



## GENERAL CONDITIONS OF SALE

Unless otherwise expressly provided for in the order or order confirmation of **LNI Swissgas S.r.l.** (hereinafter the “**Seller**”), the sales of the products and/or the services rendered by the latter are governed by these General Conditions of Sale (hereinafter the “**General Conditions**”) which supersede any conflicting provision printed on the forms utilised by the parties or by the buyer (hereinafter the “**Buyer**”).

### 1. PRODUCTS AND ACTIVITY

The Products covered by these General Conditions are those worked and/or manufactured and sold by the Seller at the time the order is placed (hereinafter the “**Products**”). Catalogues and promotional material shall not constitute an offer and may be modified by the Seller at any time without notice. The information and the technical characteristics of the Products contained in the catalogues, price lists, the promotional material and in the Seller’s internet website are indicative and do not bind the Seller.

### 2. ORDERS AND ORDER CONFIRMATIONS

2.1 Orders shall be made in writing and shall be firm for 30 (thirty) working days from their receipt by the Seller. Orders shall be deemed accepted and binding upon the Seller only upon receipt by the Buyer of the duly signed order confirmation from the Seller.

2.2 Should the order confirmation contain modifications in respect of the order, such modifications shall be deemed accepted by the Buyer after five (5) days of receipt thereof unless notice of disagreement is given within the above period.

### 3. PRICES

3.1 Unless otherwise indicated in the order confirmation, prices of the Products are those indicated in Seller’s prevailing price list as of the date of receipt of the order. Such prices are expressed in Euros, V.A.T. or other sales tax or duty excluded.

3.2 In case of substantial variations in the costs (in particular, without limitation, costs of materials and workmanship), or in case of any other fact or circumstance which may affect the price of Products during the execution of the contract, prices may be varied by Seller even after confirmation of the order, should delivery take place beyond the agreed date for any reason not directly ascribable to it.

3.3 Unless otherwise agreed upon in writing, prices are for delivery EXW Seller’s offices at Via dell’artigianato 7, 35036 Montegrotto Terme (PD), Italy (Ex Works - Incoterms 2010) and do not include (i) shipping, transport and insurance costs of the Products, (ii) duties, taxes and other official charges payable upon exportation of Products from Italy and or importation into the territory of the Buyer, and/or (iii) any other cost after delivery at Via dell’artigianato 7, 35036 Montegrotto Terme (PD), Italy, which shall remain for the Buyer’s sole account. Any special packaging is to be quoted separately by the Seller, as Products are supplied with standard packaging.

### 4. PAYMENT

4.1 Terms and methods of payment are those indicated in the Seller’s order confirmation unless subsequently modified by an express declaration of the Seller. Unless otherwise specified the payment shall be in advance.

4.2 Irrespective of what set out in the order confirmation, payment shall be deemed effected at Seller’s offices. The delivery of bills of exchange, cheques or other negotiable instruments by the Buyer shall not be considered as payment nor determine the shifting of the place of performance or the novation of the original obligations. All costs for issuance of the bills of exchange, cheques or other negotiable instruments including all relevant banking expenses, are for the Buyer’s account.

4.3 Whenever a down-payment is agreed, same shall be paid by the Buyer at the time the order is signed. The down-payment shall not bear interest and will be promptly reimbursed to the Buyer should the relevant order not be confirmed by the Seller within the period specified in paragraph 2.1 above.

4.4 In case of payment by instalments, the Buyer shall deliver to the Seller the required negotiable instruments (cheques etc.), together with any security which may have been agreed. Should the Buyer fail to honour even one instalment or diminish the security granted to the Seller, the latter shall have the right - without prejudice to what set forth under paragraph 4.7 hereunder in favour of the Seller - to claim for immediate payment of the entire outstanding amount with forfeiture of any term benefit.

4.5 In case of payment by direct remittance, it shall be made by means of bank transfer via SWIFT - value date in favour of the beneficiary equal to the day on which payment is due – to the bank indicated by Seller.

4.6 In case of payment by irrevocable Letter of Credit (L/C) same shall be issued pursuant to the ICC Uniform Customs and Practice for Documentary Credits in force at the time of the order (at present revision No. 600). The L/C shall be irrevocable, confirmed by a first class Italian bank and satisfactory to the Seller, transferable in whole or in part, payable at sight and negotiable against the documents mentioned therein. Should the Seller not require confirmation of the L/C, payment and negotiation thereof shall, in any event, be effected at the counters of the advising bank. The opening of the L/C shall be notified to the Seller by the confirming or advising bank, as the case may be, without delay from receipt of the order confirmation by the Seller. Failure to do so shall automatically cause the cancellation of the order unless Seller otherwise communicates.

4.7 In case of non-payment or delayed payment, in whole or in part, the Buyer shall be charged with interest at the rate provided for in Art. 5 of Italian Legislative Decree no. 231/2002. In such an event the Seller shall be further entitled to forthwith:

1. suspend the production or delivery of any Products and orders in progress;





2. terminate the relevant sale contract;
3. claim for refund of all damages suffered as a consequence of the non-payment or delayed payment;
4. retain the down-payment and any other amounts so far paid by the Buyer, without prejudice to Seller's right to proceed for the recovery of any additional damages it may have suffered as a result thereof.

4.8 The Buyer shall not be entitled to suspend or delay any payment in case of complaints, defects of the Products or delay in delivery by the Seller.

4.9 The sale of the Products from the Seller to the Buyer do not rise any exclusive territorial right for the Buyer and it does not grant the latter any right or title to be considered as distributor or concessionaire of the Seller.

## 5. DELIVERY

5.1 Regardless of what agreed upon with respect to transport costs and/or any reference to the Incoterms and/or in the purchase order or order confirmation, delivery, identification of the Products and the relevant transfer of risks shall be deemed effected EXW at the Seller's facilities at Via dell'artigianato 7, 35036 Montegrotto Terme (PD), Italy (Ex Works - Incoterms 2010) with the loading of the Products onto the means of transport of the carrier entrusted therewith.

5.2 Unless otherwise expressly agreed upon by the parties, all costs regarding delivery and shipment of the Products are borne by the Buyer.

5.3 Time of delivery shall be calculated in working days and shall not be of the essence. Delivery periods are in no case less than 15 (fifteen) days from Seller's receipt of the order. In case down-payments are agreed, the relevant delivery period shall start from receipt by the Seller of the down-payment.

5.4 Delivery may be suspended by the Seller (i) in case of failure by the Buyer to effect the down-payment provided for in paragraph 4.3 or even the one instalment provided for in paragraph 4.5 or in case of not opening of the L/C provided for in paragraph 4.6, (ii) until all technical and administrative data and information required to properly fulfil the order are received.

5.5 Should Seller be prevented from meeting any delivery date due to lack or delayed deliveries on the part of the suppliers, interruption or suspension of transport or energy, strikes or union agitations or by reason of any other event beyond its reasonable control, time of delivery shall cease to run from the day of communication of the impediment to the Buyer. In case the impediment of material deliveries lasts for more than 60 (sixty) days, each party shall be entitled to terminate the contract by giving written notice to the other, without any compensation or indemnity being due by the Seller which will have in any case the right to have the Products already manufactured for the Buyer at the time of the communication of the impediment, duly paid by the Buyer.

## 6. INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS

6.1 The Buyer shall not register or assign the trademark "LNI Swissgas" of the Seller (hereinafter the "Trademark") or any other Seller's distinctive marks nor use the Trademark or other Seller's distinctive marks, trademarks, names or expressions to register domain names and/or to build internet sites or web pages, even for the purpose of the promotion and resale of the Products. The Buyer is not allowed to insert or display the Trademark and/or the Products on its own web sites or home pages. The Buyer shall not apply for any patent or any intellectual/industrial property protection in any other form by utilizing any technical or production information of the Seller or the information provided by the latter. In case of express written authorisation by the Seller to the registration, the registration is to be considered as effected on behalf of the Seller and the Trademark, the domain name and/or the patent, utility model et cetera must, therefore, be assigned back to the Seller.

6.2 The Buyer acknowledges that the Seller is the only exclusive owner of the intellectual property rights of the Seller, whether titled or untitled also according to article 2598 of the Italian civil code, on the Products and their components as for example the technical documentation, schemes, electronic boards and/or drawings made by the Seller and must keep strictly confidential and secret all technical and commercial information related to the Seller as well as to the know-how and show-how utilised by Seller in the working or manufacture of the Products: as one of the consequences thereof the Buyer shall not deposit or register as industrial and intellectual property right, inventions, procedures or technical solutions developed by the Seller.

6.3 The Buyer further acknowledges the exclusive intellectual property rights of the Seller on the tooling and moulds used for the working and manufacture of the Products, even if the tooling and moulds have been paid by the Buyer: as one of the consequences thereof the Seller has the right to keep and hold back the tooling and moulds also after the termination of the business relationship with the Buyer

## 7. NON-COLLECTION

Except as otherwise communicated by the Seller, the Buyer shall collect the Products on the day indicated in the order confirmation. After 10 (ten) days have elapsed without the Buyer having collected the Products, the Seller shall be entitled to forthwith terminate the sale contract by giving written communication thereof to the Buyer, save – in any case - for Seller's right to claim payment of the penalty fee provided for under paragraph 8 here below, as well as compensation of any further damage it may have suffered as a consequence of non-collection of Products by the Buyer. The Seller shall be further entitled to definitely retain the down-payment and any instalments so far paid by the Buyer and sell the Products to third parties by giving notice to the latter of the terms and conditions of the sale at least 10 (ten) days in advance. Any difference between the contractual price (increased by any custody and preservation costs) and the price actually recovered from the sale shall constitute a debt of the Buyer and shall yield interest at the rate set forth in paragraph 4.7 above.





## 8. PENALTY CLAUSE

In case of cancellation by the Buyer of a firm and/or confirmed order as well as in case of non-collection of the Products by the Buyer, the latter shall pay to the Seller a penalty fee equal to 10% (ten per cent) of the value of the cancelled order and/or non-collected Products, without prejudice to Seller's right to claim compensation of any further damages suffered in connection therewith.

## 9. WARRANTY

9.1 Supplier guarantees that the Products are free from defects in material, workmanship and design under normal use and maintenance and are worked and/or manufactured according to the technical specifications. NO FURTHER EXPRESS OR IMPLIED WARRANTY, WHETHER BY OPERATION OF LAW OR CONVENTIONAL, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR SPECIFIC PURPOSES, IS GRANTED BY THE SELLER TO THE BUYER.

9.2 The warranty shall not apply in case of (i) Products damaged in transit, (ii) improper installation and/or assembly, use, application and/or maintenance of the Products, inappropriate use or use in violation of the instructions on the user manual (in particular, electricity supply tension, exceeding the temperature limit, violation of the indicated precautions, movement, etc.) (iii) damages caused by natural disaster, atmosphere incident, overvoltage or overcurrent, accident, fire or other casualty or negligence not ascribable to the Seller, (iv) failures resulting from modifications or alterations of the Products not effected by the Seller, (v) damages occurred during repair and/or replacement operations not effected by the Seller, (vi) normal wear and tear, (vii) damages incurred during Buyer's default in payment

9.3 The Buyer shall, subpoena of forfeiture, examine the Products immediately after arrival and notify, subpoena of forfeiture, the Seller of any incomplete or non-conforming consignments as well as of any patent defects discovered by it and/or its customers without delay and in any case not later than 8 (eight) days thereafter, clearly indicating the defective Product, the Product code, the relevant consignment lot and delivery date and the nature of the defect.

Likewise, hidden defects shall be notified, subpoena of forfeiture without delay and in any case no later than 8 (eight) days from discovery by the Buyer and/or its customers, clearly indicating the defective Product, the Product code, the relevant consignment lot and delivery date and the nature of the defect.

In no event shall the agents, buyers or intermediaries of the Seller be entitled and have the authority to represent and bind the latter towards the Buyer or any third party. For the purposes hereof any notice of complaint for defects in the Products will, therefore, be of no effect if made to the Seller's agents, buyers or intermediaries.

9.4 The Buyer shall hold the defective Products at Seller's disposal for a reasonable period of time in order to permit the inspection thereof and no returns are allowed without the latter's prior written authorisation. Upon Seller's request, the replaced parts shall be returned to the latter by the Buyer DDP (named place of destination) at Via dell'artigianato 7, 35036 Montegrotto Terme (PD), Italy (Incoterms 2010).

9.5 Should any defect be notified timely and acknowledged by the Seller, it will repair or replace or work again - at its sole discretion - within the usual time required therefore the defective Products Ex Works Via dell'artigianato 7, 35036 Montegrotto Terme (PD), Italy (Incoterms 2010), ANY OTHER INTERVENTION AND REMEDY AS WELL AS ANY RESPONSIBILITY FOR DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES BEING, TO THE EXTENT PERMITTED BY LAW, EXPRESSLY EXCLUDED AND WAIVED BY THE BUYER, INCLUDING, WITHOUT LIMITATION, THE RIGHT OF REDRESS PROVIDED FOR BY ARTICLE 131 OF THE ITALIAN CONSUMER CODE.

9.6 The warranty hereof shall be valid for a period of 1 (one) year from the date of delivery of the Products and in no event shall the validity period of the warranty be affected by the non-use of the Products by the Buyer. It is however agreed that Seller is not responsible for parts worked and/or processed by third parties and for material supplied by the Buyer nor for the suitability of the Products for any particular end use, it being understood that the determination of said suitability is for the sole responsibility of the Buyer.

## 10. TERMINATION CLAUSE

Without prejudice to any express provision on termination contained in these General Conditions, the Seller shall have the right to terminate at any time the sale contract in case of breach or failure by the Buyer to perform or observe any material terms and conditions thereof, provided said breach or failure is not cured within 15 (fifteen) days of receipt of the relevant notice of complaint.

## 11. RETENTION OF TITLE

All Products delivered by the Seller to the Buyer are subject to the retention of title clause hereof, although not mentioned in the relevant order confirmations or in other documents of the Seller.

The Products shall remain the property of the Seller until the invoiced price and any other pertinent obligation of the Buyer have been fully discharged by the latter. In case of lack of or delay in payment and/or breach of duty by the Buyer, the Seller shall automatically be entitled to terminate the relevant sale contract and/or claim back the Products without any notice period being due. In such an event the Buyer shall be under the obligation to immediately return the Products to the Seller.

As long as the property has not passed to it, the Buyer shall be bound to treat the Products with the utmost care, have them insured at its own cost against theft, vandalism and any damages caused by fire, water or other acts of God for an amount at least equal to the purchase price, notify the Seller in writing and without delay of any levy of execution or interference by a third party and immediately inform in writing the third party of the existence of the retention of title in favour of the Seller. To the extent the third party is not able to reimburse the Seller the full cost sustained for asserting its claim, the Buyer shall be liable for and will refund the Seller any such amount promptly upon receipt of Seller's written request.





All necessary inspections and maintenance interventions on the Products shall be for the Buyer's account. The above notwithstanding, the Buyer is entitled to sell the Products even prior to passage of title, provided (i) a retention of title clause substantially in the form hereof has been previously agreed upon between the Buyer and its customer and (ii) the relevant sale price has been insured against default. The Buyer hereby irrevocably assigns to the Seller, who accepts, all claims under any such resale contract and relevant insurance policy, said assignment being valid and enforceable also in case the Products have been processed by the Buyer prior to resale. Even after assignment to the Seller and without this affecting or impairing the latter's rights thereunder, it will be the duty of the Buyer to collect payment from its customers and/or the insurance company on Seller's behalf. The Seller will, therefore, not enforce any assigned claim as long as the Buyer fulfils its obligations, pays without delay, no insolvency petition is filed by or against it and no material deterioration of its financial and/or patrimonial situation has occurred. In case of delay in payment or upon Seller's written request the Buyer shall promptly instruct in writing the customer to whom the Products under retention of title have been resold to effect payment directly to the Seller. A copy of any such instructions will simultaneously be transmitted to the Seller. Upon Seller's demand the Buyer shall further deliver it all supporting documents which are necessary or useful to enforce the assigned claims or assert Seller's rights under this retention of title clause.

As long as the property has not passed to the Buyer any treatment, processing or transformation of the Products shall be deemed to have been carried out on behalf and in the interest of the Seller and the retention of title in favour of the Seller shall automatically apply to the processed Products. Likewise, in case any Product is processed with other items not belonging to the Seller, the latter shall automatically acquire joint ownership of the new product in proportion to the market value of the Product to the aggregate value of the other items at the time of processing. The same applies in case of commingling.

According to art. 11 of the Legislative Decree of 9.10.2002 n. 231 in the event of payment by instalments, the Buyer undertakes to subscribe a copy of each invoice received by the Seller, reading as follows: "payment by instalments with retention of title (vendita a rate con riserva di proprietà) ex art. 1523 cc", and to return it to the Seller by registered mail.

In the event this retention of title clause is invalid, in whole or in part, according to the law of the country where the Products are situated, an equivalent security according to such law is considered as agreed between the parties. In such an event, the Buyer shall take all steps and carry out all formalities necessary to put in place such security and preserve the rights of the Seller. The same applies in case any claim assigned to the Seller is invalid or unenforceable, in whole or in part, under applicable law. Upon request of the Buyer, the Seller shall exempt the securities to which it is entitled as far as their value exceeds the claims' value to be secured by more than 10%.

## **12. GOVERNING LAW**

The sales contract ruled by these General Conditions as well as the working and manufacture of the Products shall be governed by the laws of Italy, the application of the April 11, 1980 Vienna Convention on International Sale of Goods being expressly excluded (except for what set forth in Article 11 thereof with respect to the form of the contract).

## **13. COMPETENT JURISDICTION**

13.1 Any dispute between the Parties concerning supplies governed by any order and/or order confirmation of the Seller and/or governed by these General Conditions will be submitted to the sole jurisdiction of the Courts of Milano, Italy.

13.2 As a partial derogation to what set forth under article 13.1 above, the Seller will have in any case the right to act, at its sole discretion, before the competent Court where the Buyer has its registered offices.

## **14. FINAL PROVISIONS**

14.1 Any sale contract ruled by these General Conditions may be amended only in writing, signed by each of the parties subsequent to the date of its execution.

14.2 Failure by Seller to enforce at any time any of the provisions of these General Conditions or of the sales contracts ruled thereby shall not be construed as a general waiver of such provision or of the right of the Seller to thereafter enforce each and every provision contained therein.

14.3 In the event any of the provisions of these General Conditions or any of the clauses of the sales contracts governed thereby will be declared null and void or ineffective or contrary to law, the remaining portions thereof shall continue in full force and effect and the offending portion shall be severed therefrom, unless such provision constitutes an essential part of the contract and has been an essential inducement for the Seller to enter thereinto.

