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Article 1: General

1.1 All Westfalen quotations, sales and deliveries are subject to the following conditions, unless other conditions are stipulated in the order confirmation.

1.2 Other conditions and any general terms and conditions of the customer will only apply if and insofar as they have been expressly accepted in writing by Westfalen.

1.3 By placing an order and/or taking receipt of goods pursuant to an order, the customer waives its own terms and conditions.

1.4 When a customer has made a purchase in accordance with these Westfalen terms and conditions of sale and delivery, that customer will be deemed to have tacitly accepted the applicability of these terms and conditions for any further orders made by any means (verbally, by means of a telegram, by fax, email or telex), irrespective of whether said order has been confirmed in writing.

1.5 If any of the provisions in these general terms and conditions is invalid or declared void, the other provisions will remain fully in force. In such an event, Westfalen and the customer will consult in order to agree a replacement provision that as far as possible reflects the spirit and purport of the invalid or void provision.

Article 2: Quotations

2.1 Any quotations issued by Westfalen are without obligation and – unless otherwise indicated – are valid for 30 days after the date of issue. The acceptance of the quotation or the placing of an order by the customer will be binding for the customer. Invoices sent by Westfalen and any actual deliveries will also be deemed to constitute written acceptance.

2.2 Any agreement or contracts will only be binding for Westfalen if they have been legally signed and confirmed in writing by Westfalen.

Article 3: Prices

3.1 The prices stated by Westfalen do not include statutory turnover tax. The prices quoted apply from the Westfalen main depot or from any other depot designated by Westfalen.

3.2 Unless otherwise agreed, the prices will be in accordance with the rates payable on the day of delivery. For this purpose, Westfalen applies delivery agreements, rental agreements, right-of-use agreements, price agreements and price lists which are available from its main depot on request.

3.3 The supplement applicable at the time will be charged to fill cylinders owned by the customer. Westfalen uses price lists stating these supplements. Westfalen reserves the right to modify the price lists referred to in this Article and in Article 3.2 as a result of cost increases at any time without giving prior notice.

3.4 Cost increases are understood to include – but not be restricted to – the following: increases in freight charges, taxes, import and export duties or other levies, increases in salaries and social security payments, exchange-rate fluctuations and increases in purchase prices and prices of raw materials, energy, etc.

Article 4: Payment

4.1 Unless otherwise agreed, payments must be made within 14 days of the invoice date, without any deductions or offsetting of debt. If the customer fails to make payment by the agreed deadline, the customer will be deemed to be in default by operation of law and Westfalen will be entitled to charge the customer interest of 1% per month or part thereof on the entire sum payable from the date on which the invoice becomes due, without prejudice to any other rights accruing to Westfalen, including its right to recover from the customer any legal or extrajudicial costs relating to debt collection, whereby any extrajudicial costs must be calculated in accordance with the debt collection rate applied by the Netherlands Bar Association (*Nederlandse Orde van Advocaten*), as well as any costs relating to an application for bankruptcy.

4.2 In such an event, without prejudice to Westfalen's right to claim compensation for damages, Westfalen will also be entitled to suspend any further deliveries to the customer, or to demand cash on delivery and/or immediate payment of any accounts still payable and/or to terminate the contract entered into with the customer even if the said contract has not yet been completely fulfilled by Westfalen, without providing notice of termination.

4.3 Westfalen will also have the same rights in the event of the customer's bankruptcy, a moratorium on the payment of the customer's debts or in the event that any attachment is served against or at the expense of the customer or if the customer is placed in administration in accordance with any provision of law.

Article 5: Retention of title

5.1 The products delivered will remain the property of Westfalen until the customer has met its payment obligations of whatever kind.

5.2 In the event of failure by the customer to make timely payment, Westfalen will be entitled to recover any products subject to retention of title immediately, with any transport costs being payable by the customer and without prejudice to the customer's remaining obligations pursuant to the contract.

5.3 In the event of bankruptcy, an attachment of whatever nature, a moratorium on the payment of its debts or in the event of the customer being placed in administration under whatever provision of law, the customer will be obliged to inform Westfalen immediately in writing and to inform the liquidator or receiver, the bailiff serving the attachment or the administrator about Westfalen's property.

5.4 Any products supplied that are subject to retention of title may only be used or consumed as part of normal business operations.

5.5 Until the customer has met its obligations as described in article 5.1, it is not permitted to transfer ownership of the products to any third party or to encumber them with a limited right.

Article 6: Delivery

6.1 Deliveries will be made from the Westfalen main depot or from any other depot designated by Westfalen. Transport from the depot to the customer and the return of any packaging will be entirely at the customer's expense and risk. Deliveries will be made in accordance with the routes determined by Westfalen.

6.2 The agreed delivery date is intended solely as an approximation.

6.3 If delivery is not possible at the sites agreed by the parties as a result of circumstances for which Westfalen is not responsible, for example because the agreed location cannot be accessed by the means of transport normally used by Westfalen or if it is not reasonable to expect deliveries to be made at the agreed location, Westfalen will be entitled to deliver at another reasonable location in the vicinity of the location previously agreed.

6.4 Delayed deliveries will under no circumstances entitle the customer to terminate or dissolve the contract in full or in part. If the customer decides to accept the products at a date later than originally agreed, the products will be stored by Westfalen at the customer's expense and risk.

Article 7: Delivery of gases by road tanker or trailer

7.1 If Westfalen delivers gases by road tanker or trailer, the delivery will also be subject to Westfalen's supplementary terms and conditions as stipulated in the delivery and/or rental agreements for tanks and/or installations.

Article 8: Complaints

8.1 All gas types and quantities and numbers of cylinders, bundles, cryogenic mobile tanks and/or pallets indicated on the delivery notes and invoices must be checked for accuracy by the customer immediately after delivery. Any complaints must be submitted in writing to the Westfalen main depot within 1 week of the invoice date. Otherwise it will be assumed that the gas types, quantities and numbers have been acknowledged as correct.

8.2 Quality issues must be reported in writing to the Westfalen main depot by the customer as soon as they are identified and at the latest within 14 days after delivery.

8.3 Rejected deliveries in cylinders, bundles and/or mobile cryogenic tanks must be returned to Westfalen or to a depot designated by Westfalen. When returned, these cylinders, bundles and/or mobile cryogenic tanks must be visibly or recognisably marked. The costs of returning the items and of investigating complaints will be payable by the customer and will be refunded if the complaint proves to be justified.

Article 9: Customer liability

9.1 The customer must comply with the regulations governing the storage and transport of gases.

9.2 The customer must comply with the applicable regulations when extracting compressed gases from the cylinders and/or mobile cryogenic tanks. In the case of liquid and compressed liquefied gases, the quantities taken must be limited in accordance with their physical properties in order to ensure problem-free operation and the full use of the cylinder, bundle or tank capacity. Any remaining contents in returned cylinders, bundles and/or mobile cryogenic tanks will not be refunded.

9.3 The customer will be liable for any loss or damage to Westfalen's property, from the moment when the property leaves the main depot or another depot designated by Westfalen until it is returned to said location. The foregoing provision will not apply if and insofar as the loss or damage is as a result of normal wear and tear.

9.4 Any customer who fails to return hired products or returns these products in an irreparable condition to the main depot or another depot designated by Westfalen will be liable to pay Westfalen the replacement value for these products when new.

9.5 In addition, the customer will be liable for any damage to persons or property relating to the storage and use of products delivered or hired out by Westfalen.

Article 10: Prohibition of transfers to third parties

10.1 Unless otherwise agreed, the gases delivered by Westfalen are for the exclusive use of the customer.

Article 11: Conditions of hire

11.1 The following conditions apply in the case of cylinders, bundles, mobile cryogenic tanks and pallets hired out or made available by Westfalen for use by the customer:

11.2 The cylinders, bundles, mobile cryogenic tanks and pallets remain the inalienable property of Westfalen or its supplier.

11.3 The cylinders, bundles, mobile cryogenic tanks and pallets are hired out to the customer exclusively for transporting and using the gases purchased from Westfalen. Partly in view of the associated safety risks, it is not permitted to transfer the cylinders, bundles, mobile cryogenic tanks and pallets to third parties or to use them for any other purpose.

11.4 As soon as they are empty, the cylinders, bundles and/or mobile cryogenic tanks must be returned to the main depot or to another depot designated by Westfalen at an overpressure of at least 1 bar. The issuing of cylinders, bundles, mobile cryogenic tanks and pallets from other suppliers does not relieve the customer of its obligation to return cylinders and/or pallets hired from Westfalen to Westfalen. Hired cylinders, bundles, mobile cryogenic tanks and pallets may not be retained, even if Westfalen has not or is deemed not to have met its obligations.





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11.5 The cylinders, bundles, mobile cryogenic tanks and pallets are hired for a maximum period of 90 days. If, at the end of this period, the cylinders, bundles, mobile cryogenic tanks and pallets have not been returned to the main depot or to another depot designated by Westfalen, Westfalen will be entitled to charge the customer an amount equal to the replacement value of these articles when new by way of security.

11.6 This security will be payable immediately from the invoice date without any reduction and/or compensation. Even after the payment of this security, the cylinders, bundles, mobile cryogenic tanks and pallets remain the property of Westfalen or its supplier.

11.7 If, after payment of the security, the cylinders, bundles, mobile cryogenic tanks and pallets are returned to the main depot or to another depot designated by Westfalen, the amount of the security will be refunded interest-free after deduction of any costs incurred.

11.8 The security payment will not be refunded if the cylinders, bundles, mobile cryogenic tanks and pallets are not returned, or are returned in a condition that no longer meets the requirements, thereby rendering them unusable. If the security has not yet been paid at that point, it must still be paid.

11.9 The price for hiring the cylinders, bundles, mobile cryogenic tanks and pallets is payable from the day of delivery up to and including the day on which these items are returned. The rental fee will either be charged along with the products or otherwise.

11.10 Westfalen is entitled to issue interim invoices to customers for the hiring of cylinders, bundles, mobile cryogenic tanks and pallets. Additional agreements apply regarding rights of use.

Article 12 Damage and loss and prohibition of repairs

12.1 The customer is obliged to report any externally visible damage to cylinders, bundles, mobile cryogenic tanks and pallets, or the loss thereof, immediately, to the main depot or to another depot designated by Westfalen. The customer must clearly mark the damaged cylinders, bundles, mobile cryogenic tanks and pallets and inform Westfalen in writing of the nature of and reason for the damage. Customers are not permitted to make any changes to the hired cylinders, bundles, mobile cryogenic tanks and pallets since such changes could threaten operational safety.

Article 13: Customers' cylinders

13.1 Unless Westfalen is instructed otherwise in writing, any cylinders that are the property of the customer will only be filled and prepared for collection by the customer. The filling departments at Westfalen are entitled, even if not specifically instructed to do so, to inspect any cylinders belonging to the customer in accordance with the applicable regulations and to have them repaired before filling them. The cost of the repairs will be charged to the customer.

Article 14: Westfalen's liability and warranty

14.1 Westfalen guarantees the soundness and quality of the products delivered and/or the items or services made available, on the understanding that Westfalen's liability will at all times be limited to an obligation to replace, repair or refund – at Westfalen's discretion – any products delivered that prove to be unsound if a complaint has been notified and a claim made in the manner stipulated in previous articles. Failure on the part of the customer to meet any of its obligations will mean that any liability on the part of Westfalen will also no longer apply.

14.2 Any claims resulting from Westfalen's warranty obligation will be without prejudice to the customer's obligation to pay.

14.3 Under no circumstances will Westfalen be liable to compensate for any damage resulting directly or indirectly from failure to deliver or late delivery or the soundness of the products delivered and the customer will not be entitled to demand the dissolution of the agreement on this basis, unless the cause of the damage is the result of deliberate intent or gross negligence on the part of Westfalen.

14.4 The warranty provisions determined for Westfalen by the manufacturer will apply exclusively in relation to installations, equipment and/or materials delivered.

14.5 As the owner of products it has purchased from Westfalen, the custodian of products delivered to it by Westfalen under retention of title and the user of products it has hired from Westfalen, the customer is obliged to indemnify Westfalen against any claims for compensation made by third parties for damage caused by or resulting from products sold or made available by Westfalen.

14.6 If the customer is held liable by any third party for damage of whatever nature relating to the delivery of Westfalen products, the customer must inform Westfalen accordingly without delay.

14.7 If, despite the foregoing provisions, Westfalen is liable for any damage, this liability will be limited to the amount payable under Westfalen's (corporate) third-party liability insurance. If the damage is not covered by the insurance or if the insurance company should fail to make payment, Westfalen's liability will be limited to a maximum amount of €10,000 (in words: ten thousand euros) per event.

Article 15: Force majeure

15.1 If, as a result of force majeure or other circumstances outside its sphere of risk, Westfalen is prevented from meeting its obligations pursuant to the contract, Westfalen will be entitled to suspend the delivery and purchase obligations insofar as and for as long as the factors preventing compliance continue.

15.2 Westfalen will be entitled to invoke force majeure in the following circumstances: staff illness, operational disruptions, a lack of raw materials, failure – for whatever reason – by third parties (including suppliers) to supply or failure to supply sound products, transport difficulties, riots, strikes, exclusion, measures arising as a result of mobilisation, acts of war, the introduction of quotas and/or other government measures, energy shortages and any other circumstances of whatever nature that are beyond the power of Westfalen and likely to have a negative influence on Westfalen's ability to fulfil the contract, without any obligation on the part of Westfalen to demonstrate the role played by these circumstances in preventing fulfilment of the contract.

15.3 The contract between the customer and Westfalen will be extended by a period equal to that for which the delivery and purchase obligations are suspended.

Article 16: Determining quantities

16.1 All weights determined by Westfalen will be binding. Westfalen will ensure that these measurements are correct.

The unit m³ is understood to mean m³ of gas, measured at 1 bar and 15°C.

The conversion factor is:

1 kg liquid oxygen = 0.748 m³ of oxygen gas

1 kg of liquid nitrogen = 0.855 m³ of nitrogen gas

1 kg of liquid argon = 0.599 m³ of argon gas.

Article 17: Intellectual property

17.1 Unless otherwise agreed in writing, all intellectual and industrial property rights relating to software, hardware and/or other items, information and/or data, including analyses, documentation (technical or otherwise), drawings and models developed in preparation for and/or in the execution of the contract and/or made available will remain exclusively vested in Westfalen.

17.2 The customer declares and undertakes vis-à-vis Westfalen that in the preparation and/or execution of the contract, no third-party rights will be infringed. The customer indemnifies Westfalen against any claims that may arise as a result hereof and will provide compensation for any damage resulting from any such infringement that may affect Westfalen or the party invoking such a right.

17.3 All drawings, models, documentation (technical or otherwise), computer programs or other information carriers, including the specifications and any other items provided to the customer by Westfalen before or during the execution of the contract (or the preparation for the execution) will at all times remain the property of Westfalen and will be returned by the customer to Westfalen after execution of the contract.

Article 18: Confidentiality

18.1 The customer is obliged to observe confidentiality with regard to all information acquired either directly or indirectly in connection with the order, in the widest sense, unless prior written permission is granted by Westfalen.

Article 19: Penalty clause

19.1 In the event of infringement by the customer of the provisions of Articles 17 and 18, the customer will be liable for an immediately payable and non-negotiable fine of €5,000 for each infringement or for each day that the infringement continues, without prejudice to Westfalen's entitlement to full compensation for damages.

Article 20: Transfer of rights/obligations

20.1 The customer is not permitted to transfer any rights and/or obligations arising from this contract to third parties without prior written permission from Westfalen.

20.2 Westfalen is entitled to arrange for third parties to meet its obligations relating to delivery and the execution of work, without these arrangements affecting the customer's rights and obligations vis-à-vis Westfalen.

Article 21: Competent court and disputes

21.1 This contract and any further agreements arising from this contract will be subject exclusively to the law of the Netherlands.

21.2 Any disputes of whatever nature between the customer and Westfalen will be settled by the competent court in Almelo, the Netherlands.

These general terms and conditions of sale and delivery have been filed with the Chamber of Commerce under file number 38020060.

