

1. These terms will accompany or be incorporated into an Equipment Supply Contract or Quotation (& Equipment Sale Agreement) or other similar document, pursuant to which we offer or agree to sell you Equipment. These terms do not themselves contain any commitment to sell you Equipment.
2. In these terms, **We, our** and **us** refer to the Air Liquide entity nominated on the front page of the Equipment Supply Contract or the Quotation & Equipment Sale Agreement or similar document (as applicable), being **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 Purchaser specified on such document.
3. These terms prevail over any terms that you may seek to impose in relation to our supply of Equipment and/or related services in any document issued by you (including any terms in your purchase order).
4. We will supply, in accordance with these terms, the Equipment for the Supply Price to the Delivery Location (as each of these terms are defined in our Contract).
5. Any date for delivery of 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. We may deliver Equipment ordered by you in instalments and you will accept each instalment.
6. Equipment is deemed to be delivered to you when:
 - (a) the Equipment is physically delivered to you; or
 - (b) you or your Representative takes physical possession of the Equipment,
 and we provide you with our delivery docket or similar document evidencing delivery (Delivery Docket). Our Delivery Docket is conclusive evidence as to the description and quantity of Equipment delivered, collected and/or returned (unless you notify us otherwise in writing within 7 days of receipt).
7. Risk in the Equipment will pass to you on delivery.
8. Where the Delivery Location specified is your premises, you will ensure that:
 - (a) there is safe and ready access to the delivery and/or collection point;
 - (b) you provide adequate labour and equipment for the prompt unloading of the Equipment from our or our Representatives' vehicles; and
 - (c) notwithstanding **clause 8(b)**, you only assist in such loading or unloading when and as directed by, and under the supervision of, us or our Representatives.
9. Except to the extent we or our Representatives are responsible under **clause 8**, you will ensure that:
 - (a) you handle, transport, store and use the Equipment and take reasonable steps to ensure third parties also handle, transport, store and use the Equipment, in a safe manner and in accordance with:
 - (i) any relevant SDS;
 - (ii) relevant road and safety laws;
 - (iii) any applicable load restraint and transportation guidelines on our website www.airliquide.com.au; and
 - (iv) any other written instructions we provide you regarding safe transportation, storage and use of the Equipment;
 - (b) you obtain all licences, permits, authorisations and approvals required by law in respect of your transportation, ownership, storage, possession and use of the Equipment; and
 - (c) you provide ongoing training to your Representatives in order to ensure compliance with the above requirements.
10. 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 **clause 8** and **clause 9**.
11. Unless otherwise stated by us in writing, our Supply Price quoted does not include delivery/collection costs, insurance or government taxes or duties.
12. 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 in connection with the supply of Equipment.
13. We will invoice the Supply Price for the Equipment at or after the time of its delivery to you.
14. Unless you have a credit account open with us or we otherwise agree in writing, we require payment of our invoice at the time of delivery. Where you have a credit account open with us, our invoice will be payable within 14 days of the invoice date unless otherwise agreed.
15. If you fail to pay our invoice by the due date, then (without limiting our other rights, including our rights under **clause 26**, and regardless of whether or not we have formally notified you of the relevant failure):
 - (a) we may demand immediate return of unpaid Equipment;
 - (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;
 - (c) we may take action to recover the unpaid monies and charge you for our reasonable administration and debt recovery costs; and
 - (d) we may disclose the details of your default along with some or all of the information provided by you in connection with the Contract to appropriate credit reporting companies or agencies.
16. Title to the Equipment supplied to you will only pass to you once we have received payment in full for all amounts owing to us under the Contract in cleared funds. In the meantime, subject to **clause 10**, you may use the Equipment in the ordinary course of your business.
17. We warrant to you that:
 - (a) we have the right to sell the Equipment ;
 - (b) you will have and enjoy quiet possession of the Equipment;
 - (c) the Equipment is free of encumbrances;
 - (d) the Equipment complies with all applicable laws; and
 - (e) subject to **clause 18**, the Equipment will conform on delivery to any technical specifications provided by us.
18. Subject to any rights a Consumer may have under the Australian Consumer Law, where the Equipment sold to you by us is not manufactured by us nor are sold under a name, brand or mark under which we carry on business:
 - (a) all specifications, drawings, and particulars of weights and dimensions submitted to you, whether contained in catalogues, price lists or other advertising matter, are approximate only and do not form part of the Contract or form part of the description applied to the Equipment;
 - (b) we shall not be liable for any alteration or variation in the Equipment from any published specifications which are made available with respect to the Equipment;
 - (c) **clause 17(e)** does not apply;
 - (d) we agree to assign to you, on its request, the benefit of any warranty that the manufacturer has granted to us under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
19. 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 Contract and the supply of Equipment or services by us to you which would be implied or granted by

- statute or general law are excluded, to the extent legally permissible.
20. 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 21** and **clause 23**.
 21. Subject to **clause 22**, our liability for loss suffered or incurred by you in connection with or arising out of our supply to you of Equipment or services is limited to us (at our election):
 - (a) in respect of Equipment supplied:
 - (i) replacing the Equipment or supplying equivalent Equipment ;
 - (ii) repairing the Equipment ;
 - (iii) paying the cost of replacing the Equipment or of acquiring equivalent Equipment ; or
 - (iv) paying the cost of having the Equipment repaired.
 - (b) in respect of any services supplied:
 - (i) resupplying the services; or
 - (ii) paying the cost of having the services supplied again.
 22. If you are a Consumer, **clause 21** does not apply:
 - (a) where it is not fair or reasonable for us to rely on that clause;
 - (b) where the Equipment 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.
 23. Where we are liable to you in circumstances which are not covered by **clause 21**, then our liability to you for all events and occurrences, whether in contract, tort, under statute or otherwise, is limited to the Supply Price.
 24. 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 Contract or the supply of any Equipment or related 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 Contract, fraud or wilful default;
 - (ii) arising in relation to any claim in relation to the ownership, possession or use of the Equipment by you or any other person; or
 - (iii) in exercising any of our rights or remedies under the Contract 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 Contract or fraud or wilful default.
 25. Our obligations under the Contract are suspended for any period that we are prevented from performing them by any Force Majeure Event.
 26. Except to the extent we have otherwise agreed with you in writing, if:
 - (a) you fail to make any payment due under the Contract by the due date;
 - (b) you breach any other term of the Contract; or
 - (c) you are subject to an Insolvency Event,
 - (d) then (regardless of whether or not we have formally notified you of the relevant failure, breach or circumstance), we may immediately:
 - (e) cease further supplies of the Equipment;
 - (f) require the immediate return of any or all of our Equipment in which we retain title; and/or
 - (g) terminate the Contract.
 27. 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 Contract;
 - (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).
 28. All intellectual property rights in or relating to our Equipment or related services supplied by us to you, including in relation to the development, manufacture, use, operation, repair or maintenance of the Equipment, and in or in relation to any tooling, materials, drawings, samples, reports, work results and other documents, we create, remains at all times the sole and exclusive property of us or our licensor.
 29. Our Contract with you constitutes a security agreement. On our request, you will promptly:
 - (a) do anything (including obtaining consents, making amendments to the Contract or executing new documents) for the purposes of:
 - (i) ensuring that any Security Interest created under, or provided for by, the Contract:
 - (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 this Contract;
 - (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 Contract; and
 - (b) provide any information requested by us in connection with the Contract to enable us to exercise any of our powers or perform our obligations under the PPSA.
 30. 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.
 31. 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.
 32. Where Equipment supplied to you is 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 Equipment 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 Equipment or Equipment under section 142 of the PPSA; and
 - (iii) you have no rights to reinstate the security agreement constituted by the Contract 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.
33. Subject to any Consumer Rights, the Contract 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 Contract;
 - (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 Contract (or any part thereof),
- except those expressly set out in the Contract.
34. You represent and warrant that:
- (a) you have the authority, power and capability to enter into and to perform your obligations under the Contract;
 - (b) your obligations under the Contract are binding and enforceable; and
 - (c) the Contract 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.
35. A party giving a written notice under the Contract 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.
36. Each term of the Contract will be interpreted so as to be effective and valid under applicable law. If any term of the Contract 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 Contract.
37. A term of the Contract 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 Contract does not operate as a waiver of another or continuing breach by that party of that term or any other term of the Contract.
38. We may request a related body corporate to perform any of our rights or obligations under this Agreement on our behalf.
39. You will not assign or novate any of your rights or obligations under the Contract 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 Contract to any person by notice to you.
40. The parties acknowledge that nothing in the Contract constitutes a relationship of joint venture, employment or partnership between them.
41. Unless otherwise specified, each party will pay all its costs associated with negotiating and entering into the Contract and complying with its obligations under the Contract.
42. This Contract may only be amended in writing.
43. The Contract is to be construed in accordance with the laws in force in the State or Territory where the Equipment is to be delivered. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the State or Territory where the Equipment are to be delivered, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Contract.
44. The parties each agree that they will not commence court proceedings (except proceedings seeking urgent interlocutory relief) about a Dispute unless they have complied with this **clause 44**. A party claiming that a Dispute has arisen must notify the other party to the Dispute giving reasonable details and particulars of the Dispute (**Dispute Notice**). If the parties are unable to resolve the Dispute within 10 Business Days of receipt of the Dispute Notice, each party must escalate the Dispute to that party's Chief Operating Officer (or that person's equivalent or nominee) and those people must meet and attempt to resolve the Dispute.
45. All indemnities set out in the Contract and any clauses which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination of the Contract (or any part thereof).
46. The United Nations Convention on Contracts for the International Sale of Goods does not apply to a transaction which incorporates these terms.
47. Whenever a capitalised term is set out in bold in the Order Form, it has that meaning throughout the Contract.
48. Including (and any variation) is to be read as if followed by without limitation. A reference to \$ or dollar is to Australian currency. The following terms have the following meaning:
- Australian Consumer Law** means the Australian Consumer Law contained in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.
- Business Day** means a day in the State or Territory where the Equipment is to be delivered that is not a Saturday, Sunday or Public Holiday and on which banks are open for business generally.
- 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.
- Contract** means an Equipment Supply Contract or Quotation (& Equipment Sale Agreement) or other contractual agreement which incorporates these terms pursuant to which we agree to supply you Equipment.
- Dispute** means any controversy, claim, demand, difference or dispute of whatever nature between the parties arising under, out of or in connection with the Contract (including any question regarding its existence, validity or termination as a whole or in part or of the interpretation thereof) or any rights, benefits or interests arising under, out of or in connection with the Contract.
- GST** means the tax payable on taxable supplies under the GST Legislation.
- GST Legislation** means *A New Tax System (Equipment and Services Tax) Act 1999* and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.
- PPSA** means the *Personal Property Securities Act 2009 (Cth)*. A term or expression which is used in these 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.