

# GENERAL TERMS AND CONDITIONS OF PURCHASE

CARBOTECH GAS SYSTEMS GMBH

LAST UPDATED NOVEMBER 2017

## I Scope of application

1. All business relations with our suppliers or contractors ("Suppliers") shall be governed exclusively by our Terms and Conditions of Purchase and, to the extent that they do not contain any provisions, by the statutory provisions, unless otherwise agreed in writing on a case-by-case basis.
2. We do not recognise any conflicting or deviating general terms and conditions of business unless we have expressly agreed to their validity in writing. Even the unconditional acceptance of the delivery in the knowledge of conflicting or deviating general terms and conditions does not constitute our consent to their validity.
3. Our Terms and Conditions of Purchase shall also apply to all future transactions with the Supplier without us having to refer to these again on a case-by-case basis.

## II Orders and conclusion of contract

1. Our requests are non-binding until we place a binding order either by means of a formal purchase order or by acceptance of an offer from the Supplier.
2. If the Supplier submits an offer in response to our request, the Supplier shall be obligated to adhere to our request in its offer with regard to the quantity, quality of the goods and other details and, in the event of deviations, to make express and clearly visible reference by highlighting these deviations accordingly. The preparation of an offer for us by the Supplier shall be free of charge for us.
3. If we place an order by way of offer submission, the offer shall remain effective for 14 days ("acceptance period"), unless shorter binding periods are specified in individual cases. After the expiry of the aforementioned period, we shall no longer be bound by our order.
4. Oral or electronic offers shall only become effective when confirmed by our written purchase order ("Order"). A fax or an email shall be sufficient to comply with the written form requirement. Changes or additions to the order also require our written confirmation to become effective.
5. Acceptance of our offer on the part of the supplier must be made within the above-specified acceptance period by written declaration ("order confirmation"). We may revoke our offer until receipt of the Supplier's order confirmation.
6. If the order confirmation deviates from our order, a contract shall only be concluded if we have expressly consented to the order confirmation in writing. Without such aforementioned written consent, our payments or our

acceptance of delivered goods and services shall not constitute consent. Prior to acceptance, the Supplier must point out obvious errors, e.g. spelling and calculation errors, and incompleteness of the order including the order documents to us for the purpose of correction or completion; otherwise the contract shall be deemed not to have been concluded.

7. The respectively binding technical guidelines and standards shall apply to the orders.
8. The Customer is entitled to assign existing rights owed by the Supplier under this agreement for the provision of services and the ownership of materials provided by the Supplier in the course of its provision of services to third parties, in particular its customers, by way of security at any time. In turn, the Supplier bindingly declares a waiver of any rights of retention and undertakes to provide their delivered goods and services in such a way that the Customer can assign these at any time.

## III Subsequent changes

1. We may subsequently demand changes to the agreed deliveries and services with a corresponding adjustment of the consideration if so required for special operational reasons. This shall in particular apply if we could not foresee the reasons at the time of contract conclusion and the changes are customary in the trade or are reasonable for the Supplier in the individual case.
2. In the event of a change as mentioned above, the effects on delivery dates and any additional or reduced costs shall be regulated appropriately and by mutual agreement. However, price increases and extensions of the delivery period shall only be accepted if the change is actually and demonstrably associated with additional costs or delivery time extensions and if the Supplier has notified us of this in writing immediately after the change of the order.

## IV Delivery period, delays in delivery

1. The agreed delivery dates are binding.
2. The date of receipt of the goods at the place of receipt or use specified by us or the date of successful acceptance shall be decisive for compliance with the delivery date or delivery period.
3. In the event that the goods are delivered earlier than agreed, we reserve the right to return the goods at the Supplier's expense or to store the goods at our premises at the Supplier's expense and risk until the delivery date, until the ordered goods can be stored at the place designated by us upon contract conclusion.
4. The Supplier is obligated to inform us immediately and in writing, stating the reasons and the expected duration of the delay, if circumstances occur or become apparent to them which indicate that the agreed delivery period cannot be met.

5. If the Supplier does not provide the service owed or is in default with the delivery, we shall be entitled to the statutory claims without restriction.
6. If the Supplier culpably exceeds the agreed delivery date in accordance with Section IV No. 1, the Supplier shall pay us a delay penalty amounting to 0.15% of the gross total order value per calendar day of the culpable failure to meet the delivery date, however, no more than 5% of the gross total order value. In accordance with the statutory provisions, we are entitled to claim the delay penalty in addition to performance and as a minimum amount of damage compensation owed by the Supplier; this shall however not affect our right to claim damage compensation incurred or arising in excess thereof. The forfeited delay penalty shall be offset in this case. If we accept the delayed performance, we may also claim the default penalty if we have declared a corresponding reservation to the Supplier within 5 calendar days, starting from acceptance of the delayed delivery.
7. The Supplier may only invoke the absence of necessary documents to be supplied by us if they have sent a reminder in writing setting a reasonable period of grace and have not received the documents within the aforementioned period.
8. Circumstances of force majeure shall only indemnify the Supplier if they notify us of them in writing without undue delay immediately after becoming aware of them and under specification of the exact circumstances and expected duration of the exceeding of the deadline.

## V Packaging, dispatch and transfer of risk

1. In addition to the shipping document, we must be notified immediately of the dispatch of each delivery by means of a corresponding dispatch note with the same contents as those of the shipping document.
2. Deliveries shall be made in accordance with our current shipping and packaging instructions as communicated to the Supplier. The Supplier shall take back packaging material at our request. The goods shall be packed in such a way that transport damage is avoided as far as possible.
3. Orders shall be delivered to us in exact quantities on the requested delivery dates. Under- or overdeliveries require separate agreements.
4. The Supplier is only authorised to make partial deliveries if this was originally agreed or has been subsequently approved by us. If defects occur in a partial delivery which justify the assumption that any agreed future partial deliveries will also be defective, we may refuse acceptance of the further partial deliveries and withdraw from the contract in whole or in part if the Supplier fails to dispel the justification for this assumption by objectively suitable means within a reasonable period of time. Further statutory or contractual rights shall remain unaffected by such a withdrawal.
5. Over-deliveries which have not been mutually agreed shall be returned to the Supplier's place of business at the Supplier's expense and risk.
6. Delivery shall be made "free domicile" to the place specified in the order. If the place of destination is not specified and nothing else has been agreed, the delivery shall be made to our place of business. The respective place of destination

is also the place of performance (obligation to deliver at the customer's place of business).

7. The delivery shall be accompanied by a shipping document stating the date (issue and dispatch), the contents of the delivery (quantity, markings and numbers of the packages) and our order identification (date and number). If the shipping document is missing or incomplete, we shall not be responsible for any resulting delays in processing. In the case of deliveries to construction sites, the shipping document note must be sent to our Purchasing Department within 24 hours together with a legible acceptance note.
8. The risk of accidental loss and accidental deterioration of the goods shall pass to us upon handover at the place of performance. If acceptance is agreed or required, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply accordingly in the event of acceptance. If we are in default of acceptance, this shall be deemed equivalent to handover or acceptance.
9. The statutory provisions shall apply in full upon occurrence of our default in acceptance. However, the Supplier must also expressly offer performance if a specific or determinable calendar time has been agreed for an action or cooperation on our part, e.g. ordering of materials. If we are in default of acceptance, the seller may demand compensation for their additional expenses in accordance with the statutory provisions. If the contract provides for unreasonable item to be manufactured by the Supplier, the Supplier shall only be entitled to further rights if we undertake to cooperate and assume responsibility for the failure to cooperate.
10. If the Supplier has reserved ownership of the delivered goods, this reservation shall only apply until the goods have been paid for in full, unless we have become the owner by processing, combining or mixing the goods. We do not recognise extended or expanded reservations of title as well as group or current account reservations.

## VI Subcontracting

Without our prior written consent, the Supplier shall not be entitled to have the service owed by them to be performed by third parties, e.g. subcontractors. If the Supplier culpably violates this provision, we are entitled to withdraw from the contract. This shall not affect our right to claim damage compensation.

## VII Prices, invoices and payment terms

1. The price stated in the order is binding. If the price is not stated in the order and has not been agreed otherwise, the seller's prices valid at the time of the order shall apply as a fixed price. All prices are exclusive of statutory value added tax if this is not stated separately.
2. Unless otherwise agreed on a case-by-case basis, the price includes all services and ancillary services of the Supplier as well as all ancillary costs, e.g. proper packaging, transport costs, customs clearance and possibly transport and liability insurance.
3. The agreed price is due for payment within 30 calendar days of complete delivery and performance (including any agreed or legally required acceptance) and proper invoicing. If we make payment within 14 calendar days, the Supplier

shall grant us a 3% discount on the net amount of the invoice. The Supplier shall grant us a 2% discount on payments made within 30 days.

4. Invoices shall be submitted individually for each delivery under specification of the order and project number of each individual item to the accounting department with separately stated VAT.
5. All payments shall be made solely to the Supplier. The assignment of their claim against us resulting from payment of the price to third parties is hereby excluded.
6. In principle, down payments to Suppliers prior to their delivery shall only be made against presentation of a down payment guarantee in the same amount.
7. If we make payment before the transfer of risk, the transfer of ownership of the delivered goods shall be deemed agreed unless we request and receive security from the Supplier to the extent of the above payment. Any down payments or interim payments shall not constitute recognition that the deliveries/services comply with the order.
8. We shall be entitled to rights of set-off and retention as well as the defence of non-performance of the contract to the extent provided for by the law. In particular, we are entitled to withhold due payments as long as we are still entitled to claims from defective deliveries against the Supplier.

#### VIII Liability for defects

1. The statutory provisions shall apply to our rights in the event that the goods suffer from material defects or defects of title (including wrong delivery and shortfalls in delivery as well as improper assembly, defective assembly, operating or operating instructions) and in the event of other breaches of duty by the Supplier, unless otherwise stipulated below.
2. The Supplier shall be liable in accordance with the statutory provisions that the goods have the agreed quality at the time of transfer of risk to us. All delivered goods and services must comply with the latest state of the art, the relevant legal provisions and the regulations and guidelines of authorities, trade associations and professional associations. If deviations from these regulations are necessary in individual cases, the supplier must obtain our written consent. The Supplier's liability for defects shall not be limited by this consent. If the Supplier has reservations about the type of execution requested by us, they must inform us of this in writing without delay.
3. The Supplier shall undertake to use environmentally friendly products and processes for their deliveries and services and also for subcontracted or ancillary services by third parties within the scope of the economic and technical capabilities. The Supplier shall ensure the environmental compatibility of the products and packaging materials supplied. They shall be liable for all damages caused by culpable violation of their above obligation. The Supplier is obligated to submit the respective safety data sheets applicable to delivered goods together with the delivery. The Supplier shall indemnify us against all recourse claims by third parties in the event that the Supplier culpably fails to provide us with the safety data sheets or provides them late. The same applies to all subsequent changes.
4. Besides, any product descriptions which are the subject of the respective contract, in particular by designation or

reference in our order, or which have been incorporated into the contract in the same way as these Terms and Conditions of Purchase, shall be deemed to be agreements on quality. It makes no difference whether the product description originates from us, from the Supplier or from the manufacturer.

5. Insofar as the quality has not been agreed, a material defect shall be deemed to exist if the goods are not suitable for the use presumed under the contract. Furthermore, in addition to the statutory provisions, a material defect shall also exist if the goods do not have the properties that we may expect according to the product description given by the Supplier or manufacturer: in this case, it shall be sufficient if the product description was provided to us after conclusion of the contract, e.g. together with the goods.
6. Other than set out in Section 442 (1) Sentence 2 of the German Civil Code (BGB), we shall also be entitled to claims for defects without limitation if the defect was unknown to us at the time of conclusion of the contract due to gross negligence.
7. The statutory provisions shall apply to the commercial obligation to inspect and give notice of defects, subject to the following proviso: Our obligation to inspect shall be limited to defects which become evident during our incoming goods inspection by way of external examination including the shipping documents as well as within the scope of our quality control by way of random sampling procedure, e.g. transport damage, wrong and short deliveries. Insofar as acceptance has been agreed or is required by law, there shall be no obligation to inspect. Otherwise, it depends on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Due to the special features of the industrial systems business, an inspection and, if necessary, a complaint can normally only be made after installation and commissioning of the ordered item. A notice of defects, wrong deliveries or deviations in quantity shall be deemed to have been given in good time if it is submitted immediately after opening the packaging, installation or putting the item into use. We shall immediately notify the Supplier in writing of any obvious defects in the delivered goods and services as soon as they are discovered by us in the ordinary course of business, but at the latest within 8 working days after we have received the delivery. This shall not affect our obligation to give notice of defects discovered at a later point. In all cases, our complaint (notice of defect) shall be deemed to be immediate and timely if it is received by the Supplier within 8 working days.
8. If the Supplier does not fulfil their obligation to subsequent performance, at our discretion by remedying the defect (rectification) or by delivering a defect-free item (replacement), within a reasonable period of time set by us, we may remedy the defect ourselves and demand reimbursement of the expenses required for this from the Supplier as well as a corresponding advance payment; this shall not apply if the Supplier was entitled to refuse subsequent performance. If subsequent performance by the Supplier has failed or is unreasonable for us, e.g. due to particular urgency, risk to operational safety or imminent occurrence of disproportionately high damage, no deadline

need to be set; the Supplier must be informed of this immediately, if possible in advance, and given the opportunity to ascertain for themselves or via a trusted third party whether a defect exists. Otherwise, in the event of a material defect or defect of title, we shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, we shall be entitled to claim damage compensation and reimbursement of expenses in accordance with the statutory provisions.

9. Insofar as the Supplier's delivery includes software, rights or other objects whose use is only permitted on the basis of corresponding rights of use (licences), the necessary rights of use shall be transferred to us with the delivery at no extra charge. The Supplier shall be liable for the existence, transferability and enforceability of the rights of use depending on fault.
10. The Supplier shall also be liable, depending on fault, for ensuring that their delivery does not infringe industrial property rights, e.g. patents, utility models, trademarks, trade names, copyrights and other rights of third parties. If claims are asserted against us by a third party due to an alleged infringement of rights, the Supplier shall be obligated to indemnify us against such claims upon first request. Section IX.2 of these Terms and Conditions of Purchase shall apply accordingly to the scope of the indemnification obligation.
11. Irrespective of the above indemnification obligation, the provisions of these General Terms and Conditions of Business shall apply to the Supplier's liability for defects of title subject to the following provisos:
  - A defect of title exists if third parties can assert rights against us in relation to the subject matter of the contract which we are not obligated to accept as valid against us under the agreements concluded with the Supplier. If a right is the subject matter of the contract, the same shall also apply to its existence, transferability and enforceability.
  - In the event of a defect of title, the Supplier is obligated to provide us with the right to unrestricted further use (rectification) or, at our discretion, to modify the subject matter of the contract in a manner that is reasonable for us in such a way that the defect of title no longer exists (replacement delivery).
  - The Supplier shall also be liable for damage compensation and reimbursement of expenses if they were not aware of the defect of title or are otherwise not responsible for it. Our statutory right to reduce the price or to withdraw from the contract remains unaffected of this.

#### IX Product liability, manufacturer's liability

1. Insofar as the Supplier is responsible for damage to the product, they shall be obligated to indemnify us against third-party claims, including the costs of the necessary legal defence, insofar as the cause lies within their sphere of control and organisation and they themselves are liable in relation to third parties.
2. Within the scope of their indemnification obligation, the Supplier shall reimburse expenses arising from or in connection with third-party claims, including recalls carried out by us. With regard to the content and scope of recall

measures, we shall inform the Supplier as far as possible and reasonable and give them the opportunity to comment. Further legal claims remain unaffected.

3. The contractor shall mark the delivery items in such a way that they are permanently recognisable as their products. The contractor shall carry out quality assurance measures which are suitable in terms of type and scope and which correspond to the latest state of the art and shall provide us with evidence of this upon request.
- X Supplier recourse
1. We are without restriction entitled to our legally determined recourse claims within a supply chain (recourse of the entrepreneur according to Sections 478, 479 BGB), in addition to the claims for defects. In particular, we are entitled to demand from the supplier exactly the type of subsequent performance (repair or replacement delivery) that we owe our customer in the individual case. Our statutory right of choice (Section 439 (1) BGB) shall not be restricted hereby.
  2. Before we acknowledge or fulfil a claim for defects asserted by our customer, including reimbursement of expenses, we shall notify the seller and request a written statement of the facts. If the statement is not made within a reasonable period of time and if no amicable solution is reached, the claim for defects actually granted by us shall be deemed to be owed to our customer; in this case, the Supplier shall be responsible for proving the contrary.
  3. Our claims resulting from the recourse of the supplier shall also apply in addition to the statutory regulation if the delivery of the goods to a consumer has failed for whatever reason.

#### XI Limitation

1. The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions unless otherwise stipulated below.
2. In deviation from Section 438 (1) No. 3 BGB, the general limitation period for claims for defects shall be 3 years from delivery. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance.
3. The limitation periods under sales law including the above extension shall apply - to the statutory extent - to all contractual claims for defects. Insofar non-contractual claims for damages due to a defect also exist, the regular statutory limitation period (Sections 195, 199 BGB) shall apply; however, the special limitation periods under sales law shall apply if their application leads to a longer limitation period in the individual case.
4. Subsection 3 Sentence 2 above applies accordingly to all contractual and non-contractual claims arising from defects of title. Furthermore, such claims shall not become statute-barred under any circumstances as long as the third party can still assert the right against us, in particular in the absence of a statute of limitations. The statutory limitation period for real rights of third parties for the return of goods (Section 438 (1) No. 1 BGB) shall remain unaffected.

## XII Provision of materials

1. Material provided by us shall remain our property and shall be stored, designated and managed separately free of charge. Their use is only permitted for our orders. In the event of a reduction in value or loss, the contractor must provide compensation and take out appropriate insurance for this case at their own expense. This shall also apply to the charged provision of order-related material.
2. Processing or transformation of the material shall be carried out on our behalf. We shall become the immediate owner of the new or transformed item. If this is not possible for legal reasons, the Supplier and we shall agree at the time of placing the order that ownership of the new or transformed item shall pass to us at the time of its creation. The Supplier shall store the new or transformed item for us free of charge with the due care of a prudent businessman.

## XIII Drawings, models, tools etc. Confidentiality

1. Drawings, models, moulds, samples, profiles, standard sheets, printing templates, gauges, other documents or tools provided by us or produced at our expense shall remain our property. They may neither be passed on to third parties nor used for purposes other than the fulfilment of the order. They must be secured against unauthorised inspection or use. Subject to further rights, we may demand their surrender as soon as the Supplier violates their legal or contractual obligations towards us.
2. The Supplier shall carefully store the aforementioned items and insure them against fire, theft or other loss at their own expense. They shall return them to us immediately after completion of the order without being requested to do so and without keeping copies, duplicates, etc.
3. The Supplier undertakes to treat all commercial or technical details which are not in the public domain and which become known to them within the scope of our business relationship as business secrets and not to make them accessible to third parties. Sub-suppliers shall be committed accordingly.
4. The contractor may not make or cause to be made any publications in connection with the order or the plant without the consent of the ordering party. This also applies to the use as a reference.

## XIV Data protection

1. The contractor agrees that we may store and use their data required by us within the scope of the business relationship.
2. The contractor undertakes to observe the IT security guidelines of Carbotech Gas Systems GmbH.
3. Obligation to data secrecy according to Section 5 Federal Data Protection Act (BDSG):

On the basis of Section 5 of the Federal Data Protection Act (BDSG), the contractor is prohibited from collecting, processing or using personal data of which they become aware in the course of their work for Carbotech Gas Systems GmbH without authorisation. This applies to their business activities within and outside the company as well as after termination of their contractual relationship.

4. Obligation to maintain business secrets:

By accepting the order, the contractor confirms that they will treat information and documents obtained from customers or from the company in connection with their work for Carbotech Gas Systems GmbH as confidential vis-à-vis third parties. The contractor shall not use this information and documents for unauthorised purposes, e.g. for other customers. The contractor is aware that he must expect sanctions by Carbotech Gas Systems GmbH in the event of a breach of the provisions of this obligation. This may include termination of the contract or the assertion of claims for damages. Notwithstanding this, the threatened penalties are to be expected in the event of corresponding violations of the law. For example, anyone who commits an intentional act specified in the BDSG in return for payment or with the intention of enriching themselves or another person or causing damage to another party shall be punished with a prison sentence not exceeding two years or to a fine.

## XV Final provisions

1. The invalidity of a provision or individual parts of a provision of these Terms and Conditions of Purchase shall not affect the validity of the rest of the Terms and Conditions of Purchase and/or other agreements made between the parties. If there are provisions under non-mandatory law in the event of invalidity, the parties undertake to replace the invalid provision with a valid provision which corresponds as closely as possible to the economic purpose of the invalid provision.
2. The place of performance and exclusive place of jurisdiction, including international jurisdiction, for all disputes arising out of or in connection with the contractual relationship existing between the Supplier and us shall be the district court competent for our business address. However, we shall also be entitled to bring an action before the court having jurisdiction for the Supplier's registered office.
3. Supplementary to these terms and conditions, German law shall apply exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).