

1. **Scope of application**
Products are supplied on the basis of a supply contract and the terms and conditions indicated below. Changes and additions to the contract and to the terms and conditions require the written form. The business terms and conditions of the client become an integral part of the contract only if Praxair Surface Technologies GmbH (Praxair) agrees to them in writing. This consent is also required if Praxair unconditionally provides goods and services in the awareness of the different business terms and conditions of the client.
2. **Order placement, delivery and passage of risk**
2.1 Praxair delivers ordered products and/or provides the requested services within the stipulated timeframe or, if no timeframe was agreed upon, within an appropriate period after Praxair receives the order.
2.2 Praxair makes his products available ex works (EXW Incoterms 2010).
3. **Safety regulations**
3.1 The product-specific safety data sheets are an integral part of the contract.
3.2 The use of the products might entail risks for persons and property. The client is solely responsible for alerting all persons coming in contact with the supplied products to these risks and must see to it that all safety regulations relevant to the handling of the products and all rules for the prevention of accidents and for industrial safety as well as the state of the art are observed.
4. **Risk of making use of the goods and services as well as guarantees**
Praxair does not assume any guarantee that the supplied products or provided services are suitable for the use planned by the client or that they yield the desired results in the manufacture or other methods or processes. The same applies to any improper or unsuitable use of the products.
5. **Terms of payment, late payments and netting privilege**
5.1 The net invoice amount plus value-added tax is due and payable immediately upon receipt of invoice without any deductions.
5.2 The client is in default of payment at the latest when payment is not received by Praxair within fourteen days after the due date and receipt of invoice.
5.3 The client may offset only claims that are either undisputed, recognized by Praxair or declared as absolute and final. The same applies also to the exercise of the right of retention.
6. **Retention of title**
6.1 The supplied products remain the property of Praxair until full payment of all claims under the business transaction is received. Only Praxair may commission the reworking or further processing of the supplied products; Praxair will be the owner of any new product or service resulting from any reworking or further processing. If the products of Praxair are combined or commingled with products owned by third parties, Praxair acquires co-ownership as a result of such processes pursuant to §§ 947 and 948 BGB [*Civil Code*].
6.2 The client must assign to Praxair all claims to which it is entitled as a result of a sale in the amount of the claims to which Praxair is entitled (including value-added tax).
6.3 The client must inform Praxair immediately about liens or other attachments by third parties regarding the retained property. The client is responsible for any costs of intervention incurred by Praxair unless these are reimbursable by third parties.
7. **Rights of the client in case of defective goods and services and in case of late delivery**
7.1 Pursuant to Section 377 HGB [*German Commercial Code*] it is up to the client to inspect the products supplied by Praxair in particular with regard to their compliance with the agreed-upon specifications and to lodge a complaint in case of a defect. Defects not discernable in the context of the receiving inspection must be claimed immediately after being discovered.
7.2 If the client has lodged a complaint about a defect in a timely manner, it has the rights enumerated under lit. a) to d).
a) Praxair reserves the right, at its option, to provide a cure either by remedying the defect or by supplying products that are not defective. The legal provisions according to which Praxair has the right to refuse providing a cure are not affected hereby.
b) If the cure of the defect is unreasonable for the client, if Praxair refuses to provide a cure or if such cure is unsuccessful according to Section 440 sentence 2 BGB, the client is entitled to a rescission of the contract or a reduction in the delivered price pursuant to lit. c).
c) The client is entitled to a rescission of the contract or a reduction in the delivered price only after Praxair has let a reasonable grace period for curing the defect pass without result. Such grace period is not required if it can be dispensed with under the legal regulations, in particular if Praxair refuses to cure the defects peremptorily and without recourse. The legal exclusions of the right of rescission are not affected hereby. After the rescission of the contract the client is legally liable for the deterioration, disappearance and any unrealized uses - in deviation from the legal provisions - not only to the extent of the care usually owed by it but to the extent of any negligent or deliberate conduct.
d) If the client can - at its option - demand a cure for the defect according to lit. a, rescind the supply contract or demand the payment of damages instead of performance, Praxair has the right to demand that the client exercise its rights within a reasonable period. If the client does not exercise its rights within the specified period, it is no longer entitled to demand a cure for the defect.
7.3 Claims of the client for defective goods and services fall under the statute of limitations within twelve months unless mandatory legal regulations provide for longer limitation periods.
7.4 In case of late delivery Praxair is legally liable according to the legal regulations unless stipulated otherwise in what follows below. Losses due to delays are limited to 1% of the net invoice amount for each full day of late delivery, not exceeding however 5% of net invoice amount for late delivery, with Praxair being liable only for contract-typical, reasonably foreseeable losses.
8. **Inspection and approval**
If an inspection and approval is provided for under the law or the contract, the provided goods and services must be inspected by the client for their conformity with the contract immediately upon delivery. If the goods and services conform to the contract, the client must advise Praxair immediately of its approval. The client must inform Praxair immediately in writing if it finds differences from the agreed-upon service contents. The inspection and approval is considered accomplished within two weeks after the provision of the goods and services, but at any rate after the client has started using the provided goods and services.
9. **Legal liability**
9.1 In case of a breach of duty under or outside the contract, including in case defective goods and services are provided, Praxair is liable to pay damages and reimburse expenses only in case of malice aforethought, gross negligence or a minor negligent violation of essential contract obligations. Claims for damages due to consequential losses arising from the defect are excluded if legally permitted. In case of a criminal violation of essential contract obligations Praxair is liable only for contract-typical, reasonably foreseeable losses, except in cases of malice aforethought. In all other respects the legal liability for minor negligence is excluded, but in any event limited to the amount of the purchase price. The above legal liability exclusions and/or restrictions do not apply in case of personal injury.
9.2 In case of the bad-faith concealment of a defect or in case of the assumption of a guarantee for the quality of a product at the time the risk is transferred, the rights of the client are governed exclusively by the legal regulations. The legal liability of Praxair under the product liability laws is not affected hereby.
10. **Force majeure**
The contracting parties are not legally liable for any nonperformance or delay as a result of force majeure. Force majeure are considered in particular natural disasters, fire, riots, war, sabotage, explosions, strikes, lockouts, mobilization, power failures and loss of raw materials, machine damage due to reasons other than defective maintenance, unusual traffic and road conditions as well as other facts that are outside the control of the affected contracting party. If Praxair's ability to manufacture and/or provide the products and services is only partly affected by force majeure, Praxair has the right to divide the remaining capacities on a prorated basis among the client and other customers.
11. **Compliance with export controls**
The client undertakes to comply with all applicable export controls in force under the laws of the United States of America (these are at any rate the Export Administration Regulations, 15 C.F.R. Parts 730-760 and/or the International Traffic in Arms Regulations, 22 C.F.R. Part 120 - 130) and the governmental authority of any other country with responsibility for the parties or the legal transactions that are subject to these conditions. This includes not transferring, exporting or re-exporting any goods or technical data supplied by Praxair to a person or a destination if such transfer, export or re-export represents a violation of the export control regulations. The buyer undertakes to provide Praxair with all export control information that Praxair might need in order to be able to comply with the export control regulations. This is as a minimum the name and address of the end user, the type of the end use of each product purchased from or processed by Praxair and the country of the final destination. Praxair reserves the right to withhold any order placed by the client if it is determined that it violates or is suspected of violating export controls. This applies also if no export or re-export permit can be obtained from the responsible authority for an order. Praxair has the right to cancel contracts subject to such conditions without notice if the client violates the provisions of this paragraph. The provisions of this paragraph survive the termination of the contractual relationship.
12. **Severability clause**
If the event that an individual provision is or becomes invalid, such event will not affect the validity of the remaining provisions.
13. **Choice of law, legal venue and place of performance**
13.1 The laws of the Federal Republic of Germany apply. The validity of the UN Convention on the International Sale of Goods is excluded.
13.2 The legal venue is Düsseldorf if the client is a businessperson, a legal entity under public law or a special-purpose fund under public law.
13.3 Unless stipulated otherwise, the place of performance with regard to Praxair's goods and services is the plant of Praxair that is responsible for the shipment.
14. **Privacy**
Praxair processes the contact data of the client and its contact persons automatically. If personal data are processed, such data are processed only in compliance with the provisions of the General Data Protection Regulation and the Federal Law for Data Protection.