

A - GAS (AUSTRALIA) PTY LIMITED TERMS AND CONDITIONS OF SALE

1. General

- 1.1 This Supply Contract shall apply exclusively to the purchase of Goods and/or Services by Buyer unless otherwise agreed to in writing by Seller. Any additional, different or conflicting terms proposed by Buyer to this Supply Contract, or any request for a material alteration to this Supply Contract, are rejected and will not be binding on Seller, unless otherwise agreed by Seller in writing.
- 1.2 A quotation by Seller is not binding until Buyer places an order based on the quotation in writing and that order is accepted by Seller. Acceptance of an order may be made by Seller taking any steps to satisfy the order.
- 1.3 Seller reserves its right to accept all or any part of an order by Buyer or to refuse any such order.

2. Description

- 2.1 The description given of the Goods and/or Services has been given by way of identification only. Any error or omission in any sales literature, quotation, description, invoice or other document or information issued by Seller is subject to correction without any liability on Seller's part.

3. Payment

- 3.1 Terms of payment are net cash within thirty (30) days from the date of Seller's invoice for Goods and net cash within seven (7) days from the date of Seller's invoice for Services (including Cylinder Service Charge) unless otherwise specified in this Supply Contract.
- 3.2 Without prejudice to any other remedy, Seller may, by giving written notice, either terminate this Supply Contract or suspend future deliveries if Buyer fails to pay for any one delivery on its due date.
- 3.3 Seller may demand cash payment and/or security in advance (in addition to any security interest created by this document) for future deliveries and for Goods and/or Services previously delivered. Seller may terminate this Supply Contract if Buyer does not provide cash payment and/or security in advance as required by Seller under this Condition 3.3.
- 3.4 If Buyer makes payment to Seller at any time whether in connection with this document or otherwise, Seller may, in its absolute discretion, apply that payment in any manner it sees fit.

4. Delivery

- 4.1 Unless otherwise specified in this Supply Contract, Seller will deliver Goods F.I.S. to Buyer's premises stated in the order or as otherwise agreed in writing.
- 4.2 All delivery dates for Goods and/or Services quoted are estimates only and Seller is not responsible or liable, for any costs, expenses, losses or damages suffered by Buyer either directly or indirectly arising where Goods and/or Services are not delivered by that date. Buyer is not relieved of any obligation to accept or pay for Goods and/or Services by reason of any delay in delivery or despatch.
- 4.3 Seller may deliver any order by way of instalments and each instalment shall be deemed to be sold under a separate contract. Failure of Seller to deliver an instalment shall not entitle Buyer to rescind or repudiate the contract.
- 4.4 Should Buyer request at any time Goods remain at Seller's premises when ready for delivery such storage shall be at Seller's discretion. Goods will be at Buyer's risk and Buyer's payment obligation for Goods will not be affected.

- 4.5 Buyer must inspect and reject any Goods delivered for reasons of damage, defect or shortage within 7 days from the date of delivery. Goods are deemed to be accepted by Buyer if Seller has not received, within 7 days of the date of delivery, written notice from Buyer rejecting the Goods for reason of damage, defect or shortage.

- 4.6 Buyer shall ensure that where Goods are delivered to or collected from Buyer's premises there is safe and proper access at the point where delivery or collection is made. Buyer accepts all responsibility for any loss or damage to vehicles or loads due to unsuitability of means of access to the loading or unloading point and Buyer indemnifies Seller for and against, and will pay on demand, the cost of all loss and damage to property and injury to persons arising directly or indirectly as a result of the failure of Buyer to ensure proper and safe access.

- 4.7 Buyer will provide adequate labour and equipment for the loading and unloading of Goods at Buyer's premises and will maintain the equipment in a proper, professional and workmanlike manner and in compliance with all applicable Laws.

5. Risk

- 5.1 Risk in respect of Goods, shall pass to Buyer upon delivery.

6. Price

- 6.1 Buyer must pay the Seller's price applicable at the date of delivery, notwithstanding that delivery may be delayed.
- 6.2 Buyer shall pay in accordance with Condition 3 and must pay or reimburse Seller for all GST and any other value added taxes, sales tax, stamp duty and other government duties, taxes and expenses or other taxes of a similar nature which Seller may be liable to pay from time to time in connection with the supply of the Goods and/or services to Buyer (except where such payment or reimbursement is expressly prohibited by statute).
- 6.3 Seller may increase, adjust or alter the price at its sole discretion by notice to Buyer from time to time. For F.O.B, C.I.F, and C & F sales, customs duty, excise duty and governmental imposts are not included in prices quoted, and shall accordingly be for Buyer's account. For ex-stock sales, F.I.S and F.O.T sales, prices quoted include customs duty, excise duty and governmental imposts which shall be for Buyer's account.

7. GST

- 7.1 Words or expressions used in this Condition 7 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in this Condition 7.
- 7.2 The parties agree that any consideration to be paid or provided for a supply made under or in connection with this Supply Contract is GST exclusive, unless stated as GST inclusive.
- 7.3 If a party (Supplier) makes a taxable supply under or in connection with this Supply Contract (for consideration that is not expressly GST inclusive), the consideration payable or to be provided for that supply is increased by, and (subject to Conditions 7.5 and 7.6) the recipient of the supply (Recipient) must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST (GST Amount).
- 7.4 If a payment under this Supply Contract is a reimbursement or indemnification for a loss, cost or expense, the amount will be reduced by any input tax credits that the other party is entitled to in respect of that loss, cost or expense.
- 7.5 The Recipient need not pay the GST Amount until it receives a tax invoice for the supply to which the payment relates.

- 7.6 If an adjustment event arises in respect of a supply made under or in connection with this Supply Contract then:

- (a) if the Supplier's corrected GST amount is less than the previously attributed GST amount, the Supplier will refund the difference to the Recipient; or
- (b) if the Supplier's corrected GST amount is greater than the previously attributed GST Amount, the Recipient will pay the difference to the Supplier;
- (c) the Supplier must issue an adjustment note to the Recipient within 7 days of the adjustment event occurring; and
- (d) any payment under Condition 7.6, paragraph (a) or (b) must be paid to the Supplier or Recipient (as the case may be) within 15 days of the adjustment note being issued to the Supplier.

8. Force Majeure

- 8.1 The obligations of Seller and Buyer, other than an obligation to pay money, will be excused to the extent that either party is wholly or partially precluded from complying with its obligations by a Force Majeure Event. Seller shall be under no obligation to subsequently deliver Goods and/or Services during the period of a Force Majeure Event but otherwise these terms and conditions remain unaffected.
- 8.2 During the period of a Force Majeure Event Buyer shall be free to purchase elsewhere at its sole risk and cost, such quantities of alternative Goods and/or Services necessary to cover the shortfall of Goods and/or Services not delivered by Seller.

9. Technical Advice

- 9.1 Seller gives no warranty or makes no representation as to the correctness, compliance, adequacy or otherwise of the any technical advice, recommendation, information or assistance given (collectively referred to as 'Technical Advice') and Buyer agrees that it uses the Technical Advice at its own risk.
- 9.2 Subject to condition 11 and to the extent permitted by law, Buyer has no right of action or claim for any cost, expense, loss or damage caused either directly or indirectly by the provision of Technical Advice against Seller.

10. Acknowledgments, Representations and Warranties

- 10.1 Buyer irrevocably submits that:
- (a) Buyer has read, understood and will comply with these terms and conditions and this Supply Contract;
- (b) Buyer agrees to be bound by these terms and conditions and this Supply Contract;
- (c) Buyer has the requisite power and authority to enter into this Supply Contract and to carry out the obligations contemplated by these terms and conditions and this Supply Contract; and
- (d) Buyer is solvent and duly incorporated in accordance with the laws of the place of its incorporation and that it is validly existing under those laws.

11. Liability

- 11.1 Except insofar as any conditions, warranties, guarantees, rights, entitlements, remedies and liabilities cannot be excluded or limited by statute or are expressly conferred on Buyer, by these terms and conditions all conditions, warranties, guarantees, rights, entitlements, remedies and liabilities whatsoever in relation to Goods and/or Services express or implied by statute, common law or trade usage or custom or otherwise are excluded to the maximum extent permitted by law. For the avoidance of doubt, nothing in these terms and conditions operates to exclude, restrict or modify any conditions, warranties, guarantees, rights, entitlements, remedies and liabilities that may be implied by or imposed under the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth) or any other statute, the exclusion, restriction or modification of which would contravene that statute or cause any of these terms and conditions to be void.
- 11.2 Subject to Condition 11.1, unless the Goods and/or Services supplied by Seller are of the kind usually acquired for personal, domestic or household use or consumption, Seller's liability for any and all costs, expenses, loss or damage resulting from any cause whatsoever, including alleged negligence, shall be limited (at Seller's election) to:
- (a) in the case of Goods:
 - (i) the replacement of Goods or the supply of equivalent Goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - (iv) the payment of the cost of having the Goods repaired; and
 - (b) in the case of Services:
 - (i) the supply of Services again; or
 - (ii) the payment of the cost of having the Services supplied again.
- 11.3 Subject to Conditions 11.1 and 11.2, Seller shall not be liable to Buyer or Buyer's servants or agents for any loss, harm, damage, cost or expense (including legal fees), or in the nature of direct, indirect, special, incidental or consequential loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data) of any nature howsoever caused (whether based on negligence or other tort or contract or otherwise) arising directly or indirectly out of a breach of these terms and conditions (including the Australian Consumer Law) by the Buyer or in any way attributable to the performance of this Supply Contract.
- 11.4 Subject to Condition 11.1, for any Goods not manufactured by the Seller, the Seller will endeavour to obtain for the Buyer the benefit of any manufacturer's warranty but shall not be obliged to do so.
- 11.5 In connection with any Goods returned to Seller as a warranty claim under this Condition 11, in the event that Seller, acting reasonably, determines that the Good does not qualify as a warranty claim, Seller reserves the right to charge Buyer an administration fee.
- 12. Use**
- 12.1 Subject to Condition 11.1, Buyer indemnifies Seller, its servants and agents from and against all claims, proceedings, suits, causes of action, costs, expenses, loss and damages arising directly or indirectly out of the ownership, possession or use of the Goods by Buyer or any other person.
- 13. Licenses and Permits**
- 13.1 Licenses, authorisations, approvals and permits required by law in respect of the Goods and/or Services supplied are Buyer's responsibility.
- 14. Agents and Resellers**
- 14.1 In the event of Buyer being an agent or reseller and reselling Goods and/or Services to any third person (**End User**), Buyer agrees to notify and request acknowledgment from the End User that the End User is aware of the existence of, and agrees to comply with, any warranty that has been specifically provided by Seller for the Buyer to hand to the End User upon resale of Goods and/or Services. These terms and conditions (including all confidentiality obligations under Condition 22) as amended from time to time shall apply to and forms part of any contract in respect of the sale of all Goods and Services by Buyer. Buyer shall ensure that Sellers' terms and conditions are provided to all End Users, prior to the Buyer entering into any supply arrangements.
- 14.2 Subject to Condition 11.1, Buyer hereby agrees to indemnify Seller against all proceedings, suits, causes of action, claims, losses, damages, expenses and costs whatsoever and howsoever caused arising directly or indirectly from the failure or omission of Buyer to observe the obligations provided for in condition 14.1 or from any promise, representation, warranty or undertaking given to a End User by Buyer which contradicts any warranty specifically provided by Seller for Buyer to hand to its customers or contradicts these terms and conditions.
- 14.3 Where Buyer supplies or resells Goods and/or Services to an End User, the Buyer must not give or make any undertaking, assertion or representation in relation to the Goods (including any Cylinders) and/or Services without Seller's prior approval in writing.
- 14.4 If Buyer supplies or sells any Goods or if the Goods become constituents of other goods, before ownership of the Goods has passed to Buyer, the proceeds of such sale or use will be received and held by Buyer (in whatever form) on trust for both Buyer and Seller. Seller's interest as beneficiary under that trust will be that portion of the proceeds which does not exceed the Buyer's indebtedness to Seller. The balance of the proceeds (if any) will be the Purchaser's beneficial interest under that trust.
- 15. Frustration**
- 15.1 Seller will use all reasonable endeavours to meet its Supply Contract obligations, but if Seller obligations become impossible to perform or shall otherwise become frustrated, Buyer shall be liable to pay to Seller all costs which Seller's suppliers, or sub-contractors have incurred directly or indirectly or for which Seller is liable under Supply Contract to Buyer at the time of frustration or impossibility or performance.
- 16. Patents and Trade Marks**
- 16.1 Subject to Condition 11.1, Seller makes no representation or warranty of any kind, expressed or implied, that the Goods supplied or the use of such Goods or articles made from the Goods either alone or in conjunction with other substances will not infringe any patent or trade mark right. Buyer must promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and if Seller considers itself to be affected it shall be entitled completely to control the defence or compromise of any such allegation or infringement. Buyer agrees to subrogate its rights in this regard to Seller.
- 17. Property in Goods**
- 17.1 Property and title in the Goods remains with Seller until Buyer has paid all sums owing to the Seller under this Supply Contract and any other contract.
- 17.2 Buyer agrees that until property and title in the Goods passes in accordance with Condition 17.1 or as otherwise agreed in writing by Seller, to store the Goods in a manner that clearly shows that the Goods are the property of Seller and will not remove any marks identifying the Goods as the property of Seller.
- 18. Assignment**
- 18.1 Buyer must not assign or transfer any of its rights or obligations under these terms and conditions without the prior consent of Seller. Seller may in its absolute discretion and without notification to Buyer sub-contract or assign the whole or any part of the production, supply or delivery of the Goods and/or Services and all or any of its rights or obligations under these terms and conditions.
- 19. Pallets and Metric Tonne Containers (MTC) and Steel Cages**
- 19.1 Seller retains title to and the right of possession of any pallets, MTCs and steel cages used for the delivery of Goods, and Buyer agrees to indemnify Seller fully in respect of, and pay Seller on demand the full replacement value of (as determined by Seller), any pallets, MTC's and steel cages not returned in good order and condition to the Seller within sixty (60) days of delivery of Goods.
- 20. Cylinder Service**
- 20.1 Seller will charge and Buyer must pay a periodic charge ('Cylinder Service Charge') at Seller's rates applicable to Buyer or at a rate agreed by Seller and Buyer in writing for each Cylinder held by Buyer as shown in Seller's records, such charge being due and payable in accordance with Condition 3, unless otherwise agreed in writing by Seller and Buyer. The Cylinder Service Charge will cover Seller's costs associated with the Cylinders including, but not limited to, costs of tracking, testing, repairing and maintaining the Cylinders.
- 20.2 Buyer agrees and acknowledges that the Cylinders remain the property of Seller at all times and Buyer must not encumber the Cylinders.
- 20.3 Subject to Condition 11.1, from time of delivery of the Cylinders until the Cylinders are returned to Seller, Buyer shall:
- (a) only use the Cylinders for the purpose for which they were supplied;
 - (b) not, and shall not agree or attempt to, sell, assign, transfer, lease or licence any Cylinder;
 - (c) be solely responsible for the safe custody and proper use of the Cylinders and any ancillary equipment;
 - (d) be responsible for keeping the Cylinders in good condition and in safe custody and shall be liable for any loss or damage to the Cylinders;
 - (e) operate and maintain the Cylinders in accordance with working instructions as stipulated by Seller from time to time;
 - (f) not repair, deface, alter, or remove any aspects or parts of the Cylinders;
 - (g) not remove or deface or alter any identification marks affixed to, impressed in or painted on the Cylinders;
 - (h) use reasonable endeavours to make it known to any third parties to which Buyer supplies Cylinders and Goods that property and title to the Cylinders remain at all times with Seller;
 - (i) only use the Cylinders for storing gas supplied by Seller;
 - (j) keep the Cylinders clean, in good condition and in safe custody;
 - (k) indemnify and hold harmless Seller against all claims, proceedings, costs, damages, losses and expenses whatsoever arising directly or indirectly out of the possession or use of any Cylinder by Buyer or any other person (including any End User); and
 - (l) indemnify Seller for any loss or damage to the Cylinders and cleaning costs thereof.
- 20.4 If an End User, in possession of a Cylinder supplied by Buyer, becomes subject to an Insolvency Event, Buyer must as soon as practicable notify the Seller and immediately pay to Seller an amount equivalent to the replacement value of the Cylinder as determined by Seller.
- 20.5 If requested by Seller, Buyer must immediately notify Seller of the location of any Cylinder supplied by Buyer to an End User and provide evidence satisfactory to Seller verifying that location and the identity of the End User in possession of the Cylinder. If Buyer is unable to do so, Buyer must immediately pay Seller an amount equivalent to the replacement value of the Cylinder as determined by Seller.

- 20.6 If Buyer has paid the Cylinder Service Charge in advance and returns the Cylinder before the end of the Charge Period a pro rata refund or credit of the Cylinder Service Charge paid in advance will be made for any whole months within the Charge Period remaining after the return.
- 20.7 It is Buyer's responsibility to ensure that the specific Cylinders held by Buyer from time to time conform to the specific Cylinder(s) shown as held by Buyer in Seller's records and on which Seller charges Cylinder Service Charge. Payments by Buyer of a Cylinder Service Charge invoice is deemed conclusive evidence on the number of Cylinders held by Buyer.
- 20.8 On request by Seller, Buyer will grant Seller access to its premises and all books and records relating to the Cylinders being held by Buyer as reasonably required for Seller to audit the number, condition and location (including identity of the End User) of the Cylinders held by the Buyer.
- 20.9 If following a Cylinder transaction or upon notification by Buyer or on a count by Seller it is determined that the number of Cylinders being held by Buyer is greater than that recorded in respect of the Buyer, Seller will amend its records and charge Buyer Cylinder Service Charge accordingly.
- 20.10 If Seller receives advice or otherwise discovers that Buyer holds fewer Cylinders than the number shown on Seller's invoice then the number of Cylinders comprising the difference will be deemed to have been lost by Buyer and Buyer will pay to Seller the then current Seller's standard Cylinder replacement cost of those Cylinders.
- 20.11 Seller reserves the right to charge a deposit for Cylinders supplied by Seller to the Buyer. Once the Cylinders are returned to Seller in a clean, safe and serviceable condition, Seller will refund the deposit (or the appropriate part thereof) to Buyer.
- 20.12 No allowance, credit or rebate will be made for any residual gas in the Cylinders.

21. Waiver

- 21.1 Failure by Seller to insist upon strict performance by Buyer of any provisions contained in these terms and conditions or other provisions of a Supply Contract shall not be taken to be a waiver of any rights or remedies of Seller unless the same is expressed in writing and signed on behalf of the Seller.

22. Confidential Information

- 22.1 Except as required by Law or by the rules of any applicable stock exchange, Buyer will ensure that neither it (or any End User) nor any of its employees, agents or sub-contractors will, during or after the term of this Supply Contract, make any announcement or disclosure as to the subject matter or any of the terms of this Supply Contract, or use, exploit or disclose to any person any Confidential Information supplied directly or indirectly by Seller, or otherwise acquired by Buyer pursuant to this Supply Contract, without the prior written consent of Seller.

23. Termination

- 23.1 If:
- (a) any payment is outstanding for more than 7 days after the due date (whether legally or formally demanded or not);
 - (b) Buyer fails to observe or perform any of these terms and conditions and provisions of a Supply Contract; or
 - (c) an Insolvency Event occurs in respect of Buyer,

Seller may terminate this Supply Contract by notice in writing to Buyer without prejudice to any other rights or remedies available to Seller at law, in equity or by statute. Seller may demand and Buyer shall pay for all outstanding amounts, owed by Buyer to Seller, including, but not limited to, any charges still to become due under the unexpired portion of the term of the Supply Contract.

- 23.2 Buyer agrees to pay all Seller's costs and expenses including, but not limited to, reasonable legal costs and costs for the collection and/or the repossession of Goods incurred by Seller in exercising any of its rights or remedies whether available at law, in equity or by statute including, but not limited to those under Condition 23.1.

- 23.3 At any time after termination of the Supply Contract whether at the expiration of the term of the Supply Contract or in accordance with Condition 23.1 or otherwise Seller may enter (forcibly if necessary) the premises of Buyer where the Goods are located or believed to be located and remove and retake possession of the same demolishing if necessary any obstructions which prevent such removal and without being liable to Buyer for any loss, damage, costs or expenses caused by such removal. Buyer must reimburse Seller on demand for all costs and expenses incurred by Seller in effecting removal of the Goods. A certificate in writing signed by any director, manager or secretary of Seller shall be conclusive evidence of the costs and expenses incurred.

- 23.4 Buyer indemnifies and must keep indemnified Seller for and against all actions, proceedings, claims, losses, damages, costs and expenses arising from anything done by or on behalf of Seller in connection with the removal of the Goods or the entry into the premises in accordance with Condition 23.3.

- 23.5 Buyer acknowledges the right of Seller to enter into any premises under the control of Buyer and grants a licence to Seller to do so, where Goods that have not been paid for in full are held, and Buyer further acknowledges the right of Seller to remove those Goods in accordance with Condition 23.3.

- 23.6 Termination of this Supply Contract will not affect Conditions 11 (Liability), 12 (Use), 14 (Agents and Resellers), 20 (Cylinder Service), 22 (Confidential Information) and 26 (Construction of Contract).

24. Notices

- 24.1 Every notice or other communication given under or in connection with these terms and conditions will be in writing and addressed to the relevant party and delivered and will be deemed to have been received when delivered personally or three days after it has been put into the post.

25. PPS Act

- 25.1 This document constitutes a security agreement for the purposes of the PPS Act and Buyer grants to Seller a security interest in the Goods and their proceeds as security for payment of the purchase price of the Goods and all other amounts payable by Buyer to Seller and for Buyer's performance of its other obligations under this document.

- 25.2 Buyer agrees:

- (a) at Seller's request, to promptly do all things (including signing any documents) and provide all assistance and information necessary to ensure that Seller has a perfected first ranking security interest in all Goods (and the proceeds of those Goods) supplied by Seller;
- (b) do all things (including signing any documents) to ensure that the security interest is enforceable, perfected and otherwise effective and to enable Seller to exercise any powers in connection with the security interest; and
- (c) that Seller may register a financing statement or financing change statement and do anything else required to perfect its security interest created by this document.

- 25.3 To the extent permitted by law, Buyer waives its right to receive any verification statement (or notice of any verification statement) in respect of any financing statement or financing change statement relating to a security interest created by this document.

- 25.4 Buyer indemnifies Seller and will pay on demand all costs and expenses incurred in connection with registering or maintaining a financing statement or financing change statement relating to a security interest created by this document.

- 25.5 If requested by Seller, Buyer must provide evidence satisfactory to Seller that Buyer has put in place and is adhering to policies and procedures which adequately protect any security interest Buyer has in respect of Cylinders or Goods it has supplied to third parties.

- 25.6 Buyer must not change its name or address without notifying Seller at least 10 business days prior to doing so.

- 25.7 Buyer and Seller each agree that it will not disclose any of the information set out in section 275(1) of the PPS Act in relation to any security interest created under this document to any person (except that Seller may do so where required due to the operation of section 275(7) of the PPS Act). Nothing in this Condition 25.7 will prevent any disclosure by Seller that it believes is necessary to comply with its other obligations under the PPS Act or under any other applicable law.

- 25.8 The following provisions of the PPS Act do not apply: section 95 (notice of removal of accession); subsection 121(4) (enforcement of liquid assets); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal); paragraph 132(3)(d) (contents of statement of account); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

- 25.9 In this clause, the following words and expressions have the same meanings given to them in the PPS Act: **financing change statement, financing statement, security interest and verification statement.**

26. Construction of Contract

- 26.1 Part or all of any provision of a Supply Contract that is illegal or unenforceable maybe severed from the Supply Contract and the remaining provisions of the Supply Contract continue in force.

- 26.2 A notice or certificate from or demand by Seller stating that a specified sum of money is owing or payable under this document is taken to be correct unless proved incorrect.

- 26.3 Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Supply Contract.

- 26.4 Seller shall have a general right of set off, such that Seller may deduct any monies owing by Buyer to Seller from the proceeds of any Goods (including any Cylinders) and/or Services sold by Buyer.

- 26.5 No party will vary these terms and conditions or any Supply Agreement accepted by Seller except in writing signed on behalf of both Seller and Buyer.

- 26.6 No party to this document has the power to obligate or bind any other party. Nothing in this document will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties.

- 26.7 This Supply Contract represents the entire agreement between the parties relating to the sale and purchase of Goods and/or Services.

- 26.8 This Supply Contract shall be governed by and construed in accordance with the laws of Victoria and the parties submit to the non exclusive jurisdiction of the courts of Victoria.

27. Definitions

'Australian Consumer Law' means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended or replaced from time to time.

'Buyer' means the purchaser of any Goods and/or Services from the Seller as stipulated in the Supply Contract.

'C & F' means cost and freight.

'C.I.F' means cost, insurance and freight.

'Charge Period' means twelve (12) months or such other period stipulated by Seller.

'Confidential Information' means all information, verbal or written, personal or otherwise including documents, plans, sketches, drawings, software, marketing strategies, market research data, product literature, trade secrets, processes, technical information, know-how and intellectual property of Seller and any copies of the documents, notes and information but will not include public information (provided such information did not become public as a result of unauthorised disclosure), information independently developed or acquired or information authorised in writing by Seller for disclosure.

'Cylinders' means the gas Cylinders (of varying sizes) including any valve attachments, refill protection devices, pressure gauge regulators and gas controlling and conserving devices and including crates, packs and pallets in which gas Cylinders may be stored.

'Cylinder Service Charge' shall have the meaning set forth in Condition 20.1.

'End User' shall have the meaning set forth in Condition 14.1.

'F.I.S' means free into store.

'F.O.B' means free on board.

'F.O.T' means free on transport.

'Force Majeure Event' includes but is not limited to Act of God, war, riot, fire, explosion, accident, flood, sabotage, inability to obtain fuel, power, raw materials, labour, Cylinders or transportation facilities, governmental laws, regulations, orders, requests or action, breakage or failure of machinery or apparatus, national defence requirements or any other event beyond the reasonable control of Seller or in the event of labour trouble, strike, lockout or injunction (whether or not such labour event is within the reasonable control of Seller).

'Goods' means goods supplied by Seller to Buyer but excludes Cylinders, pallets, MTCs and steel cages. 'GST' means any tax, levy, impost generally imposed pursuant to *A New Tax System (Goods and Services Tax) Act 1999* (or any other Law).

'Insolvency Event' means in respect of a party or an End User (as relevant), any event (other than for the purpose of solvent reconstruction or amalgamation) where:

- (a) a receiver, receiver and manager, liquidator, provisional liquidator, trustee, administrator, controller, inspector appointed under any companies or securities legislation, or another similar official, is appointed in respect of that party or any of its property, or any security is enforced over a substantial part of its assets or steps taken to do so;
- (b) the party, or an End User, ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, that party's creditors or threatens to do so, or stops payments to its creditors generally;
- (c) the party or an End User is, becomes, or is deemed to be insolvent or bankrupt;
- (d) a distress, attachment or other execution is levied or enforced on or commenced against any substantial part of its assets and is not stayed within 14 days;
- (e) if a registered corporation under the *Corporations Act 2001* (Cth), steps taken under sections 601AA, 601AB or 601AC of the *Corporations Act 2001* (Cth) to cancel its registration;

(f) anything having a similar effect to any of the events specified above happens under the law of any jurisdiction; or

(g) if the party, or an End User is an individual, anything having a similar effect to any of the events specified above happens in respect of that individual.

'Law' means any law or statute and any regulation, role, ordinance or proclamation made at any time under that statute in Australia.

'PPS Act' means the *Personal Property Securities Act 2009* (Cth) and any regulation made at any time under the PPS Act (each as amended).

'Seller' means A-Gas Australia Pty Ltd (ACN 066 273 247) and any of its related bodies corporate (as defined in the *Corporations Act 2001* (Cth)) and any successor or assignee of A-Gas Australia Pty Ltd or its related bodies corporate (as defined in the *Corporations Act 2001* (Cth)).

'Services' means services supplied by Seller to Buyer.

'Supply Contract' means these terms and conditions and the terms of any order accepted by Seller in accordance with Condition 1.