

15 Legal venue

Place of jurisdiction is Lenzburg, Switzerland.