

**[General Conditions of I.C.S. \(Industrial Cryogenic Services\) B.V. and I.C.S. Belgium B.V.B.A.](#)**

These conditions have been filed with the Chamber of Commerce under number 18060769. They may be requested via the Chamber of Commerce.

These conditions are also available on I.C.S. website.

**1. General**

In these conditions the following terms have the following meaning:

- a. ICS: I.C.S. (Industrial Cryogenic Services) B.V. in Kaatsheuvel and I.C.S. Belgium B.V.B.A. in Antwerpen, the users of these general conditions which sell and insofar as possible lease, inter alia, various insulating packing/containers and cold products including dry ice, as well as carrying out work in that framework.
- b. Customer: Anyone with whom ICS has directly or indirectly made a contract and who by signing a document or in some other way has accepted the application of these general conditions.
- c. Leased goods: all machines, machine parts and/or materials which ICS possibly leases to the Customer.

**2. Applicability of these conditions**

2.1

These conditions apply to all offers of and contracts with ICS, and to work which ICS carries out on instruction of the customer.

2.2

The customer's general conditions, howsoever called, are hereby explicitly rejected.

2.3

The applicability of the customer's general conditions are without prejudice to the applicability of ICS' general conditions. In the event of a conflict between the articles of ICS' general conditions and the customer's general conditions, the articles in ICS' conditions will prevail.

2.4

The customer who according to these general conditions has made an agreement with ICS, is deemed in the event of additional agreements to have tacitly agreed to the applicability of these conditions.

2.5

If any provision of these conditions is null and void or has been annihilated, remaining provisions of these conditions shall fully remain in force and ICS and customer shall discuss in order to agree on a new provision to replace the null c.q. the annihilated provision, whereby the purpose of the null c.q. the annihilated provision shall be taken into account.

2.6

ICS is entitled to unilaterally modify and/or complete these conditions via notification to the customer.

2.7

The Dutch version of the conditions is authentic, meaning that, if a translation of the Conditions is used, the Dutch version shall at any time prevail and shall be decisive in case of inconsistencies, ambiguities or disputes regarding the interpretation of the text.

### **3. Offers and making of the agreement**

#### 3.1

All offers of ICS have a validity of one month, unless otherwise agreed in writing.

#### 3.2

An agreement is made at the time that the customer has accepted ICS' offer in writing or verbally. An agreement is also made after the customer has placed an order and ICS has confirmed this order in writing.

#### 3.3

ICS explicitly reserves the right to refuse the accepted offers without stating any reasons or to only effect delivery subject to advance payment or the giving of security, without ICS being held liable herefore.

#### 3.4

Any additions or changes to the agreement are only binding on ICS if and insofar as these additions or changes have been confirmed in writing.

#### 3.5

All products, containers, illustrations, drawings, details concerning weights, dimensions, colours, etc., which occur in offers, brochures, price lists, circulars, ads and other documents furnished by ICS are approximates and are not binding and can therefore not lead to an obligation to pay compensation in any way.

#### 3.6

Every agreement is entered into by ICS on the condition precedent that the customer is, in ICS' opinion, sufficiently creditworthy for the monetary performance of the agreement. If the customer is not sufficiently creditworthy, ICS is entitled to demand security of the other party that the payment obligation will be performed in full or to demand that the other party pay the assignment in advance.

#### 3.7

If it turns out during the (performance of the) agreement that the other party, in ICS' opinion, is not sufficiently creditworthy for the monetary performance of the agreement, ICS is entitled to demand security from the customer for the payment obligation or to demand advance payment.

### **4. Prices**

#### 4.1

The prices of ICS are based on the price-determining factors known at the time the agreement is made, such as purchase prices, salaries, currency exchange rates and levies imposed by a public authority. In the event of a change in one or more of these factors, ICS is entitled to adjust its prices accordingly.

#### 4.2

If the price adjustment in conformity with the matters set out in 4.1 is 10% or more within three months after the making of the agreement, the customer has the right to dissolve the agreement provided the customer pays for the services provided or the goods delivered.

### **5. Delivery method and delivery term**

#### 5.1

Delivery takes place at the time when the goods and, if applicable the leased goods, are delivered at the agreed and/or usual place and time. Unless explicitly otherwise agreed, delivery is effected 'Delivery at Place' (DAP), in conformity with the Incoterms 2010.

5.2

Customer guarantees good accessibility of the place set out in paragraph 1 for the relevant transport vehicle. If the leased goods cannot be delivered due to inadequate accessibility of this location, ICS has the right to charge the customer for the transport and the lost hire fee, if the latter applies.

5.3

ICS has performed its delivery obligation by presenting the goods to the customer one time at the place specified and agreed by the customer. The customer is bound to take receipt of the goods during that delivery. In the event of failure to do so the goods will be stored at the customer's expense and risk.

5.4

In the event the customer, after having been so summoned, does not pick up the goods from the storage place specified by ICS within two months, ICS is entitled to do what it wants with the goods without the customer's obligations under the agreement lapsing. The customer will therefore be bound to pay all costs incurred and profit lost by ICS.

5.5

The delivery terms specified by ICS are always approximate and time is therefore never of the essence.

5.6

An approximate delivery term will start no earlier than that all details necessary for the performance or delivery are in the possession of ICS and any security or advance payment which has been stipulated has been received by ICS. ICS assumes that it will not be hindered in the performance and completion of the assignment by factors which were not present or known or deemed to be known when the agreement was made.

5.7

Upon exceeding of the approximate delivery term ICS is only bound to pay compensation if it has been given notice of default by the customer and the customer has given ICS a term of 30 days to perform its obligations.

5.8

Additions and/or changes to an agreement which has already been made can entail that the delivery term is exceeded. ICS can never be held liable for such delays as such is the result of the customer's actions.

## **6. Shipments on inspection**

6.1

If goods are sent on inspection by ICS or on the customer's request, the customer must return these goods to ICS, if he so wishes, at latest within the term set out on the packing note.

6.2

If the goods are not returned within the term set out in 6.1, the date when the sales contract is made is the first day after the expiry of the possibility to return the goods. The price is the price which is set out on the on-inspection invoice or note.

6.3

The customer must take care of the on-inspection goods as a good custodian. Damage, use and consumption costs and the like arising due to and/or during the time the on-inspection goods are with the customer, are at the customer's expense. On-inspection goods which are damaged to such extent that they are no longer suitable for sale, will not be taken back by ICS.

6.4

In the event the goods delivered in the framework of an on-inspection shipment become damaged or are lost during the period set out under 6.1, ICS is entitled to recover the repair costs or replacement costs from the customer.

6.5

During the period mentioned in 6.1 the delivered goods will remain the full property of ICS. The customer must keep these goods identifiable for ICS by means of numbers, symbols, etc.

6.6

On-inspection goods may not be dismantled.

6.7

On-inspection shipments are subject to all provisions of these general conditions.

## **7. Work**

7.1

In the execution of work on instruction of the customer, ICS has the right to have certain work executed by third parties.

7.2

The customer will see to it that ICS can execute its work without disruption and at the agreed time and that in the execution of its work it has disposal of the necessary

- facilities, such as:
- gas, water and electricity;
- heating;
- lockable dry storage area;
- on the basis of the facilities prescribed by Dutch Occupational Health and Safety legislation and regulations.

7.3

The customer is liable for all loss resulting from loss of goods, theft, incineration or damage of tools, materials and other goods of ICS which are located at the place the work is carried out.

7.4

If the customer does not perform his obligations as described in the previous paragraphs and this results in delay in the execution of the work, the work will be executed as soon as ICS' planning permits such. In addition, the customer is liable for all loss ensuing therefrom for ICS.

7.5

The work is deemed completed when:

- the customer has approved the work;
- the customer has taken the work into use;
- ICS has notified the customer in writing that the work has been completed and the customer has not stated in writing within 14 days after the notification whether or not the work has been approved;

7.6

If the customer does not approve the work, he will give ICS the opportunity to execute the work again.

## **8. Lease conditions**

8.1

These conditions apply to all contracts of rental and lease which are entered into by ICS, insofar as it acts as lessor in this respect.

## 8.2

The lease contract is entered into for periods of days, weeks and/or months, unless otherwise agreed.

## 8.3

If the customer does not make use of the leased goods, this will be at the customer's risk and will therefore not be of influence on his payment obligations, unless the inability to use the leased goods is of an unreasonably long term, to be evaluated by ICS.

## 8.4

The hire fee owed by the customer will be calculated over the agreed lease period, subject to the provisions in Article 8.14. If the customer exceeds the term of this lease period, ICS is entitled per day the term is exceeded to charge a day's extra hire fee to the customer in conformity with the day price charged by ICS.

## 8.5

The customer will sign the receipt report to be presented upon delivery for the correct and full delivery and for the condition of the leased goods. If delivery takes place while the customer is absent, a receipt report will be left at the customer's. The customer must inspect the leased goods on the basis of this report and immediately notify ICS of any discrepancies by telephone. If the customer does not return the receipt report before the start of the work, the customer automatically states to agree to the correct delivery and condition of the leased goods and to the contents of the receipt report.

## 8.6

As soon as the leased goods are made available to the customer he will be fully responsible and liable for the leased goods and the use thereof is fully at his expense and risk. The customer will take care of the leased goods as a good custodian and will secure them sufficiently.

## 8.7

The customer will use the leased goods in an expert manner and only in conformity with the purpose for which they have been made.

## 8.8

During the lease period the customer is obliged to observe all relevant safety regulations or other regulations established by the government. The customer indemnifies ICS against all loss ensuing from the customer's failure to observe these regulations.

## 8.9

The customer is not permitted

- a. to transport the leased goods to another location or use them for other work than that for which the leased goods are intended.
- b. to carry out repairs on the leased goods or to fit replacement parts and/or make other changes to the leased goods, subject to ICS' explicit prior consent.
- c. to lease, pledge or encumber the leased goods or to place the leased goods at the disposition of a third party in any other way.

- 8.10  
The customer will provide the leased goods with the right fuel, will charge the batteries if any and regularly clean the leased goods.
- 8.11  
The customer will daily inspect the leased goods as to the proper working and the condition of the various liquid systems of the leased goods, such as hoses and connections.
- 8.12  
In the event of theft of the leased goods or if damage, threatened damage or any defect is noted in the leased goods, the customer is obliged to immediately notify ICS. In the event of theft the customer is obliged to immediately report the matter to the police.
- 8.13  
On ICS' request the customer is obliged to make the leased goods available for inspection and/or other than daily maintenance. The customer gives ICS permission in advance to access the buildings and sites of the customer or the buildings and sites where the leased goods are located.
- 8.14  
The customer must notify ICS of the return of the leased goods at latest one working day before the end of the agreed lease period or as much earlier as the customer wishes to return the leased goods unless otherwise agreed. If the customer gives notice of the return of the leased goods on the day when the leased goods are picked up or returned, ICS has the right to charge a day's extra hire fee.
- 8.15  
The customer will return the leased goods in clean condition, with charged battery and/or a full tank of fuel. If the leased goods are not returned in clean condition, ICS is entitled to charge the customer cleaning costs in the amount of € 50 per hour.
- 8.16  
At the end of the contract there will be an inspection and ICS will draw up an inspection report of which the customer will receive a copy in the event of deviations with regard to the condition of the leased goods upon delivery. If the customer does not perform these obligations or the leased goods are otherwise not in order, the extra costs which ICS incurs are at the customer's expense.
- 8.17  
During the period that the leased goods are under the customer's control, the customer is liable to ICS for all damage to the leased goods, regardless of whether this damage is reimbursed by any insurance. Damage must also be understood to mean missing items, embezzlement, alienation, theft and total loss.
- 8.18  
The customer is liable for all damage caused by or due to the use of the leased goods during the period that the leased goods are under the customer's control, regardless of whether this damage is reimbursed by any insurance.
- 8.19  
The customer indemnifies ICS for the term of the contract against all claims of third parties for compensation connected with the leased goods or the use of the leased goods.
- 8.20  
During the period that the leased goods are in the hands of the customer, the customer is obliged to take out comprehensive bodywork insurance on behalf of the leased goods, on the basis of the acquisition value of the leased goods and the bodywork, with ICS as co-insured.

8.21

If the leased goods are lost or damaged, the insurance payout must be paid to ICS.

## 9. **Cancellation**

9.1

An agreement can never be cancelled without ICS' written consent.

9.2

If ICS does agree to cancellation by the customer, the customer is obliged to compensate ICS for all expenses and costs made with an eye on the agreement and to bear the expense of the materials and other items intended for the performance of the agreement at the costs made by ICS, and to compensate for the profit lost by ICS, which will then be fixed at 25% of the amount to be paid by the customer without the cancellation.

9.3

If ICS does not give written consent for the cancellation of the agreement, ICS reserves all rights to demand full performance of the agreement and/or full compensation.

## 10. **Payment, interest and collection costs**

10.1

Payment of the amount invoice by ICS must be effected without any deduction or set-off within 14 days after the invoice date.

10.2

In the event of non-payment, late payment and/or incomplete payment the customer will be in default, without notice of default being required. In the event of default the customer will owe ICS over the amounts then owed to ICS interest of 1% per month, or the statutory interest if greater.

10.3

If the customer is a legal entity, or a natural person acting in the course of a profession or business, extrajudicial collection costs of 15% of the principal owing, with a minimum amount of € 75 will be owed.

10.4

ICS is entitled to invoice in instalments. The provisions laid down in this article relating to total invoices apply equally to the partial invoices.

10.5

If necessary, payments by the customer will first be put toward paying the interest and costs owed by the customer and only after that will they be deducted from the oldest outstanding invoice.

10.6

Advertising and/or guarantee claims under consideration do not give the right to postponement of payment or partial payment on the part of the customer.

## 11. **Retention of title**

11.1

ICS retains title to all goods sold and delivered by it, until the customer has fully performed his obligations under the agreement and these general conditions.

#### 11.2

The customer is bound to store the goods purchased and delivered subject to retention of title with due care and as the recognisable property of ICS. The customer is therefore not free, without ICS' written consent, to alienate, lease, give into use or decommission, pledge or otherwise encumber the goods before that time. Costs of loss, damage and contamination are at the customer's expense.

#### 11.3

If third parties attach goods subject to retention of title or wish to establish or rights in respect thereof, the customer is obliged to immediately notify ICS thereof.

#### 11.4

The customer undertakes on ICS' first request to place the goods at ICS' disposal and hereby grants irrevocable authorisation to ICS or to the persons designated by ICS to access the place where the goods are located in order to retrieve the goods, without giving the customer notice of default.

### 12. Force majeure

#### 12.1

ICS understands force majeure to mean: every shortcoming in the performance which according to the law, legal transactions or commonly accepted standards cannot be attributed to ICS. This in any event includes situations of war, strike, riot, fire, transport difficulties, failure to obtain the requisite permits, government measures, including import and export injunctions, business disruptions at ICS or at suppliers or producers of ICS, illness of personnel and other cases, whereby ICS cannot perform its obligations with regard to the customer, but which are not attributable to ICS and cannot reasonably be insured.

#### 12.2

If a shortcoming is temporary in nature, ICS has the right to suspend the performance of its obligations under the agreement until the circumstance which causes the shortcoming no longer arises. The customer will not in any way be able to enforce any right to compensation of costs, loss and interest.

#### 12.3

If the shortcoming is permanent in nature, the parties will make an arrangement on the cancellation of the agreement and the related consequences.

#### 12.4

In any event ICS is entitled to demand payment for the performance which it effected in the performance of the relevant agreement up to the time of the non-attributable shortcoming.

### 13. Cancellation

#### 13.1

In the event the customer:

- a. is declared bankrupt or petitions for bankruptcy, is subject to a moratorium on payment or has applied for a moratorium on payment, relinquishes his assets or in the event the whole or part of his property is attached;
  - b. does not perform any obligation under the agreement or these general conditions or on the basis of the law;
  - c. he fails to pay an invoice amount or a part thereof within the stipulated term;
  - d. he ceases or transfers his business or an important part thereof;
- all claims of ICS on the customer are immediately due and ICS is entitled without further notice of default and without judicial intervention to suspend his obligations under the agreement in whole or in part or to cancel the agreement.



13.2

Without prejudice to the provisions under 12.1 ICS reserves the right to demand full compensation of loss, costs and interest.

#### **14. Complaints**

14.1

The customer is obliged to check the delivered goods and received invoices immediately after delivery or after receipt as to quantity, mistakes and defects.

14.2

All complaints must have been presented to ICS in writing at latest within eight working days after delivery or receipt. After the expiry of this term, which starts to run on the day after delivery to the customer or after receipt, the quality and the quantity of the delivered goods or received invoice will be deemed to be fully in accordance with the customer's wishes and in accordance with the agreement.

14.3

ICS must be given the opportunity to check complaints which have been submitted. The mere fact that ICS takes a complaint into consideration does not imply that the complaint will be acknowledged. If ICS deems the complaint well founded ICS has the right, at its election:

- to revise the invoice and change the invoice amount accordingly;
- to replace the delivered goods with goods with the same specifications or to repair the goods, whereby the replaced goods or parts will be given to ICS;
- to retrieve the delivered goods and to cancel the agreement in return for restitution of the invoice amount paid by the customer without being bound to pay any compensation.

14.4

For the redelivery of goods in accordance with the agreement the customer must give ICS the necessary time, which is usual for the redelivery of these kinds of goods in the industry. The replaced goods will become ICS' property.

14.5

Complaints will in any event not be acknowledged if mistakes or defects are due to careless storage or unskilled handling and/or use by the customer. This will in any event be the case if the customer has not treated the goods in accordance with the rules and guidelines presented by ICS.

14.6

Any return of goods of the customer will be effected at the customer's expense and risk. ICS will only accept goods which have been sent back if and insofar as it agrees to this return in writing and only when these goods are delivered to the address specified by ICS in the original packing and in the condition in which ICS delivered these goods to the customer.

## **15. Guarantee**

15.1  
ICS guarantees the quality of the services provided by it to the best of its knowledge and ability and the fitness and good quality of the goods supplied by it, on the understanding that the guarantee goes no further than set out in the following provisions.

15.2  
A guarantee is only given on the goods supplied by ICS or on repairs executed on said goods, as such guarantee was granted by the relevant supplier or manufacturer of the goods to ICS and such guarantee is performed with regard to ICS on the condition that the customer has fully performed his payment obligations to ICS.

15.3  
The customer must deliver the goods which are eligible for replacement or repair at his own expense and risk at the address specified by ICS.

15.4  
If the customer has instructed ICS to execute a repair and has not retrieved the relevant item within two months after it has been presented for repair for payment of the amount owing in relation to examination or repair, the customer will be deemed to have relinquished the item presented for repair to ICS. In such case the customer will indemnify ICS against all claims of third parties with regard to this case.

15.5  
The customer cannot make a claim on these guarantee provisions:

- a. if the customer has neglected the goods;
- b. if the customer has made changes to the goods, including repairs which were not executed by or on behalf of ICS;
- c. in the event of unskilled or careless use, incorrect connection, incorrect voltage, lightning strike, damage due to the effects of moisture or other external causes or disasters;
- d. if the device is not maintained in the usual manner or the manner described in the instructions for use;
- e. if the device is used with unsuitable or incorrect accessories.
- f. if the customer has treated the goods carelessly in some other way, including removal, damage or change of identification numbers, symbols, etc.

## **16. Liability**

16.1  
ICS is liable for tangible loss which the customer suffers and which is directly and exclusively the result of a default attributed to ICS. However, only the loss against which ICS is insured, or should reasonably have been insured, is eligible for compensation.

16.2  
Consequential loss and trading loss including such things as stagnation loss and lost profit are not eligible for compensation, nor is the loss which is caused by intent or wilful misconduct of agents.

16.3  
Processing of the delivered goods must take place in conformity with the instructions and guidelines of ICS or its suppliers or manufacturers. ICS is not liable for any loss as a result of unskilled use or unskilled processing of the delivered goods.

16.4  
With regard to the supply of cryogenic products or dry ice, ICS' liability immediately ends upon delivery of the product as arranged in Article 5.

## **17. Disputes and applicable law**

### **17.1**

The relationship between ICS B.V. and the customer is exclusively governed by Dutch law.

### **17.2**

The relationship between ICS Belgium B.V.B.A. and the customer is exclusively governed by Belgian law.

### **17.3**

All disputes which might arise between the parties in connection with or in relation to an agreement made between them, including those disputes which only one of the parties deems a dispute, will be decided by the civil court with jurisdiction in the district where ICS B.V. is based respectively I.C.S. Belgium B.V.B.A., insofar as statutory provisions permit such.

### **17.4**

The provisions under 16.2 are without prejudice to ICS' right to present the dispute to the court with jurisdiction according to the normal jurisdiction rules or to have the dispute resolved by means of arbitration, a binding advisory opinion or mediation.