

Supply Terms - Packaged Gases





1. General

- 1.1 These Supply Terms apply to all supplies of Packaged Gases and/or Services by us to you. Prior to you first placing any order for or accepting any delivery of Packaged Gases and/or Services, you acknowledge that you have obtained or received a copy of, read and accepted these Supply Terms.
- 1.2 Each order for the supply of Packaged Gases and/or Services under these Supply Terms only becomes legally binding on the parties on the first to occur of:
 - (a) us accepting your order, (which need not be communicated to you and can occur by us taking any steps to satisfy your order); or
 - (b) delivery of the relevant Packaged Gases (as determined under **clause 2.3**).
- 1.3 We reserve the right to accept or reject all or part of any order from you at our absolute discretion.
- 1.4 These Supply Terms prevail over any terms that you may seek to impose in relation to our supply of Packaged Gases and/or Services (including any terms in any purchase order, our previous terms of supply or other documentation exchanged between the parties).
- 1.5 Any quotation by us is only valid for 14 days, after which time it automatically lapses.
- 1.6 You will:
 - (a) strictly comply with all laws and our written instructions; and
 - (b) obtain and strictly comply with, all licences, permits, authorisations and approvals required by law,in respect of your transportation, ownership, storage, possession and use of the Packaged Gases.

2. Delivery of Packaged Gases

- 2.1 Any date for delivery of Packaged Gases that we specify is an estimate only. Subject to any Consumer Rights, we are not liable to you for any damage, expense, loss or liability suffered or incurred by you arising from any late delivery.
- 2.2 We may deliver Packaged Gases ordered by you in instalments and you will accept each instalment.
- 2.3 Packaged Gases are deemed to be delivered to you when:
 - (a) the Packaged Gases are physically delivered to your premises; or
 - (b) you or your Representative takes physical possession of the Packaged Gases, and we give you our written delivery note for the Packaged Gases or our written delivery note accompanies the Packaged Gases.
- 2.4 Our written delivery note is conclusive evidence as to the description and quantity of Packaged Gases delivered (unless you notify us otherwise within 7 days of receiving the delivery note).
- 2.5 Where delivery of Packaged Gases occurs

at your premises, you will:

- (a) ensure that there is safe and proper access to the delivery point; and
 - (b) provide adequate labour and equipment for the loading and unloading of the Packaged Gases.
- 2.6 Except for any Consumer Rights:
 - (a) we accept no responsibility for short delivery or discrepancy in the quantity of Packaged Gases delivered unless:
 - (i) you give us written notice within 7 days of the delivery; and
 - (ii) you permit us to verify your claim by examining the relevant Packaged Gases at your premises, and
 - (b) our liability for short delivery is limited to supplying the Packaged Gases in shortage.

3. Return of Packaged Gases

- 3.1 Where you return Packaged Gases to us, you will:
 - (a) give us advance notice of the date for return, the description of the Packaged Gases and the method of transport;
 - (b) ensure that the Packaged Gases are returned in a safe manner and condition; and
 - (c) label the returned Packaged Gases with your name and address.
- 3.2 Where we agree to collect Packaged Gases from your premises, you will ensure that the Packaged Gases are available for collection at an easily accessible central point and that they are ready for loading at the time we arrive to collect them.
- 3.3 Packaged Gases are only deemed to be returned to us when:
 - (a) the Packaged Gases are physically delivered to our premises or those of our agents; or
 - (b) we or our Representative takes physical possession of the Packaged Gases, and you receive our written receipt for the Packaged Gases.
- 3.4 Our written receipt is conclusive evidence as to the description and quantity of Packaged Gases returned (unless you notify us otherwise within 7 days of receiving the receipt).

4. Containers

- 4.1 We retain title to the Containers at all times. From the date of delivery of the Containers (as determined under **clause 2.3**) until their date of return (as determined under **clause 3.3**), you possess the Containers as a lessee.
- 4.2 While leasing our Containers:
 - (a) you will:
 - (i) only use the Containers as containers for Products supplied by us;
 - (ii) keep the Containers clean and in good condition;
 - (iii) not part possession with, sell, offer for sale, or grant any Security Interest

- over the Containers;
 - (iv) not allow any property to become an accession to the Containers or allow the Containers to become an accession to any property;
 - (v) not repair, modify, tamper with or allow or cause the Containers to become contaminated;
 - (vi) not deliver or send the Containers for recharging to any place other than our premises or those of our agents;
 - (vii) not decant Product from any cylinder to any other cylinder, vessel or container; or
 - (viii) not remove, deface or alter any of our identification marks on the Containers;
 - (b) you bear the risk of damage to the Containers and will indemnify us for any such damage; and
 - (c) you bear the risk of loss of the Containers and will pay our replacement fee for any such loss.
- 4.3 From time to time (and at least once every 12 months), we will issue you with a statement of your Container holdings. The number of Containers that you hold at any time (and for which you are liable to us) will be calculated as the number of Containers specified in your most recent statement of holdings:
- (a) *plus* the number of Containers delivered to you (as determined under **clause 2.3**); and
 - (b) *minus* the number of Containers returned by you (as determined under **clause 3.3**), since that statement of holdings.
- 4.4 You will return all Containers to us as soon as they are empty. No allowance, credit or rebate will be made for any residual Product contained in any returned Containers.
- 4.5 If any Containers held by you require repair for any reason, then subject to any Consumer Rights, you will not repair the Containers but will immediately return them to us.
- 5. Products**
- 5.1 Title to the Products supplied to you will only pass to you once we have received payment in full for all amounts owing to us under these Supply Terms in cleared funds.
- 5.2 Risk in the Products will pass to you on delivery (as determined under **clause 2.3**).
- 5.3 You may deal with the Products in the ordinary course of your business.
- 6. Prices and payment**
- 6.1 You will pay us the Prices set out in your Price List for:
- (a) all supplies of Packaged Gases and/or Services; and
 - (b) the delivery and collection of Packaged Gases to and from your premises (subject to any Consumer Rights).
- 6.2 We may vary the Prices and the Price List at any time in our absolute discretion (and the varied Prices and Price List will only apply to future orders of Packaged Gases and/or Services).
- 6.3 We may require payment of our invoice on delivery or collection of the Packaged Gases or performance of the Services. Otherwise, our invoices are payable within 14 days of the invoice date. If you fail to pay any invoice by its due date, then (without limiting our other rights):
- (a) payment will become immediately due for all Packaged Gases and Services supplied;
 - (b) we may charge interest on the outstanding amount at the general interest charge (GIC) daily rate published on the website of the Australian Tax Office from time to time; and
 - (c) we may withhold further supplies of Packaged Gases and/or Services.
- 6.5 You will pay or reimburse us for all GST, sales tax, stamp duty and other duties, taxes and charges which we may be liable to pay from time to time in connection with the supply of Packaged Gases and/or Services to you.
- 7. PPSA**
- 7.1 On our request, you will promptly:
- (a) do anything (including obtaining consents, making amendments to these Supply Terms or executing new documents) for the purposes of:
 - (i) ensuring that any Security Interest created under, or provided for by, these Supply Terms:
 - (A) attaches to the collateral that is intended to be covered by that Security Interest;
 - (B) is enforceable, perfected, maintained and otherwise effective; and
 - (C) has the priority contemplated by these Supply Terms;
 - (ii) enabling us to prepare and register a financing statement or financing change statement; and
 - (iii) enabling us to exercise any of our powers in connection with any Security Interest created under, or provided by, these Supply Terms; and
 - (b) provide any information requested by us in connection with these Supply Terms to enable us to exercise any of our powers or perform our obligations under the PPSA.
- 7.2 Except if section 275(7) of the PPSA applies, each party agrees not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available.
- 7.3 Any payments received by us from you will be applied in accordance with section 14(6) of the PPSA.

- 7.4 You waive your rights to receive any notice under the PPSA (including a notice of verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.
- 7.5 Where Products supplied under these Supply Terms are not used by you predominantly for personal, domestic or household purposes:
- (a) you agree that:
- (i) we are under no obligation to dispose of or retain any Products which we seize within a reasonable time under section 125 of the PPSA;
 - (ii) following a default, neither you nor any other person have any rights to redeem the Products under section 142 of the PPSA; and
 - (iii) you have no rights to reinstate these Supply Terms following a default under section 143 of the PPSA; and
- (b) you waive your rights to receive:
- (i) a notice of our proposal to remove an accession under section 95 of the PPSA;
 - (ii) a notice of our proposal to exercise our rights in accordance with land law under section 118(1)(b) of the PPSA;
 - (iii) a notice of our proposal to enforce our Security Interest in an account, chattel paper or negotiable instrument under section 121(4) of the PPSA;
 - (iv) a notice of our proposal to dispose of any personal property under section 130 of the PPSA;
 - (v) details of the amounts paid to other secured parties in a statement of account provided by us under section 132(3)(d) of the PPSA;
 - (vi) a statement of account under section 132(4) of the PPSA; and
 - (vii) a notice of our proposal to retain personal property under section 135 of the PPSA.
- 8. Liability**
- 8.1 If you are a Consumer, you are entitled to certain Consumer Rights that cannot be excluded. Otherwise, we exclude all terms, conditions, warranties, guarantees, representations and obligations in relation to the Packaged Gases and/or the Services which are implied or granted by statute or general law.
- 8.2 Subject to **clause 8.3**, our liability for loss suffered or incurred by you is limited to us (at our election):
- (a) in respect of Packaged Gases supplied under these Supply Terms:
- (i) replacing the Packaged Gases or supplying equivalent goods;
 - (ii) repairing the Packaged Gases;
 - (iii) paying the cost of replacing the Packaged Gases or of acquiring equivalent goods; or
 - (iv) paying the cost of having the Packaged Gases repaired.
- (b) in respect of Services supplied under these Supply Terms:
- (i) resupplying the Services; or
 - (ii) paying the cost of having the Services supplied again.
- 8.3 If you are a Consumer, **clause 8.2** does not apply:
- (a) where it is not fair or reasonable for us to rely on that clause;
- (b) where the Packaged Gases or the Services are of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- (c) in relation to rights granted under sections 51, 52 and 53 of the Australian Consumer Law.
- 8.4 Where we are liable to you in circumstances which are not covered by **clause 8.2**, then our total liability to you for all events and occurrences in respect of these Supply Terms whether in contract, tort, under statute or otherwise, is limited to the total of all Prices paid by you under these Supply Terms during the 3 months prior to the date on which the relevant event or circumstance arises.
- 8.5 Except for any Consumer Rights:
- (a) we will not be liable to you, your Representatives or any other person for any indirect, economic, special or consequential loss or damage, loss of revenue, time, good will, data, anticipated savings, opportunity, loss of production and loss of profit in respect of these Supply Terms or the supply of any Packaged Gases and/or Services;
- (b) you will indemnify us against any damage, expense, loss or liability suffered or incurred by us:
- (i) to the extent caused by or contributed to by your negligence, breach of these Supply Terms, fraud or wilful default;
 - (ii) arising in relation to the ownership, possession or use of the Packaged Gases by you or any other person; or
 - (iii) in exercising any of our rights or remedies under these Supply Terms or which are available to us at law, in equity or under statute.
- 8.6 Our obligations under these Supply Terms are suspended for any period that we are prevented from performing them by any Force Majeure Event.
- 8.7 Any IP created by us in respect of these Supply Terms is, and remains our property. Nothing in these Supply Terms operates as a sale, transfer, licence, assignment or other dealing with respect to our IP in

any material.

9. Termination

- 9.1 If:
- (a) you fail to make any payment under these Supply Terms by the due date;
 - (b) you breach any other term of these Supply Terms; or
 - (c) you are subject to an Insolvency Event; (regardless of whether or not we have formally notified you of the relevant failure, breach of circumstance), then we may immediately terminate these Supply Terms by written notice to you.
- 9.2 We may terminate these Supply Terms at any time at our convenience by giving you 7 days written notice.
- 9.3 Termination of these Supply Terms under **clause 9.1 or 9.2** is without prejudice to any other rights or remedies to which we are entitled.
- 9.4 On termination of these Supply Terms, you will immediately return to us all Containers and any Products in which we retain title. If you fail to do so, you licence us to enter your premises and repossess and remove our Containers and Products.

10. Other matters

- 10.1 Subject to any Consumer Rights, these Supply Terms constitute the entire agreement between the parties as to its subject matter and supersede all prior representations and agreements in connection with that subject matter. We may amend or replace these Supply Terms at any time by giving you 7 days written notice (and the amendment or replacement will only apply to orders of Packaged Gases and/ or Services after the expiry of that notice period). Otherwise, these Supply Terms may only be amended in writing signed by both parties.
- 10.2 A party giving a written notice under these Supply Terms will do so:
- (a) in writing and signed by the party; and
 - (b) to the address, facsimile number or email address of the relevant party as notified in writing from time to time.
- 10.3 Each term of these Supply Terms will be interpreted so as to be effective and valid under applicable law. If any term of these Supply Terms is held to be prohibited by or invalid under applicable law, that term is ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of these Supply Terms.
- 10.4 A term of these Supply Terms may not be waived except in writing signed by the party granting the waiver. The waiver by a party of a breach by another party of any term of these Supply Terms does not operate as a waiver of another or continuing breach by that party of that term or any other term of these Supply Terms.
- 10.5 You are not entitled to recover from us any amounts due under these Supply Terms or

any other agreement by way of set-off.

- 10.6 You will not assign or novate any of your rights or obligations under these Supply Terms without our prior written consent (which we may withhold in our absolute discretion). We may assign or novate any of our rights or obligations under these Supply Terms to any person by notice to you.
- 10.7 The parties acknowledge that nothing in these Supply Terms constitutes a relationship of joint venture, employment or partnership between them.
- 10.8 Unless otherwise specified, each party will pay all its costs associated with negotiating and entering into these Supply Terms and complying with its obligations under these Supply Terms.
- 10.9 These Supply Terms are governed by the laws applicable in the State of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of that State.
- 10.10 All indemnities set out in these Supply Terms survive their termination.

11. Definitions and interpretation

- 11.1 The following defined terms are used in these Supply Terms:
- Australian Consumer Law** means the Australian Consumer Law contained in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.
- Consumer** has the same meaning as in the Australian Consumer Law.
- Consumer Rights** means your rights if you are a Consumer contained in the Australian Consumer Law.
- Containers** means:
- (a) our gas cylinders including any of our valves, guards, pressure gauges, regulators and gas controlling and conserving devices;
 - (b) any of our crates, packs and pallets in which our gas cylinders are stored; and
 - (c) any of our boxes in which dry ice is stored,
- supplied by us to you from time to time.
- Force Majeure Event** means any cause beyond our reasonable control, including, fire, storm, flood, earthquake, explosion, accident, act of public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, transportation embargo or failure or delay in transportation, shortage of or inability to obtain raw materials, plant or equipment breakdown, act of God, act (including laws, regulations, disapprovals or failure to approve) of any government or agency whether national, municipal or otherwise.
- Insolvency Event** means:
- (a) a resolution is passed or proposed or a petition is presented or an application filed for your winding up or a receiver or receiver and manager is appointed in respect of your property or any part of

your property;

- (b) if you are a person, you become bankrupt;
- (c) if you are a company, you are de-registered;
- (d) you make or propose to make arrangement with your creditors;
- (e) an administrator is appointed over you or your assets; or
- (f) execution is levied upon your assets and is not satisfied within 7 days.

IP means:

- (a) patents, trademarks, services marks, design rights (whether registered or unregistered and including any applications for these rights);
- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright subsists and may in the future subsist;
- (c) trade or business names; and
- (d) know-how, confidential information and trade secrets,

and any other similar rights or obligations whether registrable or not in any country.

Packaged Gases means the Products and the Containers.

Prices means the prices for Packaged Gases and Services set out in your Price List.

Price List means the relevant list of Prices, which is determined based on the quantity of Packaged Gases that you buy. If this quantity changes, then we may vary your Price List at our absolute discretion.

Products means any gas products (whether in liquid, solid or gaseous form) supplied by us to you from time to time.

PPSA means the *Personal Property Securities Act 2009 (Cth)*.

Representatives means directors, officers, employees, agents, representatives, contractors or subcontractors of the relevant person.

Security Interest means:

- (a) any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power, or title retention arrangement;
- (b) a 'security interest' as defined in the PPSA; or
- (c) any document that grants or creates anything referred to in either paragraphs (a) or (b) of this definition and any other thing which gives a creditor priority over any other creditor with respect to any asset or an interest in any asset;

Services means any services supplied by us to you from time to time, including the delivery, lease, collection and installation of Packaged Gases.

Supply Terms means these terms.

We, our and **us** refer to Air Liquide Australia Limited (ABN 57 004 385 782).

You and **your** refer to the person acquiring Packaged Gases and/or Services from us.

11.2 In these Supply Terms:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing gender include any gender;
- (c) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate or any government agency;
- (d) references to clauses and parties are references to clauses of, and parties to, these Supply Terms;
- (e) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (f) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (g) a reference to a document or agreement, including these Supply Terms, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (h) other grammatical forms of defined words or expressions have corresponding meanings;
- (i) where the nominal due date by which anything is to be done is not a business day, that thing will be done by the next succeeding business day;
- (j) if you are two or more persons, then your liability under these Supply Terms is joint and several;
- (k) references to *supply* include supply by way of sale, lease or loan; and
- (l) wherever *including*, *includes* or any other form of that word is used, it will be construed as if it were followed by *(without limitation)*.

11.3 Unless defined in these Supply Terms, a term or expression which is used in these Supply Terms and which is defined in the PPSA has the meaning given to that term or expression in, or in the context of, the PPSA.

11.4 In the event of any inconsistency between these Supply Terms and any other documents provided by us to you, the provisions of these Supply Terms prevail to the extent of the inconsistency.

VICTORIA

Principal State Centre
Gas Distribution
Sales and Administration
40 Bunnett Street NORTH SUNSHINE 3020
Tel: (03) 9290 1100 Fax: (03) 9290 1199
ALAVICSales@airliquide.com

QUEENSLAND

Principal State Centre
Gas Distribution
Sales and Administration
759 Progress Road WACOL 4076
Tel: (07) 3246 6363 Fax: (07) 3246 6333
ALAQLDSales@airliquide.com

TASMANIA

Launceston Branch
11 Windsor Street INVERMAY 7248
Tel: (03) 6334 9666 Fax: (03) 6334 9600
ALAVICSales@airliquide.com

NEW SOUTH WALES

Principal State Centre
Gas Distribution
Sales and Administration
43-47 Pine Road FAIRFIELD 2165
Tel: (02) 9892 9777 Fax: (02) 9892 1454
ALANSWSales@airliquide.com

SOUTH AUSTRALIA

Principal State Centre
Gas Distribution
Sales and Administration
164 Philip Highway ELIZABETH 5112
Tel: (08) 8209 3600 Fax: (08) 8255 9885
ALASASales@airliquide.com

