

# General Terms and Conditions of Business (GTC)

## Tyczka Neue Gastechnik Ges.m.b.H.

effective from: October 2015

- Scope and Validity:** These "General Terms and Conditions of Business (hereinafter referred to as „GTC“) apply to all contracts for deliveries and services of Tyczka Neue Gastechnik Ges.m.b.H. (hereinafter referred to as the "Tyczka").
- Offers and Prices:** Conclusion of Contract shall only be deemed to be made when Tyczka confirms the customer's order by statement or by actual delivery. Accordingly the customers shall be bound by his offer for 2 weeks of issuance. Published prices are non-binding and without any commitment on Tyczka's side. All prices are stated in Euro including Value Added Tax (VAT). Prices stated excluding VAT are only applicable for entrepreneurs as defined in the Austrian Consumer Protection Act. All rights and claims of Tyczka resulting from the customer's delay shall remain unaffected.
- Transfer of Risk – Default of Acceptance:** If Tyczka has informed the customer about its readiness to dispatch/deliver/provide services and the dispatch or delivery of the respective goods or services is delayed for reasons attributable to the customer, the customer is in default of acceptance and the risk of accidental perishing or deterioration is transferred to the customer. Tyczka is entitled to withdraw from the contract after having set 14 calendar days of additional respite, if the customer is in default of acceptance. If the customer is an entrepreneur in the meaning of the Austrian Consumer Protection Act, the risk of accidental perishing or deterioration shall be transferred to the customer as soon as the good is dispatched to him or a third party nominated by him other than the carrier.
- Due date of payment, contractual exclusion of set-off, restricted set-off, consequences of payment default:**

All payments have to be made promptly without any deduction. The customers shall pay interest of 5% p.a. for all amounts in default. In addition, the customer shall pay accrued reminder fee of EUR 10,00 (incl. VAT) for each justified reminder. In case of payment default, Tyczka is entitled to withdraw from the contract after having set 14 calendar days of additional respite and to get damages for non-performance. Tyczka is entitled to request prompt payment of all outstanding installments of a deferred payment agreement (termination), if i) Tyczka has fulfilled its obligations, ii) at least one installment of the customer is overdue since six weeks, iii) Tyczka has threatened to terminate the deferred payment agreement and ineffectively set another payment term of two weeks. Upon debit note the customers is obliged to pay a flat fee of EUR 25,00 (incl. VAT) for costs and fees. The customer is only entitled to any counterclaim, if the same is adjudicated, accepted by Tyczka or in connection with the consumer's obligation or if Tyczka is insolvent. In case of payment default, Tyczka is entitled to request cash payment or advance payment is a condition precedent for any delivery or service obligation to Tyczka. Additionally, during payment default Tyczka is entitled to cease delivery of liquefied petroleum gas (=LPG) and to shut down the LPG facility or the LPG coulometer as an interim measure. In such case, Tyczka is authorized to invoice a flat fee of EUR 250,00 for expenses. The flat fees listed in art. 4 shall be indexed in accordance with art. 10 of these GTC.
- SEPA Direct Debit Scheme:** The period of advance notice (pre-notification) is dependent on the agreed term of payment. The advance notice is part of the statement of account issued by Tyczka.
- Force Majeure, Disturbed Delivery, Refusal of Governmental Authorization:** Tyczka shall not be obliged to fulfill any delivery or service obligation hereunder, if the same is temporarily or permanently impossible, prohibited or due to Force Majeure or any other unforeseeable obstacles beyond Tyczka's reasonable control, f.e. fire, flood, earthquake, war, embargo, civil commotion, riot, blockade, governmental action, strike, lockout or similar labour or industrial hindrance, accident, machinery breakage, cancellation or reduction of the delivery to Tyczka in full or in part, regardless of these circumstances have an impact on Tyczka or its supplier (hereinafter referred to as „Force Majeure“). If such event of Force Majeure precludes the delivery or service for more than 30 calendar days, Tyczka and the customer are entitled to withdraw from the contract in full or in part. The contract shall be cancelled with immediate effect, if the same can neither be commenced or continued due to refusal of governmental authority.
- Use of LPG:** Upon ordering the delivery of gas, the customer warrants to observe all effective security regulations for the storage and use of gas to supply the delivered gas only to facilities and equipment duly certified and approved in accordance with legal and governmental regulations.
- Retention of Title:** Tyczka retains all rights of ownership of the goods supplied (hereinafter referred to as "Retained Goods") until complete payment of the purchase price including interest, dues, financing costs and other additional costs. The customer may not create any claim, mortgage, charge, lien or other encumbrance against the Retained Goods without Tyczka's approval. The customer shall promptly inform Tyczka of any garnishment or other encumbrance by third parties and shall support Tyczka to preserve its rights. The Retained Goods shall remain Tyczka's property until full payment even if integrated or incorporated in the customer's building of real property. In case of conjunction or amalgamation of the Retained Goods with other goods, Tyczka shall become co-owner thereof pro-rata the value of the Retained Goods. Objects not sold to the customer (f.a. rented LPG-tanks, refuelling instruments (excl. gas pressure regulator) remain the property of Tyczka and shall not become part of the real property or building). In case the customer is entrepreneur in the meaning of the Austrian Consumer Protection Act the following is agreed: The customer may resale the Withholding Goods in his ordinary course of business, if the same have not been delivered to him as a consumer. As a security, the customer herewith assigns all its claims and rights to separation for preferential satisfaction resulting from any further sale of the withholding goods to Tyczka. The customer shall record the existence of the security assignment made in its books at the time of the resale evident to third parties.
- Succession in Law or Treaty:** The Customers undertakes to notify Tyczka promptly in writing of any pending sale or judicial sale of his real property where the LPG-facility is situated, if the same contains parts or components owned by Tyczka. Furthermore in case of sale of the real property, the customer undertakes to include information on Tyczka's property in the sales contract.

In case the customer is entrepreneur in the meaning of the Austrian Consumer Protection Act the following is agreed: In case of sale, letting, leasing of the real property or any other form of succession treaty or assign, the customer undertakes to commit his successor to take over all rights and obligations resulting from this contract; upon good cause shown Tyczka is entitled to reject novation and assumption. In case the respective successor in treaty or assign is not willing to accept the same, the customer is obliged to terminate the contract in due time. The customer agrees to bear any and all losses or damages resulting thereof and to indemnify and hold harmless Tyczka against any rights and claims from any third party. Tyczka is entitled to transfer its rights and obligations from the contract or any parts thereof to a successor in law, treaty or assign or any other company authorized for such activity.
- Indexation:** All amounts excluding taxes and fees are subject to indexation. Indexation is based on Consumer Price Index 2005 published by Statistics Austria or an index replacing the same compared with the respective index value published August before conclusion of the contract. Indexation shall be made annually in October based on the percentage of increase or decrease of index value of August compared with August of the preceding year. In case the index value of August should be published later than October any increase may be demanded by Tyczka with retroactive effect from October; mandatorily any decrease shall be transferred to the customer as of October.
- Warranty and Liability**

In case the customer is entrepreneur in the meaning of the Austrian Consumer Protection Act the following shall apply:  
Upon taking over of the goods the Customer is obliged to check, if delivery is in accordance with the order and if the goods are free from defects. Upon unloading the Customer shall inform the carrier about any damages in transit, defects or missing parts and to record them on the delivery note. Any defects shall be notified to Tyczka within 7 calendar days after taking over of delivery; if the Customer fails to do so any warranty claim against Tyczka is excluded. The Customer has to provide evidence for all qualifying conditions of a certain warranty claim, especially the defect itself, the date of detection of the defect and timeliness of the warranty claim. The warranty period shall be six months. To the extent allowed by applicable law, Tyczka shall be liable to the Customer for all damages, whether based on violation of (pre-)contractual obligations or on own lawful act or tort, only in accordance with the following conditions: in cases of wilful intent, stark gross negligence, injury of life, body or health or for claims based on the Product Liability Act Tyczka shall be liable in accordance with the statutory provisions. In case of simple gross negligence the liability to the Customer shall be limited with the damages, which can be typically foreseen. Tyczka shall only be liable to the Customer for direct damages; liability for loss of profit and all consequential or indirect damages or costs is explicitly excluded. In any case the liability of Tyczka shall be limited with 10 % of the respective purchase price. The limitations and liability exclusions listed in this article shall be valid for all recourse claims of third parties accordingly, whereby recourse claims based on product liability shall be explicitly excluded.  
For Consumers in the meaning of the Austrian Consumer Protection Act:  
The statutory provisions shall apply.
- Adaption to public duties/taxes:** In case any public duties, taxes or contributions including but not limited to petroleum tax or VAT are increased, decreased, abolished or newly created by law, the respective price component shall be automatically adapted accordingly upon becoming effective. Presently the legal petroleum tax for LPG is EUR 51,60 / 1.000kg (incl. VAT) for heating purposes and EUR 313,20 / 1.000kg (incl. VAT) for use of fuel. The legal VAT is 20%. Customers concerned will be informed about the price adaption promptly.
- Service of Process:** The customer shall promptly notify Tyczka about any change of its address, whereby any notification by Tyczka shall be deemed to be received by customer, if delivered to the last address notified.
- Severability, Written Form:** If any of the provisions of these GTC shall be (adjudged by any court) unenforceable, the validity of the remaining provisions hereof shall not be affected thereby.

In relation to entrepreneurs in the meaning of the Austrian Consumer Protection Act it is agreed that any invalid provision shall be replaced by an effective provision leading to similar economic results, as far as no major adaption of these GTC is made.  
These GTC and any contract in relation thereto – including the waiver of the written form – may only be amended or modified by written instrument duly executed by each of the parties thereto, if the respective customer is entrepreneur in the meaning of the Austrian Consumer Protection Act.
- Governing Law, Contract Language, Place of Venue and Place of Performance:** The contract is subject to Austrian law excluding international private law and excluding the application of the UN Convention on Contracts on the International Sale of Goods (CISG). Contract Language is English. All disputes arising out of or in connection with contracts with customers being entrepreneurs in the definition of the Austrian Consumer Protection Act or claims being filed against Tyczka shall be settled by the competent court in Innsbruck.
- Change of GTC:** The Customer agrees to accept any changes or adaption of the GTC by Tyczka, if not rejected in writing within 21 calendar days after receipt of a written notification issued by Tyczka including the adapted GTC and a separate reference to the right of objection including the consequences involved.