

**SUPAGAS PTY LIMITED
GENERAL CONDITIONS**

1. INTERPRETATION

- 1.1 We or us means Supagas Pty Limited ABN 50 074 008 496.
- 1.2 Conditions means these General Conditions.
- 1.3 Contract means a Contract for Sale, a Hire Contract, or both.
- 1.4 Contract for Sale means any purchase order made by a customer and accepted by us.
- 1.5 You or your means the person named in the delivery docket, hire notice, sales invoice form or Quotation and includes your successors and assigns (if a corporation) and the legal personal representative (if an individual or partnership).
- 1.6 Goods means the goods and services the subject of a Contract.
- 1.7 Hire Contract means any hire order made by you and accepted by us.
- 1.8 Quotation means any verbal or written quotation submitted by us to you.
- 1.9 Terms means the terms and/or conditions set out in any other documents we provide to you which make up this Contract.

2. CONDITIONS PRECEDENT

- 2.1 A Quotation is not an offer to sell or hire and no contractual relationship will arise until we accept your order in writing or you accept delivery of the Goods.
- 2.2 These Conditions apply to all sales and hire of our Goods:
 - (a) despite any contrary terms in any of your documents;
 - (b) and constitutes the entire agreement between the parties to the exclusion of all other terms and conditions except for those set out in the Terms.
- 2.3 If you accept delivery of the Goods you are deemed to have accepted these Conditions unamended.
- 2.4 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.
- 2.5 Should there be any conflict between these Conditions and the Terms, the Terms will take priority to the extent of any inconsistency.

3. DELIVERY

- 3.1 Delivery times are estimates only. We shall not be liable for any loss or damage howsoever arising resulting from delays in delivery. Delay in delivery shall not entitle you to cancel the Contract.
- 3.2 A Contract is for supply of the Goods only. Installation and commissioning (if any) is at your expense unless otherwise specified in writing by us.

- 3.3 We reserve the right to over or under supply an order within reasonable limits and you accept that you 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.
- 3.4 The Customer authorises the Company and its personnel to access the Customer's premises. The Customer must ensure safe, clear and reasonable access to the delivery location.

4. PRICES

- 4.1 Prices stated are current prices only and subject to change with notice.
- 4.2 You are 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.
- 4.3 We reserve the right to charge you all actual costs and expenses incurred by us in arranging carriage, unloading and reloading of Goods on your instructions where:
 - (i) The Goods require special equipment or expertise to load, reload or install;
 - (ii) The Goods are required before our standard delivery time; or
 - (iii) The delivery address is outside our standard delivery zone.We will notify you (verbally or in writing) of any such delivery expenses prior to the parties entering into a Contract.
- 4.4 With respect to a Hire Contract, you 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:
 - (i) the day you return the Goods to us; and
 - (ii) the second business day after receipt by us of notice in writing from you 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 is of the essence.
- (b) If no terms of payment are stipulated, all invoices and charges of any kind are payable:
 - (i) For a Contract for Sale - by the last business day of the month immediately following the month of supply of the Goods; and
 - (ii) For a Hire Contract - within 21 days from the date of the invoice.

- (c) If you fail to comply with the terms of payment, we reserve the right to:
 - (i) Immediately cancel all trade discounts or rebates;
 - (ii) Make all debts owed by you to us 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 RBA cash rate (or any rate which replaces it) as published from time to time; and
 - (iv) Issue a notice in writing requiring you to rectify such failure, and if such failure continues for a period of seven (7) days after that notice is issued, we may at our sole discretion, and without prejudice to any other rights or remedies available to us, immediately terminate the Contract by giving notice in writing or suspending delivery of the Goods.
- (i) With our consent (which is hereby given), you are at liberty to sell the Goods, in the ordinary course of your business, provided that the money resulting from the sale will:
 - (A) Be held in a separate account on trust for us;
 - (B) Not be mingled with other money; and
 - (C) Not be placed into an overdrawn account; and you will account to us for those proceeds; and
- (ii) In the event that you use the Goods in some manufacturing or construction process of your own or of some third party, then you will hold such part of the proceeds of such manufacturing or construction process as relates to the Goods on trust for us. Such part will be deemed to equal in dollar terms the amount owing by you to us at the time of receipt of such proceeds.

6. RETENTION OF TITLE

- (a) Contract for Sale - we retain legal title to the Goods, even if the Goods have been put into transit or actually delivered to you, until you have paid for the Goods in full (including the purchase price, transport and other charges and price of any other Goods that we have previously supplied).
- (b) Hire Contract – we retain legal title to the Goods at all times and title does not pass to you.
- (c) Risk in the Goods - passes to you on delivery to you or your agent. Signed delivery dockets or similar electronic records are proof of delivery of the Goods.
- (d) While we have legal title:
 - (i) you will insure the Goods for their actual value against loss or damage;
 - (ii) the relationship between you and us is fiduciary;
 - (iii) you will:
 - (A) hold the Goods as bailee for us;
 - (B) keep the Goods separate from other goods; and
 - (C) if they are not already, label the Goods so that they are readily identifiable as our goods and keep legible and visible all of our trade marks and signs on the Goods;
 - (iv) you must not:
 - (A) try to sell, encumber, part with possession of, or otherwise do anything prejudicial to our title to the Goods including removing the Goods from your premises (other than in the usual course of business); or
 - (B) make any alteration to the Goods or allow any attachment to be affixed or used in the operation of the Goods without our prior written consent;
 - (v) you agree to allow us to inspect the Goods from time to time; and
 - (vi) you will use and ensure that the Goods are always used in a proper and responsible manner and are maintained in proper condition.
- (e) Notwithstanding clause 6(d)(iii), with respect to a Contract for Sale, until legal title passes:

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) You acknowledge and agree to grant us a Security Interest in the Goods and their Proceeds, including any Accounts and Accessions, by virtue of clause 6 above of these Conditions.
- (c) You acknowledge that any purchase by you on credit terms from us, or any retention of title supply pursuant to these Conditions, constitutes a Purchase Money Security Interest as defined in the PPSA.
- (d) You agree that:
 - (i) These Conditions or, subject to us giving you at least 30 days notice, such other terms and conditions as we may adopt from time to time, apply to the supply of Goods by us to you 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 us in writing;
 - (iii) The Goods supplied by us secure the payment of the purchase price of those Goods and of any other goods supplied by us with priority to the fullest extent permitted by law over all other registered or unregistered Security Interests;
 - (iv) You will do all things necessary, including providing all information we require, to enable us 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) You will not change your name, ACN or ABN or other details required to be recorded on the PPSR without first notifying us;
 - (vi) You waive your 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) You must pay our costs of any discharge or necessary amendment of any Financing Statement or Financing Change Statement.
- (e) To the maximum extent permitted by law, you agree 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, you waive any rights you may have pursuant to, and hereby contract 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, we 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 you, to search for and seize, dispose of or retain those goods in respect to which we have a Security Interest. In this regard you acknowledge that sections 126, 128, and 129(1) of the PPSA, relating to seizure of goods and disposal of seized goods, apply.
- (h) You hereby appoint and authorise us as your attorney to sign in your name all documents which we reasonably consider necessary to enforce or protect our rights and powers under these Conditions and to protect, preserve and enforce our rights under the PPSA.

8. EXCLUSION OF LIABILITY

- (a) To the extent permitted by law, and subject to 8(b) below:
- (i) We provide no warranty of any kind where the Goods are installed and/or used in conjunction with the goods of a supplier other than us and deny 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 us as conditions, warranties and representations. All such conditions warranties and representations on our part, whether express or implied, statutory or otherwise, whether collateral or antecedent or otherwise are hereby expressly negated and excluded;
- (iii) If you require that our products be delivered to your premises, then we will enter the premises at your risk and will not be responsible for any accidental damage to your property or premises;
- (iv) We exclude all conditions, guarantees, warranties and representations concerning the Goods other than those set out in 10 and 11 below;
- (v) Neither party is liable to the other for any loss of or damage to revenue, profits, savings, use, production, goodwill, business opportunity or any (or any other) consequential or indirect loss or damage; and
- (vi) Neither party is liable to the other to the extent that such liability results from the acts or omissions of the other party and/or its employees, agents or contractors and/or any other third party, and the liability of any party is reduced proportionally to the

extent that those other persons' acts or omissions caused or contributed to any relevant loss or damage.

- (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 PROVIDED THAT to the extent that any such statute permits us to limit our liabilities to compensate or indemnify any person for breach of a condition or warranty implied thereby, then our liabilities 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. WARRANTY

- (a) In respect of a Contract for Sale, we warrant that in the event of any defect in the Goods due to either faulty material or workmanship, we may in our absolute discretion either:
- (i) Repair the Goods at our cost;
- (ii) Replace the Goods with goods of an identical type at our cost; or
- (iii) Accept the return of the Goods and repay to you the amount you have paid,
- PROVIDED THAT we are notified of the defect by you within seven (7) days from delivery of the Goods and we, in our sole and unfettered opinion, are satisfied that the Goods were defective at the time of delivery. Any notification in this regard is to be made by contacting our head office via our 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.

10. CONSUMER GUARANTEES UNDER THE AUSTRALIAN CONSUMER LAW

In addition to any warranty extended by us to you, the Australian Consumer Law requires that we 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 and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major

failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service'.

11. RETURN OF GOODS

- (a) With respect to a Contract for Sale, should you return any Goods to us which are not defective or incorrectly supplied, we may, in our absolute discretion:
 - (i) Accept the return of the Goods and provide a credit for the value of the Goods to your 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 your account should the manufacturer of the Goods not accept their return; and/or
 - (iv) Reduce any credit provided to your 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 clause 12(a), we 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 you;
 - (ii) The Goods were damaged after being delivered to you 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 your specifications.
- (c) With respect to a Hire Contract, at the termination of hire all Goods shall be returned to us in good condition excepting only fair wear and tear. All Goods shall be deemed to have been delivered in good condition unless we notify you to the contrary within 72 hours of delivery of the Goods. You 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 us as a result of the failure to return the Goods in accordance with this clause.
- (d) You agree that, in the event of theft of the Goods, no title will pass to you in the event of recovery of the Goods.
- (e) If we agree to accept an early return of Goods provided under a Hire Contract:
 - (i) You are not entitled to a refund of any fees already paid; and

- (i) If the fees charged under the Hire Contract are a discounted rate determined by reference to intended length of hire, we are 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.

12. 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 us generally represent the goods described therein but do not form part of the Contract and we accept no responsibility as to the accuracy thereof nor will we be liable for any consequential loss or damage caused by any defect or otherwise.

13. FORCE MAJEURE

Should the performance of any of our obligations be hindered or delayed by any circumstances beyond our reasonable control, including by reason of acts of God, earthquake, fire, explosion, flood, landslide, lightning, storm, war, invasion, hostilities between nations, civil insurrection, military usurped power, sabotage, malicious damage, terrorism, confiscation, nationalisation, prohibition, embargo, governmental intervention, industrial action, Court order, epidemic, pandemic, shortages of (or inability to obtain) raw materials, production plant shutdown or any other circumstances whether or not similar to the above, the time for such performance by us shall be extended for such time as may be reasonable and we shall have no liability to you for failure or delay in meeting any obligation under the Contract. Further, in the circumstances contemplated by this clause, we shall be at liberty to ration the supply of Goods reasonably amongst our customers and shall not be obliged to replace any affected source of supply if doing so would involve additional expense to us.

14. TERMINATION

- (a) We will 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 you without notice to you and without being liable for damages for so doing if:
 - (i) You commit a breach of these Conditions or any other contract between you and us and such breach continues for a period of 14 days after notice is issued by us to you in writing requiring you to rectify the breach;
 - (ii) You go into liquidation, a receiver and manager of any of your undertaking or assets is appointed or you enter into any other form of insolvency administration;
 - (iii) You propose or make any composition or arrangement with your creditors;

- (iv) A petition to wind you up is presented in any Court of competent jurisdiction; or
 - (v) You become bankrupt or apply to take benefit of any law for relief of bankrupt or insolvent debtors or compound with your creditors or make an assignment of your remuneration for your benefit. In such circumstances we shall be entitled then and at any time thereafter, at your expense, to enter upon your premises and remove the Goods therefrom, without prejudice to any action or other remedy which we have or might or otherwise could have for arrears of fees, for other sums due or for any breach of your obligations hereunder.
- (b) Without prejudice to any other right we may have, where a Contract is terminated by us, we are immediately entitled to retake possession of the Goods which are the subject of the Contract without further notice to you.
- (c) You will 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 you without notice to us and without being liable for damages for so doing if:
- (i) we commit a breach of these Conditions or any other contract between you and us and such breach continues for a period of 14 days after notice is issued by you to us in writing requiring us to rectify the breach;
 - (ii) we go into liquidation, a receiver and manager of any of our undertaking or assets is appointed or we enter into any other form of insolvency administration;
 - (iii) we propose or make any composition or arrangement with our creditors;
 - (iv) a petition to wind us up is presented in any Court of competent jurisdiction; or
 - (v) we become bankrupt or apply to take benefit of any law for relief of bankrupt or insolvent debtors or compound with our creditors or make an assignment of our remuneration for our benefit.

15. REPOSSESSION

- (a) Where we are entitled to retake possession of the Goods, you irrevocably authorise and license us and our servants and agents to enter any place or premises where any Goods may be stored for the purpose of removing same.
- (b) If you are unable to grant us any such licence specified in sub-clause 16(a), you shall, upon request by us, forthwith deliver to us such of the Goods as we may demand at a place accessible to, and convenient for, us.
- (c) You shall reimburse us for all additional costs, charges and expenses which we may incur in retaking possession of all or any of the Goods (without prejudice to any right we may have to claim extra charges in relation to the Goods).
- (d) Where we repossess Goods provided under a Contract for Sale, we may sell the Goods on such terms and in such manner as we determine to recover any outstanding amounts owed by you to us and we will be entitled to deduct all expenses incurred in doing so without notice to you.

- (e) If we incur any cost or liability for whatever reason as a result of taking possession as aforesaid, you hereby indemnify us against any such liability or cost.

16. WORKPLACE HEALTH AND SAFETY

- (a) With respect to a Contract:
 - (i) You 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 us will be conveyed by you to all persons responsible for the utilisation of the Goods.
 - (iii) You 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) You shall at all times comply with any relevant legislation creating occupational health and safety requirements in connection with the use of the Goods.
 - (v) If the Goods appear to be defective or not in good working order, you will not use the Goods and will notify us by telephone immediately. You must not repair or attempt to repair the Goods.
- (b) You agree to use all Goods in accordance with the applicable Safety Data Sheet (SDS) located at www.supagas.com.au/safety/.

17. PRIVACY

Privacy

We collect and handle personal information in accordance with our Privacy Policy and the Australian Privacy Act 1988. You must read and understand our Privacy Policy before ordering our products and services or setting up an account with us. We collect and handle personal information in order to provide our products and services to you. We will only use, disclose and otherwise handle the personal information that we collect for the purpose it was collected for, and for no other purpose. We will implement adequate security controls to protect the personal information that we hold from misuse, interference and loss, as well as unauthorised access modification and disclosure. Where requested, we will provide evidence of our information security controls to you.

We will notify you of data breach events that are likely to result in serious harm to one or more individuals. A data breach includes where there is unauthorised access to or unauthorised disclosure of personal information, or a loss of personal information. We will notify you by email or by publishing a notice on our website if this occurs.

Our communications

We may communicate with you, as part of providing our products and services. These communications may relate to, for example, your account, ordered products and services, or

payments made. We are required to send these service emails and communications as part of providing our products and services.

Where you provide us with a contact email address, we will also send you promotional emails that advertise our products and services. If you do not wish to receive promotional communication, you can unsubscribe from receiving emails from us that contain promotional content. We will stop sending emails to you that promote or advertise our products and services within 5 business days where you request that we do so.

18. GENERAL

- (a) Relationship: You are not our agent.
- (b) Substitution: Unless agreed to the contrary in writing, we reserve the right to supply goods and services with the same properties and capacities as the Goods in substitution for the Goods.
- (c) No assignment: You 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 our written consent. A change in your control is deemed to constitute an assignment of these Conditions.
- (d) Assignment: We may assign the benefit of these Conditions by providing written notice to you.
- (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.