

GENEAL TERMS AND CONDITIONS

Carbotech Gas Systems GmbH

A. - Terms and Conditions for the Supply of Machinery -

For use with:

1. A person performing their commercial or self-employed professional activity [entrepreneur] when concluding a contract
2. legal persons under public law or public law special funds

I. General

1. All supplies and services are based on these terms and conditions as well as any separate contractual agreements. Deviating purchasing conditions of the Purchaser shall not become contents of the contract, even if the order is accepted.
Unless otherwise agreed, the contract is concluded upon written confirmation of the order from the Supplier.
2. The Supplier retains all property rights and copy rights pertaining to samples, cost estimates, drawings and similar information of a tangible or intangible form – even of electronic nature; these must not be disclosed to third parties. The Supplier undertakes to only make information and documents designated by the Purchaser as confidential accessible to third parties with the Purchaser's consent.

II. Price and Payment

1. Unless otherwise agreed, all prices are quoted for delivery ex works including loading at the factory, however excluding packaging and unloading. VAT is added to the prices at the respective statutory rate.
2. Unless otherwise agreed, payment is to be made to the account of the Supplier without any deductions as follows: 1/3 Deposit payment upon receipt of order confirmation, 1/3 as soon as the Purchaser has been informed that the principle part is ready for shipping, the remaining amount must be paid within one month of the transfer of risk.
3. The Purchaser is entitled to retain payments or to offset them against counterclaims insofar as the Purchaser's counterclaims are uncontested or have been established as legally binding.

III. Delivery Time and Delayed Delivery

1. The delivery time is as agreed between the contracting parties. Compliance with the delivery time requires that all the commercial and technical issues between the contacting parties are clarified and the Purchaser has fulfilled all obligations, e.g. procurement of the necessary official certificates or approvals, rendering of service or advance payment of the invoices. If this is not the case, the delivery period is extended accordingly. This does not apply if the Supplier is responsible for the delay.
2. Compliance with the delivery time is subject to correct and timely delivery to us by our suppliers. The Supplier shall provide information as soon as possible regarding imminent delays.
3. The delivery time has been complied with if, prior to its expiry, the delivery item has left the Supplier's factory or notification has been provided of readiness for shipment. If acceptance is necessary – apart from cases where the Purchaser is entitled to refuse acceptance – the acceptance date shall be decisive, or alternatively when the Supplier reports that the goods are ready for acceptance.
4. If the dispatch or acceptance of the delivery item are delayed due to reasons for which the Purchaser is responsible, the Purchaser shall be charged for the costs arising as a result of the delay, beginning one month after the notification of the readiness for shipping or acceptance.
5. If failure to comply with the delivery time is due to force majeure, strikes or other events outside of the sphere of influence of the Supplier, then the time of delivery is extended appropriately. The Supplier shall inform the Purchaser of the beginning and end of such circumstances as soon as possible.
6. The Purchaser may withdraw from the contract without providing notice if complete performance becomes ultimately impossible for the Supplier prior to the transfer risk. The Purchaser may also withdraw from the agreement if the completion of part of the delivery for an order becomes impossible and the Purchaser has a justified interest in rejecting partial delivery. If this is not the case, then the Purchaser must pay the contractual price apportioned to the partial delivery. The same shall apply to the inability to perform on the part of the Supplier.

Section VII 2 is otherwise applicable.

If the impossibility or inability to perform occurs during default of acceptance or if the Purchaser is solely or largely responsible for these circumstances, then the Purchaser remains obliged to pay due consideration.

7. If the Supplier is in default and the Purchaser suffers damage as a result, then the Purchaser is entitled to demand a fixed rate of compensation for the default. This comprises 0,5% for each full week of the delay, overall however a maximum of 5% of the value of that part of the overall delivery which, as a result of the delay, cannot be used in good time or in accordance with the terms and conditions of the contract.

If the Purchaser sets the Supplier a reasonable time limit to perform, taking into account statutory exceptions, and if this time limit is not complied with, then the Purchaser is entitled to withdraw from the contract within the framework of the statutory provisions. The Purchaser undertakes at the request of the Supplier to declare, in a reasonable period of time, whether it will make use of its right to withdrawal. Further claims due to default in delivery are determined exclusively in accordance with Section VII 2 of these terms and conditions.

IV. Transfer of Risk and Acceptance

1. The risk transfers to the Purchaser when the goods for delivery have left the factory, and even if partial deliveries are performed or the Supplier has assumed other responsibilities.
2. Such as shipping costs or delivery and installation. If acceptance must occur, then this shall determine the transfer of risk. It must be carried out immediately upon the acceptance date or alternatively following notification of the Supplier regarding the readiness for acceptance. The Purchaser is not permitted to refuse acceptance in the case of a minor defect.
3. If shipping or acceptance is delayed or does not occur due to circumstances for which the Supplier is not responsible, then the risk transfers to the Purchaser on the day of notification of readiness for dispatch or acceptance. The Supplier undertakes to conclude insurance which the Purchaser demands at the Purchaser's expense.
4. Partial deliveries are permitted insofar as this is reasonable for the Purchaser.

V. Retention of Ownership

1. The Supplier retains ownership of the delivery item until receipt of all payments – also where applicable for any additional ancillary services due – arising from the contract to supply.
2. The Supplier is entitled to insure the delivery item at the expense of the Purchaser against theft and against damage caused by fire, breakage water and other damages unless the Purchaser provides evidence of having concluded the insurance themselves.
3. The Purchaser is not allowed to sell or pledge the delivery item or transfer it as security. In the case of pledges or seizure or other orders by third parties, the Purchaser must notify the Supplier regarding this immediately.
4. If the Purchaser is in breach of contract, and in particular in default of payment, the Supplier is entitled to take back the delivery item after issuing a reminder and the Purchaser is obliged to surrender the delivery item.
5. On grounds of retention of title, the Supplier may only demand that the delivery item is surrendered if the Supplier has withdrawn from the contract.
6. The application to commence insolvency proceedings entitles the Supplier to withdraw from the contract and to demand the immediate return of the delivery item.

VI. Claims of Defects

The Supplier shall be liable for material defects and defects of title subject to the exclusion of further claims - subject to Section VII as follows:

Material Defects

1. All parts which prove to be defective due to circumstances prior to the transfer of risk must be repaired or replaced by undamaged parts free of charge at the discretion of the Supplier. The determination of such defects must be reported to the Supplier immediately in writing. Replaced parts become the property of the Supplier. If a new part is to be installed at the request of the Purchaser before an inspection can be made to establish whether reworking is possible, the Purchaser shall bear the additional costs incurred.
2. In order to undertake all the reworking and replacement deliveries which appear necessary to the Supplier, the Purchaser must, upon consultation with the Supplier, provide the time and opportunity required; the Supplier is otherwise released from liability for the consequences arising therefrom. Only in urgent cases of risk to operational safety or to avert disproportional further damage, in which case the Supplier must be informed immediately, the Purchaser is entitled to remedy the defect itself or to have the defect remedied by a third party and to demand reimbursement of the necessary expenditure from the Supplier.
3. Of the direct costs incurred as a result of the repair or replacement delivery - provided the complaint turns out to be justified - the Supplier shall bear the costs of the replacement part including the shipping. The Supplier shall also bear the costs of the removal and installation and the costs of providing the necessary installation staff and assistants including travel costs, provided this does not impose an unreasonable burden on the Supplier.
4. Within the scope of the statutory provisions, the Purchaser has the right to withdraw from the contract if the Supplier fails to perform the repair or replacement delivery due to a material defect within an appropriate time period set for the Supplier taking into account statutory exceptions. If only a minor defect exists, the Purchaser is entitled only to reduction of the contractual price. The right to reduction of the contractual price is otherwise excluded. Further claims are determined exclusively in accordance with section VII 2 of these terms and conditions.
5. No liability is accepted in particular in the following cases:
Inappropriate or improper use, defective installation or commissioning by the Purchaser or third party, natural wear and tear, defective or negligent treatment, improper maintenance, unsuitable operating materials, unsuitable building site, chemical, electrochemical or electrical factors - unless these are the responsibility of the Supplier.
6. If the Purchaser or third party makes improvements in an incorrect manner, then the Supplier shall not be liable for consequences arising from this. The same applies in the case of changes made to the delivery item without the prior consent of the Supplier.

Defects of Title

7. If use of the delivery item results in a breach of industrial property rights or copyrights domestically, the Supplier will in principle secure at their expense the right to continued use for the Purchaser or shall modify the delivery item in such a way and in a manner which is reasonable for the Purchaser so that the breach of property rights no longer exists.
If this is not possible at commercially reasonable terms or within a reasonable period, then the Purchaser is entitled to withdraw from the contract. Under the conditions specified, the Supplier also has the right to withdraw from the contract. In addition, the Supplier shall release the Purchaser from undisputed claims or from claims not established in law of the property rights holder.
8. The obligations of the Supplier specified in section VI 7 are finally subject to section VII 2 in the event of an infringement of the property right or copyright.
They exist only if:
 - the Purchaser notifies the Supplier immediately of breaches of property rights or copyright claimed,
 - the Purchaser supports the Supplier to an appropriate extent in defence against the claims asserted or enables a Supplier to effect modification measures in accordance with section VI 7,
 - all rights to defence measures including out of court arrangements are reserved for the Supplier,
 - the defect of title is not based on an instruction issued by the Purchaser,

- the legal infringement was not caused by the fact that the Purchaser modified the delivery item without authorisation or used it in a manner which is not in compliance with the contract.

VII. Liability of the Supplier and Exclusion of Liability

1. If the delivery item cannot be used as stipulated in the contract due to the Supplier's fault as a result of negligent or incorrect execution of proposals and consulting that took place prior to or after the contract conclusion or due to infringement of other secondary obligations - in particular relating to the operations and maintenance manual for the delivery item, the regulations in Sections VI and VII 2 shall apply with the exclusion of further claims on part of the Purchaser.
2. The Supplier shall be liable for damage not affecting the delivery item itself - for whatever legal reasons - only:
 - a. in the case of intent,
 - b. in the case of gross negligence of the owner/organs or executive staff,
 - c. in the case of negligent injury to life, body, health,
 - d. in case of defects which the Supplier has fraudulently concealed,
 - e. in the context of a guarantee assurance,
 - f. in the case of defects of the delivery item to the extent that the Supplier is liable for personal injury or material damage to items used privately.In the case of a culpable breach of material contractual obligations the Supplier is also liable in the case of gross negligence of non-executive staff and in the case of minor negligence, in the latter case this is limited to reasonable foreseeable damages typical for the contract.
Further claims are excluded.

VIII. Statute of Limitations

All claims of the Purchaser expire in 12 months on whatever legal grounds. The statutory periods apply to compensation claims in accordance with Section VII 2 a to d and f. They also apply to building defects or to delivery items which have been used for a building in accordance with their customary manner of use and which have caused the defect in the building concerned.

IX. Software Use

If software is included in the scope of supply, the Purchaser is granted a non-exclusive right to use the software including its documentation. It is handed over for use on the delivery item for which it is intended. Use of the software on more than one system is prohibited. The Purchaser is committed to reproduce, edit, translate or convert the software to the legally permitted extent (Section 69 a et. seq. of the Copyright Law [Urheberrechtsgesetz - UrhG]) The Purchaser is required not to remove manufacturers information - in particular copyright statements - and not to change these without the explicit prior consent of the Supplier.
All other rights to the software and documentation including copies remain with the Supplier or with the software supplier. The granting of sub licences is not permitted.

X. Applicable Law and Jurisdiction

1. The law of the Federal Republic of Germany shall apply to all legal matters arising between the Supplier and the Purchaser, which is the law governing legal matters arising between domestic parties.
2. The place of jurisdiction shall be the court of jurisdiction for the headquarters of the supplier. However, the Supplier is entitled to file a claim at the headquarters of the Purchaser.

Note pursuant to Section 33 Federal Data Protection Act Customer data is processed electronically.

B. - Bedingungen für Montagen -

For use with:

1. A person who is performing their commercial or self-employed professional activity (entrepreneur) when concluding a contract;
2. legal persons under public law or public law special funds.

I Scope

These terms and conditions of assembly shall apply to all assembly work undertaken by an assembly company domestically, unless otherwise agreed for the individual case.

II Assembly Price

1. The assembly will be invoiced in accordance with the appendix on a time basis if a fixed price has not been explicitly agreed.
2. The amounts agreed do not include VAT. This is to be paid in the addition to the Assembly Company at the statutory rate.

III Cooperation of the Purchaser

1. The Purchaser is required to support the assembly personnel in completion of the assembly at their own expense.
2. The Purchaser must put in place the necessary specific measures for the protection of persons and property at the assembly location. The Purchaser must inform the assembly manager regarding existing specific safety regulations if these are of significance for the assembly personnel. The Purchaser shall inform the Assembly Company of violations of such safety regulations by the assembly personal. In the case of serious violations, the Purchaser may, in consultation with the assembly manager, refuse the perpetrator access to the assembly site.

IV Technical assistance from the Purchaser

1. The Purchaser is obliged to provide technical assistance at the Purchaser's expense, in particular regarding:
 - a. The provision of appropriate auxiliary personnel (bricklayers, carpenters, locksmiths and other skilled workers, helpers) required and in the numbers needed for the assembly and for the time required; the auxiliary personnel must follow the instructions of the assembly manager. The Assembly Company does not accept liability for the auxiliary personnel in anyway. If a defect or damage is caused by auxiliary personnel based on instructions from the assembly manager, then sections VII and VIII apply.
 - b. Undertaking of all earthworks, building works, bedding and scaffolding work including procurement of the necessary building materials.
 - c. Provision of the necessary equipment and heavy tools (e.g. lifting gear, compressors) and the necessary materials and items required (e.g. scaffolding, timbers, supports, cement, plaster and ceiling materials, lubricants, fuels, drive ropes and belts).
 - d. Provision of heating, light, power supply, water including the necessary connections.
 - e. Provision of the necessary dry and lockable rooms for the storage of tools belonging to the assembly personnel.
 - f. Transport of assembly components to the assembly location, protection of the assembly site and materials from damaging influences of any kind, cleaning of the assembly site.
 - g. Provision of appropriate theft-proof common rooms and work rooms (with heating, lighting, washing facilities and sanitary facilities) and first aid for the assembly personnel.
 - h. Provision of materials and undertaking of all other actions necessary for the item to be assembled and for the completion of a contractually required trial.
2. The technical assistance of the Purchaser must ensure that the assembly can be commenced immediately upon arrival of the assembly personnel and completed without delay through to acceptance by the Purchaser. If particular plans or instructions of the assembly company are required, the Assembly Company shall make these available to the Purchaser in good time.
3. If the Purchaser fails to meet its obligations, then after setting a time limit, the Assembly Company is entitled, however not required, to undertake the actions for which the Purchaser is responsible at the site of the Purchaser and at their expense. The statutory rights and claims of the Assembly Company otherwise remain unaffected.

V Assembly period, delay in assembly

1. The assembly period is observed if, by its expiry, the assembly is

ready for acceptance by the Purchaser and, in the case of a contractually required trial, is ready for this to be undertaken.

2. If the assembly is delayed as a result of measures in the context of labour disputes, in particular strikes and lockout, and if circumstances occur which are not the fault of the Assembly Company, then, provided such obstacles are proven to have a significant impact on completion of the assembly, an appropriate extension will be applied to the assembly period.
 3. If damage is caused to the Supplier as a result of default of the assembly company then the Supplier is entitled to demand a fixed rate of compensation for the default. This comprises 0.5% for each full week of the delay, overall however a maximum of 5% of the assembly price for that part of the facility to be assembled by the Assembly Company which, as a result of the delay, cannot be used in good time. If the Purchaser sets the Assembly Company a reasonable time limit to perform, taking into account statutory exceptions, and if this time limit is not complied with, then the Purchaser is entitled to withdraw from the contract within the framework of the statutory provisions. The Purchaser undertakes at the request of the Assembly Company to declare, in a reasonable period of time, whether it will make use of its right to withdraw.
- Further claims due to default are determined exclusively in accordance with section VII 3 of these terms and conditions.

VI Acceptance

1. The Purchaser is obliged to accept the assembly as soon as its completion is reported the Purchaser and any contractually required trial of the assembled item has taken place. If the assembly is not as contractually agreed, then the Assembly Company is obliged to rectify the defect. This does not apply if the defect is insignificant in terms of the Purchaser's interests or is due to a circumstance which is attributable to the Purchaser. In the case of a minor defect, the Purchaser may not refuse acceptance.
2. If the acceptance is delayed due to no fault of the Assembly Company, then the acceptance is deemed to have been completed after expiry of two weeks following the reporting of the completion of assembly.
3. Liability of the assembly company for identifiable defects ceases to apply upon acceptance unless the Purchaser has reserved the right to assert claims for certain defects.

VII Claims of Defects

1. Following acceptance of the assembly, the assembly company is liable for defects of the assembly to the exclusion of all other claims of the Purchaser notwithstanding no. 5 and Section VIII in such a manner that the assembly company must remedy the defects. The Purchaser must inform the Assembly Company immediately of any defects found.
2. Liability of the Assembly Company does not exist if the defect is insignificant in terms of the Purchaser's interests or is due to a circumstance which is attributable to the Purchaser.
3. In the case of any improper modifications or maintenance work undertaken on the part of the Purchaser or third party without the prior approval of the Assembly Company, the Assembly Company shall not be liable for consequences arising from this. Only in urgent cases of risk to operational safety or to avert disproportional further damage, in which case the Assembly Company must be informed immediately, or if the Assembly Company - taking into account statutory exceptions, fails to remedy the defect within an appropriate time period set for the assembly company, the Purchaser is entitled to remedy the defect itself or to have the defect remedied by a third party and to demand reimbursement of the necessary cost from the Assembly Company.
4. Of the direct costs incurred as a result of the remedying of the defect – provided the complaint turns out to be justified – the Assembly Company shall bear the costs of the replacement part including the shipping. The Assembly Company shall also bear the costs of the removal and installation and the costs of providing the necessary installation staff and assistants including travel costs, provided this does not impose and unreasonable burden on the assembly company.
5. If the Assembly Company fails to remedy the defect within an appropriate time period set, taking into account statutory exceptions, then the Purchaser has the right to reduce the price within the framework of the statutory provisions. Only if the assembly is proven to be of no interest to the Purchaser despite the reduction in price, is the Purchaser entitled to withdraw from the contract. Further claims are determined ex-

clusively in accordance with Section VIII 3 of these terms and conditions.

VIII Liability of the Assembly Company and Exclusion of Liability

1. If, during the assembly, an assembly component supplied by the Assembly Company is damaged through the fault of the Assembly Company, then it has choice of repairing the component at its own expense or resupplying the component.
2. If the assembled item cannot be used by the Purchaser as stipulated in the contract due to the Assembly Company's fault as a result of negligent or incorrect execution of proposals and consulting, that took place prior to or after the contract conclusion, as well as other secondary obligations - in particular relating to the operations and maintenance manual for the assembled item, the regulations in Sections VI and VIII 1 and 3 shall apply with the exclusion of further claims on part of the Purchaser.
3. The Assembly Company shall be liable for damage not affecting the assembly item itself - for whatever legal reasons – only
 - a. in the case of intent,
 - b. in the case of gross negligence of the owner/organs or executive staff,
 - c. in the case of negligent injury to life, body, health,
 - d. in case of defects which the supplier has fraudulently concealed,
 - e. in the context of a guarantee assurance,
 - f. if the assembly company is liable under product liability law for personal injury or material damage to items used privately. In the case of a culpable breach of material contractual obligations the Assembly Company is also liable in the case of gross negligence of non-

executive staff and in the case of minor negligence, in the latter case this is limited to reasonable foreseeable damages typical for the contract.

Further claims are excluded.

IX Statute of Limitations

All claims of the Purchaser expire in 12 months on whatever legal grounds. The statutory periods apply for compensation claims in accordance with Section VII 3 a to d and f. If the Assembly Company 4ft he44t he assembly work on a building and as a result causes the building 4ft h defective, then the statutory periods also apply.

X Compensation of the purchaser

If, through no fault on the part 4ft he Assembly Company, equipment or tools provided by the assembly company are damaged at the assembly location or if they are lost through no fault 4ft he assembly company, then the Purchaser is obliged to compensate for such damages arising. Damages resulting from normal wear and tear shall not be taken into consideration.

XI Applicable law, jurisdiction

1. The law 4ft he Federal Republic of Germany shall apply to all legal matters arising between the Assembly Company and the Purchaser, which 4ft he law governing legal matters arising between domestic parties.
2. The place of jurisdiction shall be the court of jurisdiction 4ft he4 headquarters 4ft he Assembly Company. However, the Assembly Company is entitled to file a claim at the headquarters 4ft he Purchaser.

Note pursuant to Section 33 Federal Data Protection Act Customer data is processed electronically.

C. Particular Terms and Conditions for Services performed on Systems and System Parts -

I Subject matters of terms and conditions

Maintenance and repair work takes place on the basis of the description of the defect presented by the Client, or alternatively on the basis of defects identified by us. We reserve the right to replace all parts required for the maintenance and to replace these for parts which are as good as new (replacement subassemblies). Replaced parts become the property of Carbotech Gas Systems GmbH. The Customer shall ensure unhindered and free access to the installation site and shall ensure that parts to be provided by the Customer are supplied in good time to the installation site. The installation site must comply with the requirements of the applicable occupational safety regulations.

II Prices

Material will be charged at our list prices valid at the time the work is performed. Work on the customer system and waiting time for which the Customer is responsible shall be charged by the hour on production of appropriate evidence.

III Basis

The following individual provisions form the basis of the charging in accordance with the rates referred to:

1. Waiting periods not caused by us are deemed to be working hours and are specified separately on the invoice.
2. For the measurement of working time, our order form countersigned by the Customer or alternatively the Customer's responsible supervisory body at the work location is valid without restriction. If the Customer omits to sign off the hours, the order is deemed to have been properly fulfilled.
3. Work which, according to the order, is not contained within the scope of supply of the Contractor, must be ordered in writing by the Client prior to performance and is charged at the applicable rates.
4. The charge rates listed in the offer apply only to the deployment of our service technicians and third parties engaged by us. If the deployment of more highly qualified personnel and or specialist measurement technology is required, then we shall submit a separate offer.
5. Orders for the completion of work on Sundays and public holidays can only be accepted subject to the presentation of a permit by the local supervisory authorities.

IV Warranty Parts

Warranty parts are our property.

V Deposit Parts

Deposit parts are our property and must be returned within 2 weeks of replacement to the headquarters in Essen – freight costs shall be borne by the sender. The deposit previously charged will be credited back to you immediately upon receipt of the goods.

VI Minimum Order Value

The minimum order value for replacement parts is 50,00 EURO. For an order value of under this amount we permit ourselves to invoice the difference between the replacement part price and the minimum order value as ^a minimum order surcharge.

VII Cancellation Fees

If we are requested, following invoicing, to cancel an invoice due to incorrect invoicing which is a result of incorrect information from the customer, then we permit ourselves to invoice a processing charge of 50,00 EURO for the cancellation.

VIII Re-Warehousing

In principle, only resalable items in their original packaging which are in perfect condition may be returned.

Special orders cannot be exchanged.

Return or exchange is only possible for a maximum of 12 weeks following delivery.

For the re-warehousing of returned items, we reserve the right to charge a re-warehousing fee of 12% of the value of the goods, however no less than 85,00 EURO net.

The returned goods must be delivered with freight paid.