

General Terms and Conditions

of Gasitech Industrie- Gas- Handelsgesellschaft mbH
Status: January 2010

I. General Information

1. All business transactions between Gasitech Industrie- Gas- Handelsgesellschaft mbH – hereinafter referred to as Gasitech, and its purchasers/clients – hereinafter referred to as Clients - are subject to the following conditions:
2. Additional oral agreements and subsequent contractual amendments shall only be deemed valid if confirmed in writing by Gasitech.
3. **Our General Terms and Conditions shall apply exclusively. The Client's diverging, conflicting or additional terms and conditions shall only become a part of the contract in so far as their validity has expressly been agreed to by Gasitech.**
4. **Legally relevant declarations and notifications which are submitted to us after the conclusion of the contract (such as e.g. notifications of defects, setting of deadlines) shall be valid only if made in writing.**

II. Prices

1. The prices offered by Gasitech are subject to change. In case of increases in wages or price rises for raw materials or other vendor parts, Gasitech reserves the right to adjust the prices accordingly. Gasitech will inform the Client of price changes in good time to allow the Client to respond.
2. **We expressly retain the property rights and copyright to the catalogues, technical documentation and product descriptions provided to the Client.**

III. Delivery and service deadlines

1. Gasitech keeps to agreed deadlines. Should delays nevertheless occur, the Client is obliged to set Gasitech a reasonable period of grace.
2. If Gasitech also fails to fulfil the obligations under the contract within the period of grace, the statutory legal consequences apply.
3. Should Gasitech be unable to fulfil its contractual obligations for reasons beyond its control, the Client's right of withdrawal may only be exercised if the delivery date originally agreed upon is exceeded by at least two months.

IV. Shipment

Goods are shipped at the expense and risk of the Client.
The risk is transferred as soon as the consignment has been handed over to the carrier.

V. Packaging

The packaging of the goods is in accordance with commercial standards. If the Client requests a specific type of packaging, he has to bear the resulting additional costs.

VI. Payment

1. Invoices are due within 30 days from the invoice date.
2. For payments in cash or by check within 10 days of the invoice date, a 2 % early payment discount is granted. The date of payment is deemed the date on which Gasitech has the money at its disposal. An early payment discount is inadmissible insofar as Gasitech still has claims based on outstanding invoices.
3. Gasitech is not obliged to accept bills of exchange. If Gasitech nevertheless accepts bills of exchange, the bank discount and collection fees are payable immediately in cash by the Client. The acceptance of a bill of exchange does not qualify as a cash payment.
4. In the event of defaults in payment, Gasitech will charge default interest at the legally permissible rate. Mutual proof of higher or lower damage remains unaffected.
5. If a Client defaults on his payment obligations or his bills of exchange are protested or seizures are undertaken against him or there is a significant deterioration in his financial situation, Gasitech is entitled, at its own discretion, to withdraw from the contract or to demand securities or advance payments. In addition, Gasitech is entitled to withdraw immediately from circulation all circulating bills of acceptance, bills of exchange and checks, with the corresponding costs to be borne by the Client.
6. Offsetting with counterclaims by the Client is excluded in principle, unless the Client has a legally binding title against Gasitech or Gasitech has recognized the counterclaim.
7. **The first two orders must be paid in advance by new customers.**

VII. Retention of title

1. Goods supplied remain the property of Gasitech until full payment is received. **The retention of title also applies to products resulting from the processing, mixing or connection of the goods.**
2. The Client may not sell the reserved goods in the course of his regular business operations for cash or under reservation of title; nor is he entitled to dispose of the goods in any other way, in particular to assign them as security and as a pledge.
3. The Client hereby assigns any claims resulting from the resale of the reserved goods – including the corresponding demands from bills of exchange – with all ancillary rights to Gasitech. **Gasitech accepts the assignment.** In the case that the reserved goods are sold by the Client along with other goods that do not belong to Gasitech for a total price, the assignment only amounts to the sum which Gasitech has charged the Client for the reserved goods which were sold in combination.
4. **The Client is required to notify Gasitech immediately and in writing, if and when third parties have access to goods subject to retention of title.**

VIII. Acceptance and notification of defects

1. Gasitech has met its contractual obligations, when the Client has accepted the delivery or the service.
2. The use of the delivery or service shall be considered as formal acceptance.
3. The Client is required to notify Gasitech of any defects by registered letter immediately upon acceptance of the goods, latent defects within 3 days of their discovery, but not later than 2 months after acceptance of the goods.
4. Notifications of defects are excluded if the Client sold the product after he had discovered or could have been able to discover the defect.
5. In the case of justified defects that are properly notified, Gasitech is solely obliged to exchange the goods or, if this is not possible, to accept their return and refund the purchase price. The prerequisite for this is that the goods are still in the same condition as they were upon delivery. Any further claims are excluded. Returns are only permitted with the express consent of Gasitech and must be carriage free.
6. Defects in work or services rendered by Gasitech (e.g. repairs, powder coatings, paintwork, blasting work) are to be reported to Gasitech immediately. With the acceptance or usage, but no later than six months after the provision of the works, any claims of defects are excluded.
7. **Notwithstanding the provisions of § 438 (1) No. 3 of the German Civil Code, the general limitation period for claims arising from material and legal defects shall be 1 year from delivery. If acceptance has been agreed, the limitation period commences upon acceptance.**

IX. Warranty and remedial work

1. The Client's claims for warranty and remedial work are governed by statutory provisions, unless otherwise agreed.

X. Limitation of liability

1. Gasitech excludes liability for any fault of its vicarious agents or third parties included by them, to the extent permitted by law.
 2. All claims by the Client for compensation for damage, on whatever grounds, which do not result from gross negligence on the part of Gasitech, are limited in scope to the compensation for the damage which the Client should have been able to have foreseen at the time the contract was concluded, taking into account the circumstances which he was or should have been aware of as a possible consequence of the breach of contract.
 3. Liability for consequential damages is excluded, insofar as permissible in law.
 4. If the Client asserts a claim against Gasitech for damages arising from non-performance and this does not result from gross negligence, then this claim for damages arising from non-performance is, in addition to the above limitations of liability, limited to an amount not exceeding 20 % of the contract price. Non-performance is deemed to exist when obstacles arise in the execution of the contract, which make the proper fulfilment of contractual obligations either difficult or impossible, or when one contracting party is harmed by the other.
- The aforementioned limitations of liability also apply to claims by the Client against Gasitech for compensation for damages suffered due to delay, if these do not result from gross negligence.

XI. Place of performance, place of jurisdiction and applicable law

Place of fulfilment and place of jurisdiction are, as far as legally admissible, the registered office of Gasitech. This also applies to actions concerning bills of exchange or deeds. Gasitech is also entitled to sue the Client at its place of jurisdiction. The legal system of the Federal Republic of Germany applies to all legal relations **between the Client and Gasitech, to the exclusion of all international and supranational legal systems, in particular the UN Sales Convention (CISG).**

XII. Severability Clause

Should one or more of the provisions of these terms and conditions be invalid, this shall not affect the validity of the remaining provisions. In this case the parties shall come to an agreement to replace the void provision with an agreement which is most likely to achieve the desired economic purpose. The same applies to the filling of any contractual omissions.