

General Conditions of Sale Medical and Laboratory Gases Plant and Equipment

The following Conditions apply to and are deemed to be incorporated in all contracts for the sale and supply of equipment, materials and associated spare parts (the products) by MEDÆS Ltd. (hereinafter referred to as the Company) both home and overseas, unless the contrary is expressly and specifically agreed in writing by the Company. They exclude any terms and conditions proffered by the Customer.

1 Quotations/Tenders:

Unless otherwise stated a quotation/tender is open for acceptance within a period of 60 days from the date thereof but no obligation shall be binding on the Company until the Customer order has been accepted by the Company in writing.

2 Acceptance:

An order or the acceptance of a quotation/tender must be accompanied by sufficient information to enable the Company to proceed with the order immediately and any subsequent modification must be agreed in writing. When ordering Products the reference numbers must be quoted in all cases where these are given in the Company's catalogues. If a special quotation/tender has been made the quotation reference must be stated.

All telephone and telegraphic orders must be confirmed by an official order or letter. All communications relating to orders should specify the number and date of order, description of Products and catalogue reference number.

3 Limits of Contract:

- a) A quotation/tender includes only such Products and work as are specified in the quotation/tender.
- b) If by arrangement with the Customer, the Products or services are supplied to any person who is not a party to the contract, the Customer will procure that such person agrees to be bound by these Conditions as though a party to the Contract. The Customer will indemnify the Company and hold it harmless against any consequence of the Customer failing to do so, or of such person not fulfilling its obligations under the contract.
- c) The Company will endeavour to execute all orders at prices ruling at the time of acceptance, but reserves the right to alter prices to those ruling at the time of delivery, in the event of any increase in costs of any nature.
- d) The Company reserves the right to add packaging charges.
- e) Prices exclude Value Added Tax which will be invoiced where applicable at the rate ruling at the date of supply.
- f) Offers to supply from stock are subject to Products remaining in stock on receipt of order.
- g) Products will be delivered as available, unless otherwise agreed with the Customer.

4 Additional Expenses:

If the Company incurs additional expense not provided for in the quotation, owing to suspension of work on the Customer's instructions or owing to any other circumstances whatsoever for which the Company is not responsible, such additional expense will be charged to and will be paid for by the Customer.

5 Drawing and Technical Specifications:

All descriptive and technical specifications, drawings, catalogues, illustrations and particulars of weights and dimensions, submitted with a quotation are approximate only. None of them will form part of the contract. After receipt of any order, adequate drawings will be supplied where agreed to enable the Customer to prepare foundations and arrange for the supply of services. Drawings and technical specifications supplied by the Company are confidential and the Customer will not communicate these or their contents to third parties without the written consent of the Company unless and until the same becomes public knowledge.

6 Despatch:

The Company will use its best endeavours to despatch or complete the order within the time stated. This will run from receipt by the Company of a written order any financial securities stipulated by the company to proceed and of all the information including any dimensions required from the customer and drawing approvals necessary to enable the Company to put the order in hand. The Company will not incur any liability for failure to meet despatch dates. Late delivery will not entitle the Customer to reject the Products except on failure of the Company to deliver within a reasonable time frame.

7 Delivery and Passing of Property:

- a) Except where otherwise stated delivery is ex the Company's applicable works as specified.
- b) If delivery or collection of Products is made by the Company or carrier beyond the entrance to the Customer's premises, the Customer will accept all responsibility for and indemnify the Company against all damage to property or injury to people occurring from whatsoever cause on such premises, unless caused by the negligence of the Company or its employees or the carrier or his employees. It is the responsibility of the Customer to provide adequate labour for loading and unloading of all Products at his premises.
- c) Until payment in full to the Company for the Products, the Products will remain the property of the Company but the risk and all liability to third parties in respect of such Products will pass to the Customer on delivery. The Customer may sell the Products in the normal course of his business but in a fiduciary capacity as bailee of the Products shall hold and pursue claims for the proceeds of their sale equal to the price of the Products for and on behalf of the Company. The Customer will fully pursue such claims and if necessary will recover the sums due by legal process. The proceeds of sale will be held in trust for the Company and will not be mixed with other money or paid into an overdrawn bank account and will be at all times identifiable as the Company's money. Prior to the sale of the Products, the Customer shall store them in clean conditions separately from other goods and shall not remove, obliterate, or otherwise alter any label, mark or other means the Company may have of identifying the Products. Payment will become due immediately upon the commencement of any act or proceeding in which the Customer's solvency is involved. If such payment is overdue in whole or in part, the Company may, (without prejudice to any of its other rights) recover or resell the Products or any of them and may enter upon the Customer's premises through its employees or agents for that purpose. If the Products are incorporated in or used as material for other goods before such payment, the property in the whole of such goods will remain with the Company until such payment has been made, or the other goods shall have been sold as provided for above, and all the Company's rights in the Product will extend to those other goods.

8 Loss or Damage in Transit:

No responsibility will be accepted for any discrepancy in the quantity of Products or loss or damage in transit unless notified to the Company and to any carrier in writing, within seven days of receipt of the Products by the Customer, (or in case of loss, seven days of intended date of Products damaged during transit must be kept with the packing for inspection by the Company or its appointed representative.

9 Force Majeure:

The Company will not be liable for, and the Customer will have no claim against the Company in respect of any failure or delay in the supply of the Customer's requirements if and to the extent that such failure or delay is caused by any event beyond the control of the Company, including but not limited to. Acts of God, strikes, acts of Government, lockouts, fires, floods, riots, wars, rebellions and sabotage. The above will not be considered a waiver of the Company's obligations and the Company will fulfil its obligations as soon as the events cease, provided that if Force Majeure continues for a period of three months or more either party may terminate the contract of sale, insofar as affected by the Force Majeure by two weeks prior notice in writing to the other and both parties will be released from any obligations to supply or take delivery of the affected Products.

10 Terms of Payment:

- a) Where no other terms of payment have been specified, full payment of invoices must reach the Company by the twenty fifth day of the month following the month of delivery of the Products and/or provision of services. No discount or allowance will be made unless specifically stated by the Company.
- b) In the event of the Customer failing to comply with the Company's terms of payment, the Company reserves the right:
 - i. immediately to discontinue the provision to the Customer of any further Products or services by way of installation or storage or otherwise.
 - ii. to charge interest on any amount overdue at the rate of 2% per month compounded monthly from the day after payment was due to the date payment is made inclusive.
- c) Disputed invoices: All disputes must be notified to the Company in writing within 14 days of receipt of invoice. If the Company is unable to answer a dispute (e.g. prove delivery) due to the Customer's delay in notification, the Customer will be liable for full payment of the invoice.

11 Storage:

If by reason of instructions or lack of instructions from the Customer, despatch in accordance with the contract is delayed for twenty-one days after the Customer has been notified that the Products are ready for despatch, the risk of loss of, or damage to the Product shall pass to the Customer who will take delivery or arrange for their storage. For the purposes of Clause 10, the Products will at the moment be deemed to have been delivered if and for so long as the Company's storage facilities permit the Company may store the Products and the Customer will pay a reasonable charge. The Company will be entitled, after reasonable notice to the Customer, to dispose of the Products elsewhere.

12 Replacement and Services:

- a) All Products supplied by the Company are manufactured in accordance with the highest standards of design, quality of materials and efficient workmanship. However, the Company's liability in respect of Products supplied or for any loss, injury or damage attributable to any defects in or failure of such Products will be limited to making good by replacement or repair, at the option of the Company, defects which under proper use appear within 12 calendar months, or 3 calendar months for Service Exchange/reconditioned Products (or such other, period as may be specified), after the original Products were first despatched by the Company and which arise solely from faulty design materials or workmanship. The Company reserves the right to require that all such defective Products are promptly returned to the Company's works carriage paid. In lieu of the above right of repair or replacement, the Company will have the option to take back the defective Products and refund the purchase price. When the Company accepts responsibility to repair or replace the Products or to refund the price, the Company will refund and pay all carriage costs.
- b) In the case of Products not of the Company's manufacture, the Customer shall be entitled only to such benefits as the Company may have received.
- c) Return of defective Product or Products presented for service/repair (whether at the Customers' or the Company's premises), must be accompanied by written assurance that they are safe, (save to the extent disclosed in such notice), and that they are free from risk of infection. It is the Customer's responsibility to ensure that there is not risk of infection. In the case of the UK Department of Health, the Customer is referred to their document HN(87)22HN(FP)(87)35- Decontamination of Health Care Equipment prior to inspection, service or repair. The Customer undertakes to indemnify the Company against all claims, damages, losses and expenses arising from breach of these obligations due to the negligence or wilful default of the Customer, his employees or agents.
- d) Any figures for performance of the Company's Products are based upon the Company's experience and are such as the Company expects to obtain by proper use.
- e) The Company accepts responsibility for all technical advice given by its employees and for which a charge is made, subject to a limit of liability equal to the charge made. Technical advice made available to Customers without charge is given with all reasonable care but without responsibility on the part of the Company. In the absence of any special arrangements to the contrary, it is the Customer's responsibility to ensure that the nature, capacity and performance of the Products ordered are sufficient and suitable.
- f) The Customer will accept the rights conferred under paragraphs (a) and (b) above in lieu of any warranty condition of liability imposed by common law or by statute. Liability to the Customer for every form of indirect or consequential loss or damage suffered by the Customer or any third party is expressly excluded. Nothing in these conditions will restrict the Company's liability for personal injury or death caused by the negligence of the Company or its employees.

13 Patents, Registered Designs, etc.

- a) The Company warrants that Products of its standard manufacture are free of third party patent or other intellectual property restrictions as and when supplied. No liability for patent or other intellectual property infringement, save as stated above is accepted.
- b) If the Company supplies Products with variations to meet the Customer's special requirements or the Customer's own specification, or if the Company processes the Customer's own goods or materials, no warranty is given and the Customer will accept full liability in respect of infringement of patents or other intellectual property rights. Further, the Customer agrees to indemnify the Company against all claims, losses or costs arising.
- c) No warranty is given that any particular use of any Products, or any technique employed is free of patent or other intellectual property restriction. Any advice given by the Company is given without liability in this respect.
- d) The trademarks and names of the Company and its associated companies shall not be used otherwise than as applied by the Company products supplied under these terms.

14 Copyright and other Intellectual Property rights:

Copyright and all other intellectual rights which exist in respect of the Products, including computer software, electronic formats, instruction manuals and all similar materials supplied by the Company remain with the Company. The materials are supplied for use only in connection with the products supplied by the Company and the Customer shall not reproduce or permit the reproduction of such materials in any form without the prior written consent of the Company.

15 Termination for Breach by Customer:

If the Customer commits any breach of any term or condition of any contract for the sale and supply of the Company's Products, the Company will have the rights by notice in writing to terminate the contract at once notwithstanding any previous waiver of this right. The Company may, by notice in writing, cancel the contract immediately if the Customer becomes bankrupt or makes any composition for the benefit of creditors or being a company goes into liquidation either voluntary or compulsory. Any termination or cancellation shall be without prejudice to any rights of either party arising prior to that date.

16 Installation:

Installation is not included in the Company's quotation/tender but arrangements may be possible at extra cost for either the requisite skilled supervision of the installation or for the complete responsibility for installation of the equipment. In such cases the Customer shall allow the Company suitable access to and possession of the site and shall at his own expense secure all necessary consents and licenses and provide proper foundations ready to receive the product as and when delivered, adequate craneage, lifting tackle and scaffolding and all labour and facilities required for unloading, handling and installing the products. Installation work is conducted under the Company's "General Conditions of Sale, Installation Contracts".

17 Labour used in Connection with the Contract:

Any person engaged, at the point of delivery, on work in connection with the contract, other than the employees of the Company will be deemed to be a representative of the Customer.

18 Inspection and Tests:

Any inspection of the products by the Customer or his representative, will be made at the Company's works or where otherwise nominated by the Company. If special test or tests in the presence of the Customer or his representative are required, these must be made at the Company's works or where required by the Company and will be charged for extra. In the event of any delay on the part of the Customer or his representative in attending such tests after having received seven days notice that the Company is ready, the tests may proceed and will then be deemed to have been made in the presence of the Customer or of his representative.

19 Catalogues:

While the Company takes every precaution in the preparation of catalogues, technical circulars, price lists, illustrations and other advertising matter these are an indication only of the type of products offered and no particulars will be binding on the Company.

20 Employee's Liability:

In making these conditions, the Company does so both for itself and for and on behalf of every employee or agent of the Company and the existence of a contract shall be conclusive evidence of the agreement of the Customer that in the event of any loss or damage of any nature suffered by the Customer, by reason of the negligence or default of any employee or agent of the Company, any exemption of liability of the Company given by these conditions will extend to every such employee or agent.

21 Safety:

So far as reasonably practicable the Company has ensured that the Products have been designed and constructed so as to be safe and without risks to health when properly installed and/or used in accordance with the Company's instructions. The Customer is responsible for any risks to health or safety from the products and must ensure that people who use, maintain or otherwise handle them receive adequate training and safety literature. Safety literature will be supplied by the Company free of charge, and may be photocopied by the Customer as required.

22 Cancellation/Return of goods ordered in error:

The Customer may not cancel the contract or any part, or to return goods ordered in error except by written notice which must be acknowledged by the Company. On cancellation, the Customer may be charged for all work done and materials provided up to the time of cancellation. In both the case of cancellation and for the return of goods ordered in error, the Company reserves the right to levy a charge of overheads and loss of profit.

23 Legal Construction:

These Conditions and any contract based on them will be governed by and construed in accordance with English Law.

24 Special Export Conditions:

In the case of export, the following conditions apply in lieu of or in addition to appropriate conditions above as the case may be:

- a) Payment: Unless otherwise agreed, payment must be made by a London Clearing Bank upon presentation of a Confirmed Irrevocable Letter of Credit.
- b) Packing: All packing cases, crates and other containers will (except where otherwise stated) be charged at cash price and are non-returnable.
- c) Import and Export Licences: The contract will be subject to the provision by the Customer at his own expense of any import licence required for the import of the products into the country to which the Products are to be despatched from the United Kingdom. The contract will also be subject to the procurement by the Company at its own expense of any export licence required for the export of the Products from the United Kingdom provided that where the order is placed from an address in the United Kingdom, the Customer will be responsible at his own expense for the procurement of such a licence. All special documents e.g. Consular Invoice and Legalisation of Documents will be charged to the Customer at cost.

25 Arbitration:

In case of any dispute or difference arising between the Company and the Customer as to the construction of any contract for the sale and supply of the Company's equipment, materials, associated spare parts and services of the right duties or obligations of either part there-under or any matter arising out of or concerning the same, every such dispute or matter indifference shall be referred to a single arbitrator appointed by agreement or in default of agreement by the President for the time being of the Institution of Mechanical Engineers in London and in either case in accordance with and subject to the provisions of Arbitration Act, 1950 or any statutory modifications or re-enactment thereof for the time being in force.