

SUPAGAS PTY LTD
CONDITIONS OF QUOTATION AND SALE AND HIRE

1. INTERPRETATION

- (a) 'Company' means Supagas Pty Ltd (ABN 50 074 008 496).
- (b) 'Conditions' means these Conditions of Quotation and Sale and Hire – Commercial.
- (c) 'Contract' means a Contract for Sale, a Hire Contract, or both;
- (d) 'Contract for Sale' means any purchase order made by a Customer and accepted by the Company.
- (e) 'Customer' means the person named in the delivery docket, hire notice, sales invoice form or Quotation and includes a Customer's successors and assigns (if a corporation) and the legal personal representative (if an individual or partnership).
- (f) 'Goods' means the goods and services the subject of a Contract.
- (g) 'Hire Contract' means any hire order made by the Customer and accepted by the Company.
- (h) 'Quotation' means any verbal or written quotation submitted by the Company to the Customer.

2. CONDITIONS PRECEDENT

- (a) A Quotation is not to be construed as an offer to sell or hire and no contractual relationship shall arise therefrom until the Company confirms the Customer's order in writing or the Customer accepts delivery of the Goods.
- (b) These Conditions apply to all sales and hire of the Company's Goods despite any contrary terms in any of the Customer's documents and constitutes the entire agreement between the parties to the exclusion of all other conditions. Acceptance of delivery of the Goods indicates the Customer's acceptance of these Conditions unamended. No representations, inducements, promises or agreements between the parties shall be of any force or effect in varying these Conditions unless in writing and signed by both parties.
- (c) Should there be any conflict between these Conditions and a Contract, it is agreed the Contract will take priority to the extent of any inconsistency.

3. DELIVERY

- (a) Delivery times are estimates only. The Company shall not be liable for any loss or damage howsoever arising resulting from delays in delivery. Delay in delivery shall not entitle the Customer to cancel the Contract.
- (b) A Contract is for supply of the Goods only. Installation and commissioning (if any) is at the Customer's expense unless otherwise specified in writing by the Company.
- (c) The Company reserves the right to over or under supply an order within reasonable limits and the Customer accepts that it shall, in the event of reasonable and inadvertent oversupply, pay for Goods delivered in addition to those ordered at the rate specified in the Contract.

4. PRICES

- (a) Prices stated are current prices only and subject to change without notice.
- (b) The Customer is liable for all additional costs or expenses not specifically provided for in the Contract including without limitations any tax, GST, stamp duty, fee, levy or charge of any nature whatsoever imposed by any semi-government or government authority in respect of the sale or hire of the Goods.
- (c) The Company reserves the right to charge the Customer all actual costs and expenses incurred by the Company in arranging carriage, unloading and reloading of Goods on the Customer's instructions where:
 - (i) The Goods require special equipment or expertise to load, reload or install;
 - (ii) If the Goods are required before the Company's standard delivery time; or
 - (iii) The delivery address is outside the Company's standard delivery zone.The Company will notify the Customer (verbally or in writing) of any such delivery expenses prior to the parties entering into a Contract.
- (d) With respect to a Hire Contract, and subject to clause 4(c), the Customer will pay hire charges at the rate and in the manner specified in the Hire Contract on and from the day of delivery until the later of the day the Goods are returned by the Customer to the Company and the second business day

after receipt by the Company of notice in writing from the Customer notifying that the Goods are ready for collection.

5. TERMS OF PAYMENT

- (a) The terms of payment that are stipulated in a Contract shall be strictly adhered to and in this regard time shall be of the essence. If no terms of payment are stipulated, all invoices and charges of any kind are payable:
 - (i) With respect to a Contract for Sale, by the last business day of the month immediately following the month of supply of the Goods; and
 - (ii) With respect to a Hire Contract, within thirty (30) days from the date of the invoice.
- (b) If the Customer fails to comply with the terms of payment, the Company reserves the right to:
 - (i) Immediately cancel all trade discounts or rebates;
 - (ii) Make all debts owed by the Customer to the Company immediately due and payable;
 - (iii) Charge interest upon all outstanding amounts at an interest rate not more than 3 per cent in excess of the ANZ Banking Group Ltd indicator lending rate as published from time to time; and
 - (iv) Issue a notice in writing requiring the Customer to rectify such failure, and if such failure continues for a period of seven (7) days after that notice is issued, the Company may at its sole discretion, and without prejudice to any other rights or remedies available to it, immediately terminate the Contract by giving notice in writing or suspending delivery of the Goods.

6. RETENTION OF TITLE

- (a) With respect to a Contract for Sale, legal title to the Goods remains with the Company, notwithstanding that the Goods have been put into transit or actually delivered to the Customer, until the Customer has paid for the Goods (including the purchase price, transport and other charges and price of any other Goods previously supplied by the Company) in full.
- (b) With respect to a Hire Contract, legal title to the Goods remains with the Company at all times.
- (c) Risk in the Goods passes to the Customer on delivery to the Customer or its agent. Signed delivery dockets or similar electronic records shall be deemed to be proof of delivery of the Goods.
- (d) Whilst legal title remains with the Company:
 - (i) The Customer must insure the Goods for their actual value against loss or damage;
 - (ii) The relationship between the Company and the Customer will be fiduciary;
 - (iii) The Customer will:
 - (A) Hold the Goods as bailee for the Company;
 - (B) Keep the Goods separate from other goods; and
 - (C) Label the Goods so that they are readily identifiable as the goods of the Company and keep legible and visible all trade marks and signs of the Company on the Goods;
 - (iv) The Customer must not:
 - (A) Purport to sell, encumber, part with possession of, or otherwise do anything prejudicial to the Company's title to the Goods including removing the Goods from its premises; or
 - (B) Make any alteration to the Goods or allow any attachment to be affixed or used in the operation of the Goods without the prior written consent of the Company; and
 - (v) The Customer agrees to allow the Company to inspect the Goods from time to time and the Customer shall ensure that the Goods are used at all times in a proper and responsible manner and are being maintained in proper condition.
- (e) Notwithstanding clause 6(d)(iii), with respect to a Contract for Sale, until legal title passes:
 - (i) With the Company's consent (which is given), the Customer is at liberty to sell the Goods, in the ordinary course of the Customer's business, provided that the money resulting from the sale will:
 - (A) Be held in a separate account on trust for the Company;
 - (B) Not be mingled with other money; and
 - (C) Not be placed into an overdrawn account; andthe Customer will account to the Company for those proceeds; and
 - (ii) In the event that the Customer uses the Goods in some manufacturing or construction process of its own or of some third party then the

Customer will hold such part of the proceeds of such manufacturing or construction process as relates to the Goods on trust for the Company. Such part will be deemed to equal in dollar terms the amount owing by the Customer to the Company at the time of receipt of such proceeds.

7. PPSA

- (a) Unless otherwise defined in these Conditions, the capitalised words and expressions used in this clause have the meanings given to them in the *Personal Property Securities Act 2009* (PPSA).
- (b) The Customer acknowledges and agrees to grant to the Company a Security Interest in the Goods and their Proceeds, including any Accounts and Accessions, by virtue of clause 6 above of these Conditions.
- (c) The Customer acknowledges that any purchase by the Customer on credit terms from the Company, or any retention of title supply pursuant to these Conditions, constitutes a Purchase Money Security Interest as defined in the PPSA.
- (d) The Customer agrees that:
 - (i) These Conditions or, subject to the Company giving the Customer at least 30 days notice, such other terms and conditions as the Company may adopt from time to time, apply to the supply of Goods by the Company to the Customer to the exclusion of all other terms and conditions of sale or purchase and constitute a Security Agreement pursuant to the PPSA;
 - (ii) No variation to these Conditions will be of any effect unless agreed to by the Company in writing;
 - (iii) The Goods supplied by the Company secure the payment of the purchase price of those Goods and of any other goods supplied by the Company with priority to the fullest extent permitted by law over all other registered or unregistered Security Interests;
 - (iv) The Customer will do all things necessary, including providing all information the Company requires, to enable the Company to register a Financing Statement or Financing Change Statement on the Personal Property Securities Register (PPSR) as a Security Interest and a Purchase Money Security Interest pursuant to the PPSA;
 - (v) The Customer will not change its name, ACN or ABN or other details required to be recorded on the PPSR, without first notifying the Company;
 - (vi) The Customer waives its right to receive a verification statement in respect of any Financing Statement or Financing Change Statement in respect of the Security Interest created pursuant to these Conditions.
 - (vii) The Customer must pay the Company's costs of any discharge or necessary amendment of any Financing Statement or Financing Change Statement.
- (e) To the maximum extent permitted by law, the Customer agrees that sections 129(3), 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply.
- (f) To the maximum extent permitted by law, the Customer waives any rights it may have pursuant to, and hereby contracts out of, sections 95, 96, 117, 118, 121(4), 123, 129(2), 130, 135 and 157 of the PPSA.
- (g) In addition to any other rights under these Conditions, the Company may exercise any and all remedies set out in the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Customer, to search for and seize, dispose of or retain those goods in respect to which the Company has a Security Interest. In this regard the Customer acknowledges that sections 126, 128, and 129(1) of the PPSA, relating to seizure of goods and disposal of seized goods, apply.
- (h) The Customer hereby appoints and authorises the Company as its attorney to sign in the Customer's name all documents which the Company reasonably considers necessary to enforce or protect its rights and powers under these Conditions and to protect, preserve and enforce its rights under the PPSA.

8. EXCLUSION OF LIABILITY

- (a) To the extent permitted by law:
 - (i) The Company provides no warranty of any kind where the Goods are installed and/or used in conjunction with the goods of a supplier other than the Company and denies all liability for any damage whatsoever suffered by any person arising from such use;
 - (ii) Representations and agreements not expressly contained herein shall not be binding upon the Company as conditions, warranties and representations. All such conditions warranties and representations on the part of the Company, whether express or implied, statutory or otherwise, whether collateral or antecedent or otherwise are hereby expressly negated and excluded;

- (iii) If the Customer requires that the Company's products be delivered onto the Customer's premises then the Company will enter the premises at the Customer's risk and will not be responsible for any accidental damage to the Customer's property or premises.
- (iv) The Company excludes all conditions, guarantees, warranties and representations concerning the Goods;

- (b) Nothing contained in these Conditions shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of the Goods of all or any of the provisions of the *Competition and Consumer Act 2010* or any relevant State or Territory Statute which by law cannot be excluded, restricted or modified, including any liability resulting from wilful misconduct or gross negligence of the Company or its personnel, **PROVIDED THAT** to the extent that any such statute permits the Company to limit its liabilities to compensate or indemnify any person for breach of a condition or warranty implied thereby, then the respective liabilities of the Company for such breach shall be limited in the case of goods to the replacement of the goods or supply of equivalent goods and in the case of services, to the resupply of the services.

9. INDEMNITY

- (a) The Customer indemnifies the Company against all losses and expenses which the Company may suffer or incur due to the failure of the Customer to fully observe its obligations under these Conditions.

10. WARRANTY

- (a) In respect of a Contract for Sale, the Company warrants that in the event of any defect in the Goods due to either faulty material or workmanship, the Company may in its absolute discretion either:
 - (i) Repair the Goods at the Company's cost;
 - (ii) Replace the Goods with goods of an identical type at the Company's cost, or
 - (iii) Accept the return of the Goods and repay the Fees to the Customer;
- PROVIDED THAT** the Company is notified of the defect by the Customer within seven (7) days from delivery of the Goods and the Company, in its sole and unfettered opinion, is satisfied that the Goods were defective at the time of delivery. Any notification in this regard is to be made by contacting the Company's head office via its postal address – **PO Box 1015 Ingleburn NSW 1890** or by telephoning **Supagas** on **137 872** (within Australia) or by sending a facsimile to **[(02) 8788 4445]**.
- (b) Any warranty claim regarding any defective Goods must be accompanied by the original invoice number and details of the invoice date.

11. CONSUMER GUARANTEES UNDER THE AUSTRALIAN CONSUMER LAW

In addition to the warranty extended by the Company to the Customer, the Australian Consumer Law requires that the Company provide the following additional guarantees to consumers (as that word is defined by the *Competition and Consumer Act 2010*) in respect of consumer goods (as defined by that Act):

'Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of an acceptable quality and the failure does not amount to a major failure.'

12. RETURN OF GOODS

- (a) With respect to a Contract for Sale, should the Customer return to the Company any Goods which are not defective or incorrectly supplied, the Company may, in its absolute discretion:
 - (i) Accept the return of the Goods and provide a credit for the value of the Goods to the Customer's account;
 - (ii) Apply a restocking fee of 20% (exclusive of GST). The re-stocking fee will not apply where a gas cylinder is exchanged for another gas cylinder of similar value;
 - (iii) Refuse to grant any credit to the Customer's account should the manufacturer of the Goods not accept their return; and/or

- (iv) Reduce any credit provided to the Customer's account in regard to, or reject, such Goods as are not in their original packages or are in any way damaged, shop-soiled or obsolete.
- (b) Notwithstanding clauses 12(a), the Company will not accept returns under a Contract for Sale if:
 - (i) The Goods are returned eight (8) or more days after the Goods were delivered to the Customer;
 - (ii) The Goods were damaged after being delivered to the Customer and that damage is unrelated to their state or condition at the time of supply;
 - (iii) The Goods have been attached to, or incorporated in, any real or personal property and they cannot be detached or isolated without damaging them;
 - (iv) The Goods contain custom gas mixtures (unless the gas is defective or incorrectly supplied); and/or
 - (v) The Goods were non-standard Goods or Goods designed to the Customer's specifications.
- (c) With respect to a Hire Contract, at the termination of hire all Goods shall be returned to the Company in good condition excepting only fair wear and tear. All Goods shall be deemed to have been delivered in good condition unless the Company notifies the Customer to the contrary within 72 hours of delivery of the goods. The Customer shall on demand pay in respect of any Goods damaged or not so returned the lesser of the cost of repairing the Goods or the then current selling price for the Goods (as applicable). Until such sum is paid, hire charges specified in the Hire Contract shall continue to accrue together with any and all other costs and expenses incurred by the Company as a result of such shortages or losses.
- (d) The Customer agrees that, in the event of theft of the Goods, no title will pass to the Customer in the event of recovery of the Goods.
- (e) If the Company agrees to accept an early return of Goods provided under a Hire Contract:
 - (i) The Customer is not entitled to a refund of any fees already paid; and
 - (ii) If the fees charged under the Hire Contract are a discounted rate determined by reference to intended length of hire, the Company is entitled to charge and recover a retrospective price increase related to the standard hire charge as at the date of commencement of the Hire Contract.

13. PROMOTIONAL MATERIAL

Subject to the Australian Consumer Law, photographs, drawings, illustrations, specifications, samples and any other particulars accompanying or associated with either a Quotation, Contract or any catalogue, price list or advertising material provided by the Company generally represent the goods described therein but do not form part of the Contract and the Company accepts no responsibility as to the accuracy thereof nor will the Company be liable for any consequential loss or damage caused by any defect or otherwise.

14. FORCE MAJEURE

Should the performance of any of the Company's obligations be hindered or delayed by any circumstances beyond the Company's reasonable control, including but without limiting the generality thereof strikes, lock outs, rebellions, fire, acts of God, war, epidemics, governmental intervention, accidents or the inability of the Company to procure necessary materials or services, the time for such performance by the Company shall be extended for such time as may be reasonable and any such event and extension of time shall exonerate the Company from any liability in respect of such hindrance or delay.

15. TERMINATION

- (a) The Company shall be at liberty to immediately cancel a Hire Contract at any time or a Contract for Sale prior to such time as legal title passes to the Customer without notice to the Customer and without being liable for damages for so doing if:
 - (i) The Customer commits a breach of these Conditions or any other contract between it and the Company and such breach continues for a period of [seven (7)] days after notice is issued by the Company to the Customer in writing requiring the Customer to rectify the breach;
 - (ii) The Customer goes into liquidation, a receiver and manager of any of the Customer's undertaking or assets is appointed or the Customer enters into any other form of insolvency administration;
 - (iii) The Customer proposes or makes any composition or arrangement with its creditors;
 - (iv) A petition to wind up the Customer is presented in any Court of competent jurisdiction; or

- (v) The Customer becomes bankrupt or applies to take benefit of any law for relief of bankrupt or insolvent debtors or compounds with his creditors or makes an assignment of his remuneration for their benefit. In such circumstances the Company shall be entitled then and at any time thereafter, at the expense of the Customer, to enter upon the Customer's premises and remove the Goods therefrom, without prejudice to any action or other remedy which the Company has or might or otherwise could have for arrears of fees, for other sums due or for any breach of the Customer's obligations hereunder.
- (b) Without prejudice to any other right the Company may have, where a Contract is terminated by the Company, the Company is immediately entitled to retake possession of the Goods which are the subject of the Contract without further notice to the Customer.

16. REPOSSESSION

- (a) Where the Company is entitled to retake possession of the Goods, the Customer irrevocably authorises and licenses the Company and its servants and agents to enter any place or premises where any Goods may be stored for the purpose of removing same.
- (b) If the Customer is unable to grant the Company any such licence specified in sub-clause 16(a), the Customer shall, upon request by the Company, forthwith deliver to the Company such of the Goods as the Company may demand at a place accessible to, and convenient for, the Company.
- (c) The Customer shall reimburse the Company for all additional costs, charges and expenses which the Company may incur in retaking possession of all or any of the Goods (without prejudice to any right the Company may have to claim extra charges in relation to the Goods).
- (d) Where the Company repossesses Goods provided under a Contract for Sale, the Company may sell the Goods on such terms and in such manner as the Company determines to recover any outstanding amounts owed by the Customer the Company and the Company will be entitled to deduct all expenses incurred in doing so without notice to the Customer.
- (e) If the Company incurs any cost or liability for whatever reason as a result of taking possession as aforesaid, the Customer hereby indemnifies the Company against any such liability or cost.

17. WORKPLACE HEALTH AND SAFETY

- (a) With respect to a Hire Contract:
 - (i) The Customer shall use the Goods solely for the purpose for which the Goods are supplied and in accordance with any limitations on the use of the Goods arising from any legislation or the requirements of any local regulatory authority.
 - (ii) All safety information provided by the Company will be conveyed by the Customer to all persons responsible for the utilisation of the Goods.
 - (iii) The Customer shall attach and maintain all safety signs supplied with the Goods in prominent positions on the Goods or in such other positions as are necessary to bring the signs to the attention of any users of the Goods.
 - (iv) The Customer shall at all times comply with any relevant legislation creating occupational health and safety requirements in connection with the use of the Goods.
- (b) The Customer agrees to use all Goods in accordance with the applicable Safety Data Sheet (SDS) located at www.supagas.com.au/safety/.

18. GENERAL

- (a) **Relationship:** The Customer is not the agent of the Company.
- (b) **Substitution:** Unless agreed to the contrary in writing, the Company reserves the right to supply goods and services with the same properties and capacities as the Goods in substitution for the Goods.
- (c) **No assignment:** The Customer may not assign the benefit, or novate the burden, of these Conditions or otherwise transfer these Conditions or a right or remedy under them without the written consent of the Company. A change in control of the Customer is deemed to constitute an assignment of these Conditions.
- (d) **Assignment:** The Company may assign the benefit of these Conditions by providing written notice to the Customer.
- (e) **Waiver:** No provision hereof and no breach of any provision shall be deemed waived by reason of any previous waiver of any breach hereof.
- (f) **Applicable law:** The applicable law shall be the law of the state of New South Wales and the parties hereto agree to submit to the jurisdiction of the courts of the state of New South Wales.