

## 1. Scope

1.1 All deliveries and services from CARBAGAS are provided solely in accordance with the following provisions unless otherwise expressly agreed in writing between the customer of CARBAGAS (hereinafter "Customer") and CARBAGAS.

1.2 CARBAGAS rejects the customer's General Terms and Conditions, and these will only be included in the contract if CARBAGAS has expressly agreed to this in writing. CARBAGAS' General Terms and Conditions shall also apply if CARBAGAS provides the customer with the service without reservation whilst being fully aware of conditions that conflict with or differ from CARBAGAS' General Terms and Conditions.

## 2. General Provisions

### 2.1 Conclusion of the Contract

The content of the contract is determined by the order confirmation from CARBAGAS. Promises of services from CARBAGAS are always subject to the possibility for it to replenish stocks and respectively the correct and timely delivery of its suppliers.

The agreement of delivery and implementation services for assembly, construction work and delivery of materials requires a written agreement. CARBAGAS shall not be under any obligation to meet delivery and performance dates unless the Customer has clearly stated all details of the order and handed over all the relevant instructions and documents.

### 2.2 Intellectual Property

The intellectual property and all copyright in all documents, respectively, ideas on which they are based, projects, designs, drawings, assembly instructions, such as, for example, texts, manuals, models, as well as trademarks, patents and know-how shall remain the exclusive property of CARBAGAS. CARBAGAS grants the Customer an inalienable and non-exclusive right of use to these documents, trademarks, patents and know-how to the extent and for the time necessary for the performance of the present contract. The documents, trademarks, patents, and know-how may only be used for the purpose of fulfilling the contract. Following the termination of the contractual relationship, the Customer is obliged to immediately return all related documents to CARBAGAS or destroy them, after consultation with CARBAGAS. Disclosure or forwarding to third parties or reproduction of these documents is not permitted.

### 2.3 Obtaining Licences

All licences or other authorizations required for setting up installations and the operation of equipment installed by CARBAGAS are to be obtained and paid for by the Customer. To the extent that CARBAGAS supports any such application, CARBAGAS shall be appropriately remunerated.

### 2.4 Risk bearing

Use and risk are transferred to the Customer as follows: in the case of collection on handover, in the case of supply upon delivery and in the case of assembly on conclusion of the assembly work. In the event of any delay to shipment or delivery owing to circumstances for which CARBAGAS is not responsible, risk transfers to the Customer on the date of notification of the shipment respectively when the order is ready for delivery. If the delay requires storage, the Customer shall bear these costs. In the case of contracts for work and services, CARBAGAS bears the risk until acceptance of the work. However, the risk shall pass to the Customer as soon as the Customer delays the acceptance or the assembly work is interrupted due to the Customer. In such cases, CARBAGAS is entitled to payment of services provided up to that time as well as compensation for any damages. Customers are responsible for insuring themselves against any risk.

### 2.5 Payment Terms and Prohibition to Offset Claims

The agreed prices are listed in CHF as ex-factory or ex-depot and do not include packaging or taxes such as VAT and HGVC. The total amount will be stated in the invoice. The invoiced amounts are net amounts and are payable within 30 days of the date of any invoice without any deduction. After the payment period has elapsed, a reminder fee and a default interest at the prevailing market rate may be levied on the outstanding amount. In such cases, CARBAGAS is entitled to supply the Customer against prepayment.

Complaints regarding the invoice of the delivery and performance shall be submitted to CARBAGAS promptly in writing following receipt of the invoice. Failure to submit objections within 10 calendar days of receipt of the invoice shall qualify as an implied consent to the correctness of the invoice.

With respect to material, assembly and construction services with a contract value in excess of CHF 10,000.00, the following payment terms shall apply:

- 60 % when the contract/order is concluded
- 40 % on delivery (30 % for work contracts)
- 10 % for work contracts upon acceptance

Minor work outstanding on the part of CARBAGAS such as the commissioning operation or other matters at the time of delivery or acceptance shall not impact the due dates for payment.

**The Customer is not entitled to withhold payment and to withdraw from performance against the claims of CARBAGAS.**

**The Customer waives the right to redeem any claim against CARBAGAS by offsetting payments.**

**CARBAGAS may charge a fee of CHF 3.50 CHF for hard copies of invoices.**

### 2.6 Notice of Defects and Right to Choose

The Customer shall inspect the goods promptly following receipt respectively assembly and inform CARBAGAS by email, fax or post of any defects immediately and at the latest within 5 days following receipt respectively assembly (Notice of Defect), otherwise the goods shall be deemed to be approved and accepted. In the case of any Notice of Defect from the Customer, CARBAGAS is entitled to inspect and examine the rejected materials. Where in the course of such inspection it is established that CARBAGAS is not responsible for the defect, the Customer undertakes to reimburse CARBAGAS for the costs arising from the inspection (e.g. transport, examination and disposal costs). With respect to any defects CARBAGAS is entitled at its own discretion to rectify the defect or fault or replace any such goods. Where delivered goods or work and services are handled incorrectly and/or not regularly maintained

and/or altered technically or in their construction without the written permission of CARBAGAS, it will be presumed that any defect and related consequential loss arise therefrom.

CARBAGAS is only liable for the observance of equipment performances in accordance with the standard conditions of the particular manufacturer. Warranty claims for deliveries and services provided out of good faith are fully excluded. Part-deliveries and part-performances are permissible if CARBAGAS has a legitimate interest in this and this is reasonably acceptable for the Customer.

All claims by the Customer regarding defects in quality and/or defects in work and services shall be limited to one year following the transfer of risk. Carbagas ensures that the gas/gas mixture maintains the specified properties (stability, homogeneity, etc.) for a period of one year.

### 2.7 Limitation of liability

2.7.1 The liability of CARBAGAS towards the Customer for defects in quality and defects in work and services and any damages arising therefrom shall be excluded to the extent permitted by law.

In accordance with the statutory provisions, CARBAGAS is liable if the Customer makes a claim for damages based on intentional or gross negligence, including on the part of CARBAGAS' representatives or agents, and also in the event of a culpable breach of an essential contractual obligation. Essential contractual obligations are obligations that must be fulfilled so that the contract may be properly executed and that the Customer may consistently depend upon to be compliant. In the case of the supply of gases, CARBAGAS' essential contractual obligations are limited to the supply of the gases in compliance with the specifications. Where CARBAGAS is not charged with the intentional or gross negligent breach of contract or a breach of a key contractual obligation, its liability is limited to the foreseeable damage or loss that is usually experienced in the given circumstances. Liability for property and other consequential or immaterial damages is not covered by the foreseeable loss that is usually experienced in the given circumstances.

2.7.2 If CARBAGAS is unable to supply on time, the Customer is entitled to demand a flat-rate compensation for the delay to the amount of 0.5 % of the delivery value of the respective (partial) delivery obligation for every full calendar week, but not more than 5% of the delivery value of the respective (partial) delivery obligation. Further liability for delayed supplies is excluded, except in the event of intentional or gross negligence on the part of CARBAGAS and/or in the case of intentional or gross negligence by CARBAGAS' agents.

2.7.3 Liability for damages in excess of the provisions referred to in 2.7.1 to 2.7.2 referred to above is excluded. This does not affect claims based on physical or personal injury or ill health as well as mandatory provisions regarding liability.

2.7.4 Any claims for damages shall expire within one year from the start date of the statutory limitation period, unless CARBAGAS is accused of intent or gross negligence or if the mandatory statutory provisions generate a new deadline.

### 2.8 Force Majeure

CARBAGAS is not liable for events beyond its control, such as events of force majeure, actions of third parties (acts of terrorism, sabotage, etc.), lockouts, strikes, failure of machinery or equipment, delayed or incorrect deliveries from our suppliers, explosions, floods, fires, earthquakes, failure of communication services or energy supply, lack of means of transport or important operating materials, exceptional traffic and road conditions, epidemics (including the outbreak of the COVID-19 pandemic), quarantine and other similar measures, as well as other operational disruptions that occur through no fault of its own, the introduction of legal provisions, etc. Such events release CARBAGAS from the duty to deliver for as long as such hindrances exist.

## 3. Special Provisions Regarding the Delivery of Gas

### 3.1 Delivery of Gas

The delivery of gases (in gas, liquid, solute or solid form) shall be made depending on the type of gas and the quantity solely in officially approved cylinders or bundles of cylinders, in cryogenic receptacles, in tanks or in special packaging, hereinafter referred to generally as "containers". The costs of delivery as well as the return of the containers shall be borne by the Customer and, where performed by the Customer, at the Customer's risk. Following successful delivery, the Customer is solely responsible for each further use of the gas and the containers.

Home-delivery of containers means delivery to a place accessible to lorries and on even ground. Should CARBAGAS be engaged by the Customer to transport and/or connect goods from the home-delivery location to another location, this shall be done at the cost and risk of the Customer.

Where the gases are collected by the Customer from a depot or a CARBAGAS point of sale, such transportation shall be governed by the "Ordinance on the Carriage of Dangerous Goods by Road" ("SDR", SR 741.621) respectively the European "European Agreement concerning the International Carriage of Dangerous Goods by Road" ("ADR", SR 0.741.621).

### 3.2 Delivery Note

The Customer shall receive a delivery note with each delivery on which the number of delivered as well as recovered containers is recorded. Upon delivery, the Customer must review the details on the delivery note and confirm these by signing the delivery note. The delivery note forms the basis of the invoice.

### 3.3 Quantities

Depending on the type of gas and delivery, the quantities are expressed in kg, l or m<sup>3</sup> and will be determined by CARBAGAS. The delivery quantity expressed in "m<sup>3</sup>" refer to the volume under normal conditions at 1 bar and 15 °C. The prices for delivered gases are calculated as a rule at a flat rate per container or on the basis of the supplied quantity. The measuring instruments at the filling plant are decisive for determining the measurement of the quantities.

## 3.4 Purity of the Gases

CARBAGAS ensures the correct filling of the containers and the purity of the gas according to the valid specifications. CARBAGAS accepts no liability for impurities introduced into the containers outside its premises. Individual analysis and corresponding purity warranties shall be provided solely at the special request and at the cost of the Customer. The Customer bears the risk of its suitability and use.

## 3.5 Orders

Pursuant to the applicable order deadlines set by the Customer, deliveries by CARBAGAS shall be made when possible on the desired date. Orders for a delivery on a delivery day according to the delivery schedule of CARBAGAS must be submitted to CARBAGAS at the latest by 10 am on the day before. In the event that the Customer order is submitted too late so that a delivery at the desired time is only possible by way of an express delivery, a corresponding additional fee will be invoiced in accordance with the applicable rates. The right to vary the delivery date and delivery quantity due to the geographical location of the Customer, the level of stock or the available means of transportation remains reserved.

## 3.6 No Credit Notes for Returns

In principal, no credit notes will be issued for returns of gas.

## 3.7 Prohibition to Resell

The resale of gas bought from CARBAGAS is prohibited without the written permission of CARBAGAS.

## 4. Special Provisions on the Rental of Containers

### 4.1 Rental of Containers

The containers are as a rule rented and are the property of CARBAGAS. Containers located at the Customer's premises shall be subject to a daily rental charge in accordance with the CARBAGAS rates at the time of the delivery, provided that no consolidated rate has been agreed for these containers. ("lump sum contract / EcoPass" instead of daily rental). Calculation of the rental period will be based on the delivery and return dates. The rental payment due from the Customer for the use of the containers is calculated as stated on the attachment to the invoice under "container account" where this is requested by the Customer. The container account of the Customer is deemed to be acknowledged if the Customer does not reject this in writing within 10 calendar days following receipt of the invoice. Separately from any rental agreement, CARBAGAS reserves the right to impose an immobilization charge should the container account of the Customer exceed an average turnaround period of 90 days per container.

### 4.2 Use and Notification Duty

The containers may only be used for the extraction of gas loads and may not be filled with gas or other substances by the Customer or a third party. The Customer undertakes to treat the containers in accordance with the regulations and with care. The cylinder valves must be closed properly after use. Containers may not be handed on to third parties without the permission of CARBAGAS. The Customer is responsible for ensuring that the inside of the containers is not contaminated during use, e.g. through the return flow of other substances. If certain containers appear faulty or there is a danger of contamination, the Customer shall immediately cease using the container and notify the nearest CARBAGAS point of sale accordingly. All maintenance work on the containers is to be performed exclusively by CARBAGAS.

### 4.3 Return of the Containers

The Customer shall return the rented containers to CARBAGAS as quickly as possible once they are empty. The return of anything else other than the rented containers shall not release the Customer from its obligation to return the rented containers. The empty containers will be taken back by CARBAGAS at the home-delivery address.

### 4.4 Liability of the Customer

The Customer is liable for the containers entrusted to it, in particular for any damages to the containers and their fittings, for the consequences of any contamination to the inside of the containers as well as for any containers or parts thereof not returned.

### 4.5 Container Information System

CARBAGAS operates a container information system with which it tracks each rented container. Discrepancies (e.g. the return of containers by third parties which are in the Customer account) will be identified and corrected. Where a correction is made owing to the negligence of the Customer, CARBAGAS reserves the right to invoice the Customer for the expense arising therefrom. Specific services relating to the container information system and which concern the Customer are available at a charge to the Customer.

### 4.6 Customer containers

With respect to the Customer's own containers, which do not meet the applicable requirements or technical rules, CARBAGAS reserves the right to reject these or to examine them at the cost of the Customer and repair them, respectively, examine them and get them repaired. The Customer's own containers will be filled following receipt and delivered to the Customer at the cost of the Customer. Any additional work generated by the Customer's own containers will be invoiced to the Customer.

## 5. Final Provisions

### 5.1 Insurance

The Customer shall insure at its own cost, all materials and equipment made available by CARBAGAS against damage by fire, the elements, burglary, theft and water. The Customer must also ensure it has taken out a company liability insurance which adequately covers the activities and risks arising from the business relationship with CARBAGAS, for which the customer is responsible.

## 5.2 Safety

By signing the contract, or upon receipt of the goods, the Customer confirms that it or the persons entrusted with the order are adequately trained in handling CARBAGAS products and are familiar with the characteristics of these products. The Customer can download the relevant safety data sheets at any time as well as further information about the applicable safety requirements at [www.carbagas.ch](http://www.carbagas.ch) or request these directly from CARBAGAS. The corresponding CARBAGAS safety regulations shall apply to work provided by CARBAGAS on the Customer's premises. The Customer may request these from CARBAGAS at any time. Where the Customer possesses its own safety regulations, these shall apply on a secondary basis to those of CARBAGAS insofar as these have been provided to the CARBAGAS employees by the day the work commences at the latest.

## 5.3 Severance Clause

Should a provision of these GTC or the individual agreement with the Customer be or become invalid, void or unenforceable, the validity and enforceability of the remaining provisions shall not be affected.

## 5.4 Privacy Policy

CARBAGAS collects and processes personal data to the extent necessary for fulfilling the contract. For more detailed information, please refer to our Privacy Policy by visiting [www.carbagas.ch](http://www.carbagas.ch).

## 5.5 Code of Conduct

Carbagas makes reference to its principles as set out in the Carbagas Code of Conduct and Anti-Corruption Code of Conduct (both found at [www.carbagas.ch](http://www.carbagas.ch)). The customer shall adhere to the principles contained therein, and shall implement and continue to implement these policies and procedures to help ensure the applicable anti-corruption laws and regulations are complied with.

## 5.6 Entry into Force

The General Terms and Conditions enter into force on 2020-08-01 and, unless otherwise agreed with the Customer in writing, they shall replace all earlier GTC regarding deliveries and services from CARBAGAS.

## 5.7 Jurisdiction and Applicable Law

**The exclusive place of jurisdiction is Bern. The GTC as well as the legal relationship between the Customer and CARBAGAS are subject exclusively to Swiss law excluding Swiss International Private law and any international treaties (in particular the Vienna Convention dated 11 April 1980, SR 0.221.211.1.).**

3073 Gümligen, 1<sup>st</sup> August 2020