

Supply Terms - Packaged Gases





1. General

- 1.1 Prior to you ordering or accepting any delivery from us of Packaged Gases, Equipment and/or Services, you acknowledge that you have obtained or received a copy of, read and accepted these Supply Terms.
- 1.2 A reference to "us" in these terms means either **Air Liquide Australia Limited (ABN 57 004 385 782)** or **Air Liquide W.A. Pty Ltd (ABN 52 008 694 166)**, being the relevant entity which has issued you a quotation, offered to supply you or accepted your order for the Packaged Gases, Equipment and/or Services.
- 1.3 These Supply Terms do not create any commitment by you to order Packaged Gases, Equipment and/or Services from us. However, each time you order, or accept a delivery of, Packaged Gases, Equipment and/or Services from us, you accept that these Supply Terms apply, except to the extent otherwise agreed by us in writing.
- 1.4 These Supply Terms prevail over any terms that you may seek to impose in relation to our supply of Packaged Gases, Equipment and/or Services in any document issued by you (including any terms in your purchase order).
- 1.5 These Supply Terms, in their present form or as varied in accordance with clause 10.11, together with:
- (a) your accepted application to open a credit account with us;
 - (b) any quotation issued to you and accepted in accordance with clause 2.1 of these Supply Terms;
 - (c) any order placed by you which is binding under clause 2.4 of these Supply Terms;
 - (d) any Individual Supply Contract; and
 - (e) any variation to a document listed in (a) to (d) above, agreed to in writing by you with us,
- constitute the entire supply agreement between you and us (Supply Agreement) pursuant to which we make all supplies of Packaged Gases, Equipment and/or Services to you.

2. Quotations, orders and deliveries

Quotations and Orders

- 2.1 Unless otherwise stated, any quotation by us is only valid for 30 days, after which time it automatically lapses. A quotation will not bind us unless given, or subsequently confirmed, in writing by us and accepted by you during its validity period through placement of an order.
- 2.2 Each time you place an order for Gases, you offer to:
- (a) buy the Gases; and
 - (b) rent the Containers,
- in accordance with these Supply Terms.
- 2.3 Each time you place an order for Equipment or Services, you offer to rent the Equipment or acquire the Services in accordance with these Supply Terms.
- 2.4 Each order for the supply of Packaged Gases, Equipment and/or Services under these Supply Terms only becomes legally binding on the first to occur of:

- (a) us accepting your order; or
- (b) delivery of the relevant Packaged Gases, Equipment and/or Services.

- 2.5 Except where we agree otherwise in writing, we reserve the right to accept or reject all or part of any order from you at our absolute discretion.

Deliveries

- 2.6 Delivery of the Packaged Gases ordered may be through our Representatives.
- 2.7 Any date for delivery of Packaged Gases, Equipment and/or Services 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.
- 2.8 We may deliver Packaged Gases ordered by you in instalments and you will accept each instalment.
- 2.9 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 provide you with our Delivery Note for them.
- 2.10 Our Delivery Note is conclusive evidence as to the description and quantity of Packaged Gases delivered, collected and/or returned (unless you notify us otherwise in writing within 7 days of receipt).
- 2.11 Except for any Consumer Rights:
- (a) we will only be liable for short delivery or discrepancy in the quality or quantity of Packaged Gases delivered if:
 - (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 is limited in accordance with clause 7.4.
- 2.12 Risk in the Packaged Gases will pass to you on delivery.

3. Safety, loading, unloading, storage, transportation and use

- 3.1 You acknowledge that:
- (a) Packaged Gases may constitute "dangerous goods" or "hazardous chemicals" under dangerous goods and occupational health and safety legislation and, as such, laws regulate their storage, handling, transportation, use and disposal (including disposal of the Containers); and
 - (b) you have been warned and instructed as to the dangerous qualities of the Gases and safe handling procedures for the Containers and any other Equipment we supply you.
- 3.2 Where we agree that we or our Representatives will deliver Packaged Gases to or collect Containers at or from your premises, you will ensure that:

- (a) there is safe and ready access to the delivery and/or collection point;
 - (b) any Containers for collection are ready for loading at the time we or our Representatives arrive to collect them;
 - (c) you provide adequate labour and equipment for the prompt unloading of the Packaged Gases from, and loading of Containers onto, our or our Representatives' vehicles; and
 - (d) notwithstanding clause 3.2(c), you only assist in such loading or unloading when and as directed by, and under the supervision of, us or our Representatives.
- 3.3 Except to the extent we or our Representatives are responsible under clause 3.2, you will ensure that:
- (a) you handle, transport, store and use the Packaged Gases and Containers, and take reasonable steps to ensure third parties also handle, transport, store and use the Packaged Gases, in a safe manner and in accordance with:
 - (i) the relevant SDS;
 - (ii) relevant road and safety laws;
 - (iii) our load restraint and transportation guidelines which can be downloaded from our website www.airliquide.com.au; and
 - (iv) any other written instructions we provide you regarding safe transportation, storage and use of the Packaged Gases and Containers;
 - (b) you 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, Containers and any other Equipment; and
 - (c) you provide ongoing training to your Representatives in order to ensure compliance with the above requirements.
- 3.4 To the extent permissible by law, you indemnify us and our Representatives against any costs, loss or liability we or they may incur in respect of death or bodily injury to any person or loss or damage to any property (including but not limited to consequential loss or damage) directly or indirectly caused by or resulting from your failure to observe this clause 3.

4. Containers and other Equipment

Title

- 4.1 We retain title to the Containers and any other Equipment we supply to you at all times.

Risk and Responsibility

- 4.2 While renting our Containers and other Equipment:
- (a) you will:
 - (i) only use the Containers as containers for Gases supplied by us;
 - (ii) only use such Equipment in connection with

Packaged Gases supplied by us;

- (iii) keep the Containers and other Equipment clean and in good condition;
 - (iv) not part possession with, sell, offer for sale, or grant any Security Interest over the Containers or other Equipment;
 - (v) not allow any property to become an accession to the Containers or other Equipment or allow the Containers or other Equipment to become an accession to any property;
 - (vi) not repair, modify, tamper with or allow or cause the Containers or other Equipment to become contaminated;
 - (vii) not deliver or send the Containers for recharging to any place other than our premises or those of our Representatives or move the other Equipment from your premises;
 - (viii) not decant or otherwise remove Gas from any Container to any other Container; and
 - (ix) not remove, deface or alter any of our identification marks on the Containers or other Equipment; and
- (b) you bear all risk in relation to each Container or item of other Equipment from its delivery to you until its return to us or our Representative including:
- (i) the risk of damage to any item (including any damage to, or removal of, our identification marks on the it) and will indemnify us for any such damage; and
 - (ii) the risk of loss of any item and, without prejudice to our right to claim for Rental Fees in respect of any Rental Period, you will pay our Lost Equipment Fee in respect of any Container or other item of Equipment determined by us to be lost or missing.

Rental of Containers and other Equipment

- 4.3 Each time you order the Gases, you agree that you rent the Containers in which the Gases are supplied.
- 4.4 Except to the extent we otherwise agree, you rent a Container for:
- (a) an initial Rental Period; and
 - (b) subsequent consecutive Rental Periods,
- unless and until the end of any Rental Period in which you:
- (a) return the Container to us, and do not receive an equivalent Container from us in exchange for the Container you return; and/or
 - (b) pay our Lost Equipment Fee in respect of any Container not returned, if we are satisfied that the Container is lost or missing.

You must return Containers by the end of a Rental Period or, where applicable, pay our Lost Equipment Fee if you do not want the Rental Period to renew in respect of any Container.

- 4.5 You may return our Containers at any time during any Rental Period and request a filled Container in exchange for no additional Rental Fee during that Rental Period. The filled Containers which we provide to you in exchange will be of an identical type or, if these are not reasonably available, a suitable substitute. Unless we otherwise agree, if you request another type of Container, this will be considered a separate rental arrangement and separate Rental Fees will apply.
- 4.6 Where we agree to rent you Equipment other than Containers, then except to the extent we otherwise agree in writing, you rent the Equipment for:
- (a) an initial Rental Period; and
 - (b) subsequent consecutive Rental Periods,
- unless and until the end of any Rental Period in which you:
- (a) return the Equipment to us or, where we agree in writing, notify us that the Equipment is available for our collection and make it so available; and/or
 - (b) where applicable, pay our Lost Equipment Fee in respect of any Equipment not returned.

Returns

- 4.7 We will make reasonable efforts to make filled Containers available at our premises for the purpose of such exchange but we make no warranty regarding their availability or any date of delivery of any Containers. 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.
- 4.8 Subject to your Consumer Rights, no allowance, credit or rebate will be made for any residual Gas contained in any returned Containers.
- 4.9 You must return Containers and Equipment to us in the same clean condition and good working order it or they were in when you received it or them, ordinary wear and tear excluded. If you do not properly clean Containers or Equipment or return them in good working order (ordinary wear and tear excluded), we may charge you for the costs we incur for cleaning and repair.
- 4.10 If any Container or Equipment held by you appears to be defective or to require repair for any reason (**Suspect Equipment**), then you will:
- (a) immediately notify us of the quantity and description of the Suspect Equipment; and
 - (b) subject to any Consumer Rights, return to us the Suspect Equipment or (where we agree in writing) make it available for our collection; and
 - (c) on the return or our collection of the Suspect Equipment, ensure that it is separately and positively identified to us as appearing to be defective or requiring repair (which may include affixing to the Suspect Equipment any label provided by us).
- You will not attempt to, or permit any other person to, maintain or repair the Suspect Equipment.
- 4.11 Containers or other Equipment are only deemed to be

returned to us when:

- (a) the Containers or other Equipment are physically delivered to our premises or those of our Representatives; or
 - (b) we take, or our Representative takes, physical possession of the Containers or other Equipment, and you receive our Delivery Note for them.
- 4.12 Our Delivery Note is conclusive evidence as to the description and quantity of Containers and Equipment delivered, collected and/or returned (unless you notify us otherwise in writing within 7 days of receipt).

Equipment Holdings

- 4.13 From time to time, we may (but are not obliged to) send you an Equipment Holdings Statement. Your Equipment Holdings Statement is conclusive evidence as to your Equipment Holdings (unless you notify us otherwise in writing within 7 days of receiving the statement).
- 4.14 A Lost Equipment Fee will be payable where we determine that Containers or other Equipment of the number and/or type specified in your Equipment Holdings Statement are unable to be located. Rental Fees will remain payable on any lost or missing Container or other Equipment until you pay our Lost Equipment Fee.
- 4.15 Upon return of a Container or payment of the applicable Lost Equipment Fee, our records will be adjusted accordingly. An adjustment of our records will not entitle you to any refund of accrued Rental Fees.
- 4.16 You acknowledge that if you return or we collect any Container or other Equipment which cannot be identified as being from your Equipment Holdings, then unless we agree otherwise, this will not result in any adjustment to your Equipment Holdings.
- 4.17 We may on reasonable notice enter your premises during business hours to inspect our Containers or other Equipment and to audit your Equipment Holdings.

5. Fees and payment

- 5.1 Subject to any Consumer Rights, you will pay us the Fees for:
- (a) all supplies of Gases to you;
 - (b) the rental of Containers and/or other Equipment by you during each Rental Period (Rental Fees);
 - (c) where applicable, the delivery and collection of Packaged Gases to and from your premises; and
 - (d) where applicable, any other Services provided to you.
- In addition, we may invoice you from time to time for other Fees contemplated by these Supply Terms, including any Lost Equipment Fee.
- 5.2 Except where we otherwise agree in writing, we may vary our Fees at any time in our absolute discretion, and the varied Fees will apply to:
- (a) orders of Packaged Gases, Equipment and/or Services placed on or after the date from which the new Fees apply;

- (b) orders of Packaged Gases, Equipment and/or Services already placed (but not yet binding on us under clause 2.4), in which case you may decide to withdraw your order if you consider such variation would cause detriment to you; and/or
 - (c) in the case of the rental of Containers or other Equipment, the next Rental Period after the date from which the new Fees apply.
- 5.3 Unless otherwise stated by us in writing, Fees quoted do not include delivery/collection costs, insurance or government taxes or duties. Each amount quoted by us as Fees is the goods and services tax (GST) exclusive amount, unless specifically described as 'GST inclusive'.
- 5.4 You will pay or reimburse us for all GST, sales tax, stamp duty and other duties, taxes and fees which we may be liable to pay from time to time in connection with the supply of Packaged Gases, Equipment and/or Services to you.
- 5.5 Subject to clause 5.7, we will invoice the Fees for the Gases and the Services at or after the time of their delivery to you. Unless we otherwise agree with you in writing, you will be invoiced at the Fee which is applicable at the date of delivery to you of the Packaged Gases, Equipment or Services, notwithstanding that delivery may be delayed by agreement or otherwise.
- 5.6 Unless you have a credit account open with us or, we otherwise agree in writing, we require payment of our invoices at the time of delivery. Where you have a credit account open with us, our invoices will be payable within 14 days of the invoice date unless otherwise agreed. We may open, suspend or terminate your credit account at our discretion.
- 5.7 Except where we otherwise agree in writing, we will invoice you for the Rental Fees at the end of each Rental Period. If we elect to issue you an invoice which also serves as a renewal notice, this invoice may be issued prior to the next Rental Period and, in this case, will not be payable unless the Rental Period renews under clause 4.4. Unless we otherwise agree with you in writing, Rental Fees applicable to any Rental Period will be calculated by reference to applicable rental unit rate multiplied by the number of Cylinders (or other items of Equipment) rented to you during the relevant Rental Period. Subject to your Consumer Rights, no adjustment will be made to Rental Fees for early return of Containers or other Equipment during any Rental Period.
- 5.8 Title to the Gases supplied to you will only pass to you once we have received payment in full for all amounts owing to us under the Supply Agreement in cleared funds. In the meantime, subject to clause 5.10, you may deal with the Gases in the ordinary course of your business.
- 5.9 We may allocate all amounts received from you in any manner we determine, including as required to preserve any Security Interest we have in the Packaged Gases.
- 5.10 If you fail to pay any invoice by its due date, then (without limiting our other rights, including our rights under clause 8, and regardless of whether or not we have formally

notified you of the relevant failure):

- (a) we may withhold further supplies of Packaged Gases, Equipment and/or Services;
- (b) payment will become immediately due of all Fees in connection with Packaged Gases, Equipment and Services supplied;
- (c) we may demand immediate return of any or all of our Containers or other Equipment and, should these not be returned by the end of the Rental Period, proceed to invoice you for the Lost Equipment Fee, pending payment of which Lost Equipment Fee (or return of the Containers or Equipment) we may continue to invoice you for the Rental Fees;
- (d) 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;
- (e) we may take action to recover the unpaid monies and charge you for our reasonable administration and debt recovery costs; and
- (f) we may disclose the details of your default along with some or all of the information provided by you under the Supply Agreement to appropriate credit reporting companies or agencies.

6. PPSA

- 6.1 The Supply Agreement constitutes a security agreement. On our request, you will promptly:
- (a) do anything (including obtaining consents, making amendments to the Supply Agreement or executing new documents) for the purposes of:
 - (i) ensuring that any Security Interest created under, or provided for by, the Supply Agreement:
 - (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, the Supply Agreement; and
 - (b) provide any information requested by us in connection with the Supply Agreement to enable us to exercise any of our powers or perform our obligations under the PPSA.
- 6.2 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.
- 6.3 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.

6.4 Where Packaged Gases or Equipment supplied to you 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 Packaged Gases or Equipment 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 Packaged Gases or Equipment under section 142 of the PPSA; and
 - (iii) you have no rights to reinstate the security agreement constituted by the Supply Agreement following a default under section 143 of the PPSA; and
- (b) you waive your rights to receive:
 - (i) a notice of our proposal to dispose of any personal property under section 130 of the PPSA;
 - (ii) 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;
 - (iii) a statement of account under section 132(4) of the PPSA; and
 - (iv) a notice of our proposal to retain personal property under section 135 of the PPSA.

7. Liability

7.1 In this clause 7, references to supply include supply by way of sale, lease, rental or loan; references to goods include the Gases, Containers and other Equipment; and references to services include the Services.

7.2 If you are a Consumer, you are entitled to certain Consumer Rights that cannot be excluded. You agree that (except to the extent of any Consumer Rights, if you are a Consumer), all terms, conditions, warranties, guarantees, representations and obligations in relation to the Supply Agreement and the supply of goods or services by us to you which would be implied or granted by statute or general law are excluded, to the extent legally permissible.

7.3 Where you are a Consumer and the Australian Consumer Law permits us to limit the remedies available to you, including for a breach of a Consumer Right, or if you are not a Consumer, we hereby limit the remedies available to you in accordance with clause 7.4 and clause 7.6.

7.4 Subject to clause 7.5, our liability for loss suffered or incurred by you in connection with or arising out of our supply to you of goods or services is limited to us (at our election):

- (a) in respect of goods supplied:
 - (i) replacing the goods or supplying equivalent

goods;

- (ii) repairing the goods;
 - (iii) paying the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) paying the cost of having the goods repaired.
- (b) in respect of services supplied:
 - (i) resupplying the services; or
 - (ii) paying the cost of having the services supplied again.

7.5 If you are a Consumer, clause 7.4 does not apply:

- (a) where it is not fair or reasonable for us to rely on that clause;
- (b) where the goods 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.

7.6 Where we are liable to you in circumstances which are not covered by clause 7.4, then our liability to you for all events and occurrences, whether in contract, tort, under statute or otherwise, is:

- (a) if your claim relates to an Individual Supply Contract:
 - (i) limited per event/occurrence, to the total Fees paid by you under that Individual Supply Contract during the month prior to the date on which the relevant event or circumstance giving rise to the claim arises; and
 - (ii) limited in aggregate during the term of the Individual Supply Contract, to the total Fees paid by you under that Individual Supply Contract during the 3 months prior to the date on which the relevant event or circumstance giving rise to the claim arises; or
- (b) if your claim does not relate to an Individual Supply Contract, to the total Fees paid by you during the month prior to the date on which the relevant event or circumstance giving rise to the claim arises.

7.7 Subject to your 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, goodwill, data, anticipated savings, opportunity, loss of production and loss of profit in connection with the Supply Agreement or the supply of any goods or services to you; and
- (b) you will indemnify us against any damage, expense, loss or liability suffered or incurred by us or our Representatives:
 - (i) to the extent caused by or contributed to by your negligence, breach of the Supply Agreement, fraud or wilful default;
 - (ii) arising in relation to any claim in relation to the ownership, possession or use of the Packaged

- Gases or Equipment by you or any other person; or
- (iii) in exercising any of our rights or remedies under the Supply Agreement or which are available to us at law, in equity or under statute, except to the extent it has been caused by or contributed to by our negligence, breach of the Supply Agreement or fraud or wilful default.
- 7.8 Our obligations under the Supply Agreement are suspended for any period that we are prevented from performing them by any Force Majeure Event.
- 8. Ceasing supply and termination**
- 8.1 Except to the extent we have otherwise agreed with you in writing, if:
- (a) you fail to make any payment due under the Supply Agreement by the due date;
- (b) you breach any other term of the Supply Agreement; or
- (c) you are subject to an Insolvency Event, then (regardless of whether or not we have formally notified you of the relevant failure, breach or circumstance), we may immediately:
- (a) cease further supplies of the Packaged Gases, Equipment and Services;
- (b) require the immediate return of any or all of our Containers, Equipment and Packaged Gases in which we retain title; and/or
- (c) terminate the Supply Agreement in whole or in part (including any binding order or Individual Supply Contract) by written notice to you.
- 8.2 Subject to clause 8.3, where our Supply Agreement (or any part thereof, including any binding order or Individual Supply Contract) expires or is terminated, you must immediately return to us or our Representatives our Containers and/or other Equipment (or, where applicable, those items under the expired or terminated part of the Supply Agreement) or, at our election, make those items available for our collection.
- 8.3 Except to the extent we have otherwise agreed in writing with you, we may cease further supplies of Packaged Gases, Equipment and/or Services and/or terminate the Supply Agreement (in whole or in part) at any time at our convenience by giving you 7 days' written notice. If termination under this clause 8.3 occurs, you must return our empty Containers to us or our Representatives at the end of the 7 day period, but you may retain filled Containers until they are emptied or until the end of the current Rental Period, whichever occurs first. We agree to refund the pro rata portion of any Rental Fees already paid in respect of any period after you return empty cylinders under this clause 8.3.
- 8.4 Ceasing further supplies under and/or termination of the Supply Agreement (in whole or in part) is without prejudice to any other rights or remedies to which we are entitled.
- 8.5 No allowance, credit or rebate will be made for any residual Gas contained in any returned Containers at termination or expiration of the Supply Agreement (or any part thereof).
- 8.6 If you fail to return any Containers, Equipment or Gases after us duly requiring their return, you license us to enter your premises during business hours to repossess and remove them.
- 9. Confidentiality and our IP**
- 9.1 You will ensure that any Confidential Information we disclose to you is:
- (a) maintained as confidential;
- (b) only used by you to the extent necessary for the purpose for which it has been disclosed to you under the Supply Agreement;
- (c) only given to those of your Representatives that require access for such purpose, who are informed of its confidential nature and who are required to keep that information confidential; and
- (d) not disclosed to or used by any third party (without our prior written consent).
- 9.2 All our Confidential Information and all IP created by us in respect of the Packaged Gases, the Equipment or the Services remains our exclusive property. Nothing in these Supply Terms operates as a sale, transfer, licence, assignment or other dealing with respect to our IP in any material.
- 10. Other matters**
- 10.1 Subject to any Consumer Rights, the Supply Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior representations and agreements in connection with that subject matter. You acknowledge and represent and warrant to us that no representations, warranties, promises, undertakings, statements or conduct (whether express or implied):
- (a) have induced or influenced you to enter into, or agree to any terms of, the Supply Agreement;
- (b) have been relied on in any way as being accurate by you;
- (c) have been warranted to you as being true; or
- (d) have been taken into account by you as being important to your decision to enter into or to agree to the Supply Agreement (or any part thereof),
- except those expressly set out in the Supply Agreement.
- 10.2 You represent and warrant that:
- (a) you have the authority, power and capability to enter into and to perform your obligations under the Supply Agreement;
- (b) your obligations under the Supply Agreement are binding and enforceable; and
- (c) the Supply Agreement does not conflict with or result in the breach of any material term or provision of any agreement, deed, writ, order or injunction, judgment or law to which you are a party or a subject or by

which you are bound.

- 10.3 A party giving a written notice under the Supply Agreement 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.
- 10.4 Each term of the Supply Agreement will be interpreted so as to be effective and valid under applicable law. If any term of the Supply Agreement 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 the Supply Agreement.
- 10.5 A term of the Supply Agreement 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 the Supply Agreement does not operate as a waiver of another or continuing breach by that party of that term or any other term of the Supply Agreement.
- 10.6 You are not entitled to recover from us any amounts due under the Supply Agreement by way of set-off.
- 10.7 We may request a related body corporate to perform any of our rights or obligations under this Agreement on our behalf.
- 10.8 You will not assign or novate any of your rights or obligations under the Supply Agreement 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 the Supply Agreement to any person by notice to you.
- 10.9 The parties acknowledge that nothing in the Supply Agreement constitutes a relationship of joint venture, employment or partnership between them.
- 10.10 Unless otherwise specified, each party will pay all its costs associated with negotiating and entering into the Supply Agreement and complying with its obligations under the Supply Agreement.
- 10.11 Except to the extent we otherwise agree in writing with you, we may amend or replace these Supply Terms at any time, and the amendment or replacement will apply to:
- (a) orders for Packaged Gases, Equipment and/or Services you place on or after the date from which the new or varied Supply Terms apply;
 - (b) orders for Packaged Gases, Equipment and/or Services already placed (but not yet binding on us under clause 2.4), in which case you may decide to withdraw your order if you consider such variation would cause detriment to you; and/or
 - (c) in the case of rental, to the rental terms applicable to Containers or other Equipment as from the next Rental Period after the date upon which the new or varied Supply Terms apply.
- 10.12 Except to the extent we otherwise agree with you in writing (generally or in relation to any Individual Supply Contract):
- (a) the Supply Agreement is governed by and interpreted

in accordance with the laws in force from time to time in the State or Territory in which we supply you Packaged Gases, Equipment and/or Services, and the parties submit to the non-exclusive jurisdiction of the courts in that State or Territory; or

- (b) if we supply you in more than one State or Territory of Australia or if we supply you outside of Australia, the Supply Agreement will be governed by and interpreted in accordance with the laws in force from time to time in Victoria and the parties submit to the non-exclusive jurisdiction of the courts in that State.
- 10.13 All indemnities set out in the Supply Agreement and any clauses which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination of the Supply Agreement (or any part thereof).

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)*.

Confidential Information means confidential information, including:

- (a) the Supply Agreement and its terms;
- (b) our financial and business information;
- (c) our technical information, procedures and processes, methods and plans;
- (d) information provided by us to you which is designated in writing as confidential; and
- (e) all our other information not generally known to the public relating to our business,

except where that information is:

- (a) made public other than by you breaching your obligations to us;
- (b) known to you free of any obligation to keep it confidential;
- (c) independently developed by you without use, directly or indirectly of Confidential Information received from us; or
- (d) required to be disclosed by law.

Consumer has the same meaning as in the Australian Consumer Law.

Consumer Rights means your rights under the Australian Consumer Law if you are a Consumer.

Containers means:

- (a) gas cylinders including valves, guards, pressure gauges, regulators and gas controlling and conserving devices;
- (b) crates, packs and pallets in which the gas cylinders are stored; and
- (c) low loss boxes in which dry ice is stored, supplied by us to you from time to time.

Delivery Note means any document produced by us which records transactions or activities (including deliveries and collections) in relation to the Packaged Gases, our Containers or our Equipment. Delivery Note includes a delivery docket, cylinder transaction slip ("CTS") or other similar documentation.

Equipment means Containers and other equipment which we supply you in connection with the supply of Packaged Gases.

Equipment Holdings means the quantity and type of Containers and other Equipment held by you from time to time under the Supply Agreement, as evidenced in an Equipment Holdings Statement.

Equipment Holdings Statement means any written statement produced by us (whether contained in a rental or facility fee invoice or other document) of your Equipment Holdings from time to time.

Fees means our prices and fees for Packaged Gases, Equipment and Services, as revised by us 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.

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

Individual Supply Contract means any individual or supplementary written agreement we enter into with you from time to time in respect of the supply of Packaged Gases, Equipment and/or Services and which may cover orders you place with us during a particular term.

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 deregistered;
- (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.

Lost Equipment Fee means the full cost of purchasing a new replacement Container or a new replacement for another item of Equipment (as applicable), plus our related administration costs, which you acknowledge together represent a genuine pre-estimate of our loss in terms of replacing the Container or other relevant Equipment.

Packaged Gases means our Gases supplied in Containers or, where the context requires, either the Gases or the Containers.

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

Rental Fees means the fee applicable to the rental of Containers or other Equipment in each Rental Period.

Rental Period means, unless we otherwise agree in writing, an initial period commencing from the date of first delivery to you of a Container or other Equipment and expiring at the end of the calendar month of such delivery, and thereafter any further consecutive monthly rental period for which the rental term is renewed in accordance with these Supply Terms.

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

SDS means a material safety data sheet for a Gas which can be downloaded from <http://www.airliquide.com.au>.

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 in connection with the supply of Packaged Gases, including the delivery, rental, collection and installation of Packaged Gases and supply of any Equipment.

Supply Terms means these terms.

Supply Agreement is defined in **clause 1.5**. Unless the context otherwise requires, a reference to the Supply Agreement in these Supply Terms means the Supply Agreement as a whole or any part thereof (such as an

Individual Supply Contract).

We, our and **us** refer to Air Liquide Australia Limited (ABN 57 004 385 782) or Air Liquide W.A. Pty Ltd (ABN 52 008 694 166).

You and **your** refer to the person acquiring Packaged Gases, Equipment 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, the Supply Agreement;
- (e) a reference to a party means us or you, as the context requires, and in either case 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 the Supply Agreement is joint and several; and
- (k) 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, except where this is expressly stated by us not to be the case.

SAFETY WARNING

Users of AIR LIQUIDE gas products and cylinders are reminded that oxygen and acetylene and other gases may constitute "dangerous goods" and/or "hazardous chemicals" under dangerous goods and occupational health and safety laws and care should be taken with respect to cylinder handling, transportation, storage and use.

Please read carefully the following important points:

1. Cylinders contain gas at high pressure. Never use without a regulator to reduce pressure.
2. Connect only to apparatus designed for the contained gas.
3. Never heat cylinders.
4. Keep oils and greases away. Do not allow any foreign matter to enter cylinder or cylinder valve.
5. Open valve slowly and close after use. Avoid leakage.
6. Avoid undue shocks. Never drop cylinder.
7. Storage of compressed gases must always comply with relevant dangerous goods and occupational health and safety laws.
8. Do not:
 - a) attempt to repair or tamper with any cylinder or parts thereon or permit another party to do so; or
 - b) refill or have cylinders refilled by or through any persons other than an Air Liquide or its authorised agents or distributors.
9. If you intend to transport compressed gas cylinders in cars or vans:
 - a) Gas cylinders should NEVER be transported in enclosed spaces such as the boot of a car. It is EXTREMELY DANGEROUS and could cause an EXPLOSION, FIRE or ASPHYXIATION.
 - b) In some circumstances, transporting gas cylinders containing liquid oxygen or flammable or toxic gases in an enclosed vehicle or compartment of a vehicle is prohibited by the law.
 - c) Liquefied gas and dissolved acetylene gas cylinders should be transported in a FIXED UPRIGHT POSITION with windows OPEN FOR VENTILATION.
 - d) For other gas cylinders, if they are transported horizontally, they MUST BE RESTRAINED so they cannot move, with windows OPEN FOR VENTILATION.
 - e) The safest and recommended method of transporting gas cylinders is by using the transport services provided by Air Liquide or its representative where available.
10. Safety Data Sheets, load restraint and transportation guidelines are available from Air Liquide on request and from www.airliquide.com.au.

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

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

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

WESTERN AUSTRALIA

Principal State Centre
Gas Distribution
Sales and Administration
3 Channel Close HENDERSON 6166
Tel: (08) 9494 9600 Fax: (08) 9494 9682
ALWAORDERS@airliquide.com

NORTHERN TERRITORY

Branch Office
144 Winnellie Road WINNELLIE 0820
Tel: (08) 8947 1184 Fax +61 8 8947 1203
ALWAORDERS@airliquide.com