

# General Terms and Conditions(AGB)

## 1. GENERAL PROVISIONS:

We, BERG GaseTech GmbH®, produce, supply and sell goods exclusively to commercial customers. By placing an order (by telephone, fax, e-mail or via a digital platform), the customer declares that he is acting as a trader (entrepreneur within the meaning of §14 BGB) or freelancer and not as a private individual.

The contract language is German.

The place of jurisdiction for all legal disputes arising from this contract is Krefeld.

BERG GaseTech GmbH manufactures PSA generators for the production of nitrogen and oxygen on site. We offer solutions that are customised to the specific requirements of the customer.

Our following terms and conditions of sale and delivery apply as the basis for all future business relationships, contracts, deliveries and services as well as offers and take precedence over any conflicting terms and conditions of purchase of the buyer. The relevant statutory provisions shall apply in addition. The buyer's terms and conditions of purchase shall only be effective if we have previously recognised them in writing for the respective contract conclusion. Our General Terms and Conditions of Business are recognised by the Buyer when the order is placed, but at the latest when the first delivery or service is accepted, and shall apply in the respective valid version for the entire duration of the business relationship. Any deviating terms and conditions of the buyer are hereby rejected; these shall not be deemed accepted even if the order is executed.

The contract is only concluded by our written order confirmation; if no written order confirmation is issued, the contract is concluded in any case by delivery with the content of our invoice. Price and performance details or assurances are only binding for us if they have been confirmed in writing. The information, drawings, illustrations, technical data, weight, dimension and performance descriptions contained in our brochures, catalogues, circulars, advertisements, price lists or in the documents belonging to the offer are non-binding unless they are expressly designated as binding in the order confirmation. The same applies to the above information in other advertising material, the Internet presence or similar. We expressly reserve the intellectual property (trademarks, patents, utility models, design) and copyright to drawings, illustrations, technical data, weight, dimension and performance descriptions. This data may only be passed on to third parties with our prior consent.

## 2. OFFERS:

Our offers are always non-binding

## 3. DELIVERY:

a) Partial deliveries

BERG GaseTech GmbH is authorised to make partial deliveries if this is reasonable for the customer.

In the case of partial deliveries, however, the customer shall not incur any additional shipping costs. This shall not apply if a partial delivery (successive delivery) of individual parts is made at the express request of the customer and despite the possibility of uniform delivery. In this case, the customer shall bear the shipping costs incurred for the partial delivery.

b) Delays in delivery and performance:

BERG GaseTech GmbH is not responsible for delays in delivery and performance due to force majeure and due to extraordinary and unforeseeable events which cannot be prevented by BERG GaseTech GmbH even with the utmost care (this includes in particular strikes, official or court orders and cases of incorrect or improper self-supply despite a covering transaction to that effect). They authorise BERG GaseTech GmbH to postpone the delivery or service for the duration of the impeding event.

c) Cancellation:

BERG GaseTech GmbH may withdraw from the contract in the event of non-availability for the aforementioned reasons. BERG GaseTech GmbH undertakes to inform the customer immediately of the non-availability or non-feasibility and to reimburse any payments already made without delay.

d) Default of acceptance:

If the customer is in default of acceptance of the ordered goods, BERG GaseTech GmbH is entitled to withdraw from the contract after setting a reasonable grace period and to claim damages for delay or non-performance. During the delay in acceptance, the customer shall bear the risk of accidental loss or accidental deterioration.

e) Time of performance:

The individually agreed delivery times or those stated in the shop are approximate times and may vary for each BERG GaseTech GmbH service. Unless expressly agreed otherwise, BERG GaseTech GmbH will only deliver or begin to provide the service after order confirmation and receipt of the documents and authorisations required for the customer order. In the case of payment in advance, the period for delivery or performance shall commence on the day after the payment order has been issued to the remitting bank or, in the case of payment on delivery or purchase on account, on the day after conclusion of the contract. The deadline ends on the last day agreed individually or noted in the shop. If the last day of the deadline falls on a Saturday, Sunday or a public holiday recognised at the place of delivery, the deadline shall end on the next working day. Subsequent change requests by the customer shall interrupt an individually agreed deadline until the matter has been clarified. A new deadline will then be set.

f) Term for framework agreements:

A term is always specified for framework agreements. An extension of the term is possible and requires the text form.

g) Packaging:

The type of packaging shall be determined by BERG GaseTech GmbH. Packaging materials will only be taken back if this has been expressly agreed or is required by law. BERG GaseTech GmbH shall be responsible for choosing the supplier.

## 4. PAYMENT:

You have the following payment options with BERG GaseTech GmbH: Prepayment, invoice or letter of credit for export, if this is provided for in the contract.

All prices quoted by us are EURO (€) prices and, unless otherwise agreed, are fixed prices net ex warehouse Krefeld excluding VAT. VAT will be invoiced separately at the applicable rate in accordance with the applicable tax regulations. The prices in the price lists valid at the time the contract is concluded shall apply. We shall be entitled to pass on to the Buyer any additional charges (e.g. new or increased customs duties, taxes, other levies, freight increases, etc.) occurring after conclusion of the contract.

Payment must be made within 14 days of the invoice date at the latest, without any deductions, unless the buyer is expressly authorised in the order confirmation to pay within a different payment

period after the invoice date. After expiry of this period, the Buyer shall automatically be in default of payment without any further reminder. The receipt of payment in one of our accounts is decisive for the timeliness of the payment. Cheques and bills of exchange are only accepted on account of performance. If payment is not made in cash, payment must be made by bank transfer to the account stated on the invoice, quoting the customer and invoice number. Transfer charges, taxes on bills of exchange and discount charges shall be borne by the buyer. If the buyer is in arrears, subsequent reminders will be charged at EURO 10.00 each at the customer's expense. The statutory default interest shall be added.

Offsetting is only permitted with undisputed or legally established counterclaims. The assertion of rights of retention and/or other rights to refuse performance is also only permissible with undisputed or legally established counterclaims.

In the event of default in payment and in the event of justified concern about a significant deterioration in the Buyer's financial position or insolvency, we shall be entitled to suspend delivery or, at our discretion, to demand immediate advance payment of all claims, including those not yet due, including deferred claims and claims arising from bills of exchange or corresponding securities. If the buyer does not comply with the request for advance payment or provision of security within a reasonable period to be set by us, we shall be entitled to withdraw from all contracts and to charge the buyer for costs incurred and to be incurred by us as well as for loss of profit.

## 5. RESERVATION OF TITLE:

We only deliver on the basis of the retention of title described in more detail below. This shall also apply to all future deliveries, even if we do not always expressly refer to this. We reserve title to the delivered item until all claims arising from the delivery contract have been paid in full. We shall be entitled to take back the purchased item if the purchaser acts in breach of contract. The buyer is obliged to treat the purchased item with care as long as ownership has not yet been transferred to him. In particular, he is obliged to insure it adequately at his own expense against theft, fire and water damage at replacement value. If maintenance and inspection work have to be carried out, the buyer must carry this out in good time at his own expense or arrange for it to be carried out by us. As long as ownership has not yet been transferred, the buyer must inform BERG GaseTech GmbH immediately in writing if the delivered item is seized or exposed to other interventions by third parties. If the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action in accordance with § 771 ZPO, the buyer shall be liable for the loss incurred by us. The buyer is authorised to resell the reserved goods in the normal course of business.

The purchaser hereby assigns to us the claims of his customer from the resale of the reserved goods in the amount of the final invoice amount agreed with us (including VAT). This assignment shall apply irrespective of whether the purchased item has been resold without or after processing. The purchaser remains authorised to collect the claim even after the assignment. Our authorisation to collect the claim ourselves remains unaffected by this. However, we shall not collect the claim as long as the purchaser fulfils his payment obligations from the proceeds received, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed and payments have not been suspended.

The treatment and processing or transformation of the purchased item by the buyer is always carried out in our name and on our behalf. In this case, the expectant right of the buyer to the object of sale shall continue in the remodelled object. If the purchased item is processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the objective value of our purchased item to the other processed items at the time of processing. The same shall apply in the event of mixing. If the mixing takes place in such a way that the buyer's item is to be regarded as the main item, it is agreed that the buyer transfers proportional co-ownership to us and keeps the resulting sole ownership or co-ownership for us. To secure our claims against the purchaser, the purchaser also assigns to BERG GaseTech GmbH such claims which accrue to him against a third party through the combination of the reserved goods with a property; we hereby accept this assignment. We undertake to release the securities to which we are entitled at the buyer's request if their value exceeds the claims to be secured by more than 20%.

In the event of imminent suspension of payments, insolvency or negative information indicating a significant deterioration in the Buyer's financial situation, we shall be entitled to take possession of the goods subject to retention of title; the Buyer hereby irrevocably and unconditionally consents to their surrender. The same shall apply in the event of foreclosure, bill of exchange or cheque protests against the Buyer. The buyer must treat the reserved goods with care and maintain them. The buyer shall be obliged to bear the costs incurred by us for any defence measures required to impair our security rights.

## 6. EXPORT CONTROL:

The delivered goods are generally intended to remain and be used in the country of first delivery. However, this does not exclude resale. However, this may depend on certain authorisation requirements. Furthermore, the export control regulations must be complied with. This is particularly the case for deliveries to embargoed countries. By concluding the contract, the customer declares compliance with such relevant export control regulations in the case of his own exports or resales. Furthermore, he declares that he will not deliver the goods either directly or indirectly to embargoed countries.

## 7. WARRANTY:

The following warranty limitations do not apply to damages resulting from injury to life, body or health, which are based on an intentional or negligent breach of duty by BERG GaseTech GmbH or one of our legal representatives or vicarious agents. They also do not apply if any other damage is based on intent or gross negligence on the part of BERG GaseTech GmbH or a vicarious agent.

a) The warranty period is 12 months. Any liability and warranty is excluded for minor breaches of duty and insignificant defects. In the event that the customer has a right to subsequent fulfilment, BERG GaseTech shall decide whether the subsequent fulfilment shall take the form of rectification of the defect or delivery of a defect-free item.

b) Work on goods supplied by BERG GaseTech GmbH or other services provided by BERG GaseTech GmbH shall only be deemed to be work to remedy defects or rectify defects:

- Insofar as the defectiveness has been expressly recognised by BERG GaseTech GmbH.

- Or insofar as notices of defects are proven.

- And insofar as these proven notices of defects are justified. Without these prerequisites, such work is to be regarded as a special service.

c) BERG GaseTech shall also provide subsequent improvements or replacement deliveries as special services

unless they are expressly carried out in recognition of a legal obligation.

d) If the warranty period is suspended or interrupted by work or replacement deliveries carried out by BERG GaseTech, such suspension or interruption shall only extend to the functional unit affected by the replacement delivery or rectification.

e) The customer must give BERG GaseTech GmbH the necessary time and opportunity to carry out repairs and replacement deliveries owed under warranty. Only in urgent cases where operational safety is jeopardised and to prevent disproportionately large damage, in which case BERG GaseTech GmbH must be notified immediately, or if BERG GaseTech GmbH is in default with the rectification of a defect, does the customer have the right to rectify the defect himself or have it rectified by a third party and to demand reimbursement of the necessary costs from BERG GaseTech GmbH.

f) Insofar as a subsequent fulfilment to be carried out at our discretion after a reasonable number of attempts to remedy the defect, the customer shall be entitled to withdraw from the contract. At least three attempts at subsequent fulfilment are reasonable. The number of reasonable attempts at subsequent fulfilment after which the customer has a right of withdrawal relates to the respective functional unit of the subject matter of the contract. Irrespective of whether the same functional unit of the subject matter of the contract is always affected, the customer has a right of cancellation if the number of isolated defects makes it unreasonable for the customer to adhere to the contract.

g) If BERG GaseTech GmbH refuses subsequent fulfilment despite a corresponding right of subsequent fulfilment on the part of the customer is entitled to withdraw from the contract immediately.

h) The same applies if BERG GaseTech GmbH has not carried out subsequent fulfilment, to which BERG GaseTech GmbH is entitled, within a reasonable period of grace to be set by the customer.

i) The customer shall only be entitled to reduce the price (reduction) if BERG GaseTech GmbH agrees to this.

j) All further claims of the customer are excluded.

k) No warranty is assumed for damages for which BERG GaseTech GmbH is not responsible. This includes, for example, damage caused for the following reasons: Unsuitable or improper use, faulty assembly or commissioning by the customer or by third parties, natural wear and tear, faulty or negligent handling, unsuitable operating materials or replacement materials, defective construction work, unsuitable building ground, chemical, electromagnetic, electrochemical or electrical influences, insofar as they are not attributable to the fault of BERG GaseTech GmbH.

l) BERG GaseTech GmbH assumes no warranty for components provided by the customer.

The customer alone is responsible for the suitability and quality of such components, unless expressly agreed otherwise.

m) Non-observance of the operating and maintenance instructions by the customer, if it causes it is the cause of damage, leads to BERG GaseTech GmbH being released from liability and warranty.

n) In the event of non-observance of the operating and maintenance instructions by the customer, it shall be assumed that any damage

is attributable to this. In this case, the customer shall bear the burden of presentation and proof to the contrary.

o) In the event that systems supplied by BERG GaseTech GmbH are installed or operated at a location outside the borders of the country in which the customer's branch or main office with which the contract in question was concluded is located, the customer shall bear the additional costs, in particular but not limited to transport costs, travelling expenses and other expenses incurred as a result of any warranty measures to be provided by BERG GaseTech GmbH exceeding the borders of that country. This does not apply if a different place of delivery or destination has been agreed.

p) The sales partner shall also provide its customers with technical customer support, including the fulfilment of warranty claims of its customers, whether by rectification or by replacement of any defective products and services. If BERG GaseTech GmbH is liable for defects for which the sales partner provides corresponding services to its customers, BERG GaseTech GmbH will compensate these services of the sales partner accordingly.

## **8. LIABILITIES:**

Our liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and unauthorised action, is limited in accordance with this section, insofar as fault is involved in each case. BERG GaseTech shall not be liable in the event of simple negligence on the part of our executive bodies, legal representatives, employees or other vicarious agents, insofar as this does not involve a breach of material contractual obligations. Material contractual obligations are the obligation to deliver and/or install the delivery item on time, its freedom from defects that impair its functionality or usability more than insignificantly, as well as obligations to provide advice, protection and care that are intended to enable the buyer to use the delivery item in accordance with the contract or to protect the life and limb of the buyer's personnel or to protect the buyer's property from significant damage. Insofar as we are liable for damages on the merits, this liability is limited to damages that we foresaw as a possible consequence of a breach of contract when the contract was concluded or that we should have foreseen if we had exercised due care. Indirect damage and consequential damage resulting from defects in the delivery item are also only eligible for compensation if such damage is typically to be expected when the delivery item is used as intended.

The above exclusions and limitations of liability shall apply to the same extent in favour of our executive bodies, legal representatives, employees and other vicarious agents. Insofar as we provide technical information or act in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by us, this is done free of charge and to the exclusion of any liability. The limitations of this section do not apply to our liability for intentional behaviour, for guaranteed characteristics, for injury to life, limb or health or under the Product Liability Act. The place of fulfilment and exclusive place of jurisdiction for all disputes is Krefeld. The law of the Federal Republic of Germany in its currently valid version shall apply exclusively. The application of the UN Convention on Contracts for the International Sale of Goods is excluded. We are also entitled to bring an action at any other legal place of jurisdiction. The provisions of the Product Liability Act also remain unaffected by the exclusion of liability

Data backup: BERG GaseTech GmbH carries out effective data backups as part of the service provision, but does not provide a general data backup guarantee for the data transmitted by the user.

The user is also responsible for creating appropriate backups of his data at regular intervals to prevent data loss.

However, GaseTech GmbH does not guarantee that the stored content or data will not be accidentally damaged or falsified, lost or partially removed.

## **9. FINAL PROVISIONS:**

Severability clause: Should individually provisions of these terms and conditions be or become void, invalid and/or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions. Void, ineffective and/or unenforceable provisions shall be replaced by such effective and enforceable provisions that come closest to the intended economic purpose. The same applies if these terms and conditions should contain a loophole.