

GENERAL TERMS AND CONDITIONS OF SUPPLY

1. Definitions, application and interpretation

(a) Definitions:

- (i) **"Affected Product"** means, in respect of a Price Increase Notice, (as defined in clause 1(a)(xii) below) a product or service the price of which is increased by that Price Increase Notice. Where an Affected Product is only delivery or another service, the relevant Affected Product is deemed to include the goods to which the delivery or other service relates for the purposes of clause 9(e);
 - (ii) **"Agreement"** means these General Terms and Conditions of Supply and, where a Supply Agreement is entered into by You, the other parts of that document including any coversheet or covering letter, together with all attachments and any other documents referred to in the Agreement;
 - (iii) **"Australian Consumer Law"** means Schedule 2 of the CCA;
 - (iv) **"BOC", "We", "Us" and "Our"** means BOC Limited ABN 95 000 029 729 including its officers, directors, employees and representatives from time to time;
 - (v) **"CCA"** means the *Competition and Consumer Act 2010* (Cth);
 - (vi) **"Factored Gas"** means a gas that is:
 - A. a Refrigeration, Helium, Dissolved Acetylene and/or LPG gas, or any other gas product that BOC purchases from a third-party supplier; and
 - B. identified as a Factored Gas in Part B;
 - (vii) **"Gas"** means any gas or gas mixture including liquefied, solidified, compressed or dissolved gas;
 - (viii) **"Gas Containers"** means cylinders and storage vessels of any description;
 - (ix) **"Installation Costs"** means the costs of installing Our Gas Containers and equipment at Your site.
 - (x) **"Our Website"** means www.boc.com.au.
 - (xi) **"PPSA"** means the Personal Property Securities Act 2009;
 - (xii) **Price Increase Notice** means a notice of a type referred to in clause 6(d)(i), 6(d)(ii), 6(d)(iii), 6(e)(i) or 6(e)(ii) of this Agreement;
 - (xiii) **"Small Business Customer"** means a customer who, at the time of entering into this Agreement, was a small business customer within the meaning of section 23(4) of the Australian Consumer Law.
 - (xiv) **Statutory Guarantees** means any right or statutory guarantee under Division 1 of Part 3-2 of the Australian Consumer Law;
 - (xv) **"Supply Agreement"** means an agreement with You to supply You for a specified period of time;
 - (xvi) **"Surcharge"** means a surcharge imposed pursuant to clause 6(k);
 - (xvii) **"You", "Your" and "Customer"** means the person or entity identified in this Agreement or in the applicable BOC trading account; and
 - (xviii) **"Your Equipment"** means all property, plant and equipment owned or leased by You or Your affiliates, parent companies, subsidiaries, co-owners, co-lessees and joint venturers (but excludes property or equipment leased from Us) and includes surface facilities and other property on Your site.
- (b) This Agreement applies to all supplies of goods and/or services by Us to You and supersedes all previous negotiations and representations, whether oral or written, any earlier agreement for the same goods and/or services, and any earlier sets of terms and conditions issued.
 - (c) No variation or waiver of this Agreement and no terms and conditions put forward by You or printed on Your purchase order or other document You give to Us for the supply of goods and/or services will have any effect unless expressly agreed in writing by both parties. Failure to exercise any right or remedy under this Agreement in a timely manner will not constitute acceptance of the matter which gave rise to the right or remedy, nor a waiver of such right or remedy.
 - (d) If any provision of this Agreement is invalid, illegal or unenforceable, it will be read down to the extent necessary and reasonable to ensure that it is not invalid, illegal or unenforceable. If it or part of it can not be so read down, it or the relevant part of it will be void and severable and the remaining provisions will not in any way be affected or impaired.
 - (e) All warranties, releases, exclusions of liability and indemnities will remain valid and binding following termination.
 - (f) In interpreting this Agreement no rules of construction shall apply to Our disadvantage on the basis that We put forward the Agreement, or any part of it. Headings are for convenience only and do not affect interpretation. To the extent of any inconsistency between the General Terms and Conditions of Supply and the Special Conditions, the Special Conditions shall prevail.
 - (g) If the Customer comprises two or more persons or entities, each of You is jointly and severally liable for all obligations and liabilities under this Agreement.
 - (h) A reference to legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it.

2. Goods and services

- (a) Goods sold by Us to You will comply with any technical specifications provided by Us or the manufacturer. Except to the extent that the Statutory Guarantees apply, We do not warrant or guarantee that the goods are suitable for Your intended use, purpose or process. You are solely responsible for determining the suitability, compatibility, and use of the goods or services.
- (b) Where goods supplied by Us, or materials or equipment used in providing services, have not been manufactured by Us, to the extent We are able to do so, We will pass through to You the benefit of any manufacturer's warranty where it is available
- (c) If We supply Gases to You We will provide the Gas Containers and other equipment listed in this Agreement. We may from time to time at Our discretion change the mode of supply or model of equipment used to supply You the Gases, provided that the change does not increase the aggregate charges payable by You for the supply of those Gases (except where clause 3(m), 6(e) or 6(k) applies, or where a change is made with Your consent or at Your request).

3. Your obligations

You will:

- (a) provide free of charge, adequate and safe access to Your premises, information and facilities (including labour for loading and unloading of goods, and utilities supply), and to Our equipment and Gas Containers on Your premises, for Us to carry out Our duties and rights under this Agreement, including the provision of services, any installation, replacement, delivery to, and the inspection, audit, removal and servicing of equipment and Gas Containers. You will be responsible for any additional costs incurred by Us in carrying out Our duties and rights under this Agreement, including the provision of services, any installation, replacement, delivery to, and the inspection, audit, removal and servicing of equipment and Gas Containers, where those costs relate to: inadequate or unsafe access to Your premises, information and facilities, or to Our equipment and Gas Containers on Your premises;
- (b) ensure that all sites, works and materials for which You are responsible, and all Your Equipment which is relevant to this Agreement, comply with current industry standards and all legal and statutory requirements, including those relating to a safe workplace, and with any specifications provided by Us to You prior to entering into this Agreement;
- (c) obtain and maintain all necessary licences, permits, authorisations, approvals and consents, and comply with all legal obligations, in connection with Your possession and use of any goods supplied or Our equipment and Gas Containers provided to You, or work done on Your site, including installation or other services provided by Us;
- (d) insure Our equipment and Gas Containers to their full replacement cost against loss, damage and destruction and maintain other insurance as required by law and sufficient to insure Your obligations under this Agreement. If requested by Us, You will provide proof of any such insurance within 7 days;
- (e) not obliterate, remove or deface identification marks, tracking devices, labels, barcodes or notices on Our equipment and Gas Containers;
- (f) return all Our equipment and Gas Containers in a clean and serviceable condition, or pay the cost of restoring them to a clean and serviceable condition, and pay the reasonable new replacement cost if any equipment or Gas Container of Ours is lost or damaged beyond repair. No refund or allowance will be made for residual gas that may be in a returned Gas Container;
- (g) not mortgage, pledge, sell, or lend, or create a security interest under the PPSA over, Our equipment or Gas Containers, and You will not remove them from Your premises shown in this Agreement, or otherwise part with possession of them, except to Us or to an agent or representative authorised by Us;
- (h) not at any time disclose any of the know-how, technology, information, documents or other intellectual property supplied by Us to You or contained in Our equipment, Gas Containers, goods or services or otherwise made available to You, nor infringe Our rights in such materials, and You will use such for Your internal purposes only;
- (i) notify Us in writing if You intend to sell Your business, with such notice being provided not less than twenty-one (21) days before any such sale takes place;
- (j) notify Us in writing as soon as reasonably practicable after You become aware of any defect in goods or services supplied by Us, any alleged breach of contract on Our part, any negligence or other tort on Our part, or any breach of statutory duty by Us. You acknowledge and agree that prompt notification may enable Us to mitigate the loss or damage suffered by You as a result of the alleged act or omission or to assist You in doing so. Prompt notification may also enable Us to identify defective goods and services and prevent other customers from suffering loss or injury;
- (k) warrant that You do not have a binding exclusive supply arrangement with another supplier for the goods (including Gas), services and locations covered by this Agreement;
- (l) not use Our equipment or Gas Containers to decant product into other containers, and will not on-sell, distribute or otherwise transfer any product, unless this Agreement expressly states otherwise;
- (m) pay all costs incurred by or on behalf of Us, directly or indirectly, in connection with a request from You to modify goods (including Gas) or services provided, or relocate a Gas Container or replace a Gas Container with a different size, type or capacity of container; and
- (n) only use Gases in accordance with Our Material Safety Data Sheets ("MSDS") and use the MSDS to warn Your personnel and others who may be exposed to the Gases of the hazards associated with those Gases. MSDS are available at no charge from Our Website, Gas & Gear stores, authorised agents or by contacting Our Customer Service Centre.

4. Ordering, delivery and collection

- (a) Cylinder Gases, industrial and safety products may be ordered in person at a BOC Gas & Gear store or authorised BOC Agent, on-line or by contacting the BOC Customer Service Centre.
- (b) Bulk and liquid Gases – We will schedule deliveries in appropriate quantities and frequency having regard to Your average consumption rate, working patterns as advised by You in writing, and the Gas Container capacity. We will not normally deliver loads of less than 50% of the Gas Container capacity. You must provide Us unimpeded access to the Gas Container without time or vehicle restriction – additional charges may apply if You are unable to do this. You must contact Us if You anticipate a significant change in Your Gas consumption rate or if You require an additional or specific delivery – additional charges may apply.
- (c) You acknowledge that where You collect Gas Containers from, or deliver Gas Containers to, Our site or agent, that collection or delivery will be at Your own risk and that You are responsible for handling and transporting the load safely, training the driver on the hazards of the goods and compliance with all relevant legislation. You indemnify Us against any claims arising in any way from the collection, transport and delivery of Gas Containers by You or Your agent, except to the extent that any such claim is caused or contributed to by Us or Our agent.
- (d) Our weights, records and measurements will be evidence of the quantities of goods delivered to You, including for the purposes of invoicing. Gas Container barcode information scanned at the point of delivery or return will be evidence of Gas Containers delivered to or returned by You, including for the purposes of tracking the location of Our Gas Containers and equipment. Subject to clause 6(n) Our delivery/collection

GENERAL TERMS AND CONDITIONS OF SUPPLY

note will be evidence of the goods delivered.

- (e) If full delivery cannot be made due to Your act or omission We may charge for abortive journeys or part deliveries.
- (f) We may suspend:-
 - (i) deliveries of Gas if Your Gas storage, handling or process equipment is not safe.
 - (ii) performance of services and delivery of goods (including Gas) if Your site is not safe.
- (g) We may supply Gas into Gas Containers owned by You and which We consider suitable, but ONLY by prior special arrangement with You. Such supply is subject to Gas Container examination and testing, when necessary, in accordance with Our procedures and applicable statutory requirements and at Your cost. We reserve the right to apply reasonable additional charges for filling services.
- (h) We have the right to charge a fee for the collection of empty Gas Containers.

5. Title and risk

- (a) All goods sold remain Our property until You have paid for them and have paid all other outstanding amounts due and payable to Us. The risk in goods sold or supplied passes to You upon delivery to You or Your agent or collection by You or Your agent.
- (b) Our equipment and Gas Containers remain at all times Our absolute property, even if affixed to real property owned or used by You, and are supplied for Your sole use. You have no rights over any property of ours or Our contractors brought onto Your site.
- (c) If Our equipment or Gas Containers are installed at Your site and You are not the owner of that site, You will provide Us with the unconditional written agreement of the site owner confirming that Our equipment or Gas Containers will at all times remain Our property, irrespective of how they may be affixed, and that they may be repossessed by Us in accordance with this Agreement. You indemnify Us against any cost, loss or damage if You fail to provide Us with such site owner's agreement.

6. Charges, invoicing and payment

- (a) If We have a Supply Agreement with You the charges applicable at the time of entering into this Agreement are shown in the table/s or schedule/s forming part of the Supply Agreement or, if none are specified, will be Our standard prices and charges for the relevant good or service. Charges shown in the table/s or schedule/s forming part of the Supply Agreement are based on:
 - (i) supply from Our usual supply source, plant or network and using Our normal means of delivery; and
 - (ii) Your estimated annual volumes given in the table/s or schedule/s in the Supply Agreement. From time to time We will compare Your actual volumes purchased against Your estimated volumes on a pro rata basis. If You fail to purchase those estimated volumes then this will be taken into account by Us when any new agreement or extension is negotiated for a new term. If We do not have a Supply Agreement with You Our standard prices and charges from time to time will apply.
- (b) If installation, hazop or other additional services are required, then additional charges may apply. We will normally tell You about such charges when You arrange that

service. We may also offer to sell to You other goods and services (subject to availability), which may include maintenance, training, welding and safety equipment and consumables at Our standard price. You may need to sign an additional or amended agreement before We provide these additional goods (including Gas) or services.

(c) Gas charges consist of the following elements:

- (i) a charge for Gas ;
- (ii) applicable Surcharges pursuant to clause 6(k);
- (iii) a delivery and/or handling charge; and
- (iv) a periodic service charge for the provision of services related to Our equipment and Gas Containers, charged per period, or part thereof, for each Gas Container or piece of equipment held by You as shown in Our records.

If You elect to pay cylinder service charges in advance on a quarterly, annual or 3-yearly basis, You will receive a discount on the standard monthly cylinder service charge. If some or all of the cylinders are returned before the nominated fixed period expires and you do not take replacement cylinders, no pro rata credit is provided. The periodic service charges for Gas Containers and Our equipment allow Us to provide services related to Gas Containers and equipment including, but not limited to: maintenance, repair (including repair, re-conditioning and maintenance of any ancillary equipment attached to it); painting, labelling and testing as required by law; making Gas Containers available for customers (as agreed) and maintaining premises for this purpose; scrapping faulty or defective Gas Containers; research into gas delivery devices; and inspecting gas cylinders prior to filling.

(d) Unless stated otherwise in this Agreement:

- (i) **Gas and other product charges** may be varied by Us in proportion to changes in Our standard prices for the applicable product from time to time by giving you notice in writing of the change (changes may include, but are not limited to, changes resulting from variations in market or economic conditions and any other relevant circumstances);
- (ii) **Delivery, handling and service charges** may be varied in line with our standard charges from time to time; by giving you notice in writing of the change;
- (iii) **All charges** may be varied from time to time (and at least annually) by written notice to You, taking into account all of the circumstances related to supply to You; and

(e) Notwithstanding any other term of this Agreement:

- (i) We may increase the price of a **Factored Gas** by notice in writing to You, provided that:
 - A. the percentage price increase must be no more than the percentage by which the cost to Us of supplying the relevant Factored Gas has increased since the last time we changed the price of that gas to You; and
 - B. We must use reasonable endeavours to minimise that cost increase.
- (ii) if at any time Our costs of supplying goods and/or services under this Agreement increase due to a significant increase in the cost of fuel, power, product, feedstock or distribution, We may increase the price of those affected goods and/or services, provided that:

GENERAL TERMS AND CONDITIONS OF SUPPLY

- A. the percentage price increase must be no more than the percentage by which the cost to Us of the relevant goods and/or services has increased since the last time we changed the price of that good or service to You; and
 - B. We must use reasonable endeavours to minimise that cost increase.
- (f) You agree that We may deliver invoices and notices to You by electronic means, such as email. You must notify Us in writing immediately of any error on an invoice together with substantiating documents or information relating to the error, to be dealt with as a dispute in accordance with clause 13 of this Agreement. You must pay all undisputed charges within 14 days of invoice date. After determination of the dispute pursuant to clause 13, if an adjustment in either party's favour is due, We will issue a credit note or You will pay the additional amount as determined, as the case may be.
- (g) Our preferred method of payment is by direct debit. If You do not use this method, We may charge You a reasonable administration fee for the extra cost of processing. If We incur any merchant or dishonour fees as a result of Your method of payment, You agree that We may recover those fees from You. At Our discretion We may recover those fees from You directly or by adding the amount to a subsequent bill.
- (h) Notwithstanding clause 6(f), if You agree to pay by direct debit, on the 21st day of the month following the month of invoicing We will debit Your nominated account for the full amount due.
- (i) Except where goods (including Gas) and or services delivered are not in accordance with Your order or Our selling specification, or are defective, the return of goods for credit is at Our absolute discretion. If We grant credits they may be subject to charges for handling or testing. Special Gas mixtures cannot be returned for credit and if any order is cancelled by You a cancellation fee may apply. Medical Gases cannot be returned for credit. Further information can be found on Our website (www.boc.com.au) under "BOC Returns Policy". This clause does not apply to the extent of any inconsistency with a Statutory Guarantee.
- (j) If any amounts are overdue:
- (i) We may suspend supply of goods and/or services to You until payment for those overdue amounts has been made in accordance with clause 6(j)(ii) below;
 - (ii) You must pay charges and interest in accordance with the applicable Court interest rate at the time;
 - (iii) if We are entitled to take debt recovery action against You and do so, You must pay Us Our reasonable costs incurred in recovering overdue amounts owing by You, including our reasonable administration costs incurred in taking that action; and
 - (iv) as a condition of any subsequent supply, We may vary Your payment terms, including requiring You to provide reasonable security of payment in a form acceptable to Us (such as a bank undertaking, director or shareholder guarantee or pre-payment).
- (k) Notwithstanding any other term of this Agreement, if at any time Our costs of supplying goods and/or services under this Agreement increase due to:
- (i) government action (including imposition of a new tax or charge), a change in law, a change in tax, the introduction of any emissions trading scheme or any other scheme relating to greenhouse gases or other environmental emissions;
 - (ii) a fuel levy or fuel surcharge (or the like) being charged to Us by Our delivery contractors; or
 - (iii) an inability to supply from Our usual supply source, plant or network (being that source/plant/network nominated as at the date of this Agreement or as otherwise agreed thereafter) due to events or circumstances beyond Our control; or
 - (iv) any other events or circumstances beyond Our control,
- We may by notice in writing to You apply or vary a Surcharge to the impacted products to take account of such change in Our costs, provided that:
- (v) We must use reasonable endeavours to minimise that cost increase;
 - (vi) the percentage price increase of the impacted product (inclusive of all applicable Surcharges) resulting from the application or variation of the Surcharge must be no more than the percentage by which the cost to Us of supplying the relevant product has increased as a result of the relevant event or increase in costs;
 - (vii) if a cost in respect of which We have applied a Surcharge subsequently decreases or abates, We will decrease or remove the Surcharge as appropriate; and
 - (viii) if We exercise our power to increase the price of a product pursuant to clause 6(e) then, to the extent that that price increase includes any of the same cost increases as a Surcharge already covers, We will remove or reduce the Surcharge as necessary to prevent any double recovery of the cost increase.
- (l) Prices in this Agreement exclude GST unless stated otherwise. You will pay GST and any other government charges, duties or taxes in connection with supply of goods or services under this Agreement.
- (m) Payment of a service charge invoice will be evidence of (subject to clause 6(n)) Your holding of Our equipment and Gas Containers as shown on that invoice.
- (n) If any transaction or notification by You indicates a holding of Our equipment and Gas Containers greater than recorded, We may amend Our records and charge You service charges accordingly.
7. Liability and exclusions
- (a) Nothing in any agreement between Us and You excludes, restricts or modifies Your rights pursuant to any Statutory Guarantee if that right cannot, by law, be excluded, restricted or modified. Limitations and exclusions are made only to the extent that We may legally do so.
 - (b) Notwithstanding any other provision of this Agreement (including any indemnity) or any transaction document (including any purchase order, statement of work or similar document), whether liability arises in contract, negligence or other tort, breach of any statutory or equitable duty, or otherwise, and except where such liability cannot by law be limited or excluded:
 - (i) neither party will be liable in any circumstances for pure economic loss, any loss of or damage to revenue, profits, savings, contract, use, production, goodwill, business or business opportunity or consequential or indirect loss or damage. This clause shall not excuse

GENERAL TERMS AND CONDITIONS OF SUPPLY

You from complying with any obligation to pay for the Goods and Services supplied under this Agreement and/or to make a payment pursuant to clause 9(f), 9(g) or 9(h);

- (ii) a party (**first party**) is not liable to the other party to the extent that such liability results from the acts or omissions of:

- A. the other party and/or the other party's employees, agents or contractors; and/or
 - B. any other third party;
- and the first party's liability is reduced proportionally to the extent those other parties' acts or omissions caused or contributed to the relevant loss or damage.

- (iii) where the Goods or Services supplied under this Agreement are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then in the case of a breach of any Statutory Guarantee, Your remedy is limited to:

- A. in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; and
- B. in the case of services, supplying the services again or paying the cost of having the services supplied again.

- (iv) Subject to clause 7(b)(iii):

- A. Our liability per event or series of connected events arising from one originating cause is limited to the lesser of \$500,000 and the annual revenue derived by Us in the preceding Contract Year (provided that in the first year of this Agreement, the annual revenue shall be calculated pro-rata from the Commencement Date up until the date the cause of action first arose); and
- B. Our total cumulative aggregate liability shall not exceed the lesser of \$1,000,000 and the total revenue derived by Us in connection with this Agreement.

In this clause 7(iv) "Contract Year" means a 12 month period beginning on the Commencement Date of this Agreement and each anniversary thereof.

- (v) The liability caps set out in clause 7(b)(iv) apply across all purchase orders (or similar documents) collectively and to any liability to all indemnified parties and/or related bodies corporate collectively.

- (c) You indemnify Us and hold Us harmless against all loss, damage, proceedings, claims, costs and expenses howsoever caused (except to the extent caused or contributed to by Us) arising directly or indirectly:

- (i) out of Your possession, use or ownership (as applicable) of goods (including Gases) or Our Gas Containers;
- (ii) from any unauthorised use of Our intellectual property; and
- (iii) from Our presence on Your site, including Our equipment, materials and personnel.

- (d) If performance of any contract obligation by its normal means is prevented or delayed due to any cause beyond Your or Our reasonable control (including in respect to Our

ability to supply from Our usual supply source, plant or network), the party so prevented or delayed will notify the other party as soon as reasonably practicable after becoming aware and that contract obligation (other than a payment obligation) will be suspended during the period affected by such cause.

- (e) We will not be liable for any defect arising from fair wear and tear to the materials or equipment installed or used in relation to or in connection with the goods and/or services.

- (f) To enable Us to address promptly any potential safety or operational issues, You must notify us in writing within 30 days of receipt of goods by You of any shortage in, loss of discrepancy in, or damage to the goods supplied under this Agreement. If it was not reasonably possible to notify Us within that timeframe, You must notify Us within 5 working days after You first became aware, or could reasonably be expected to have become aware, of the issue. This clause does not prevent a claim under a Statutory Guarantee.

8. Our containers and equipment

- (a) Except as allowed under 8(b) Our Gas Containers can only be used in conjunction with Gas placed in them by Us. You will not refill or allow the refilling of Our Gas Containers or let them be used otherwise than for storage, transport or use of Gas placed in them by Us.

- (b) If and for as long as We are unable to supply bulk/liquid Gas, We will notify You as soon as reasonably practicable after we become so aware and You may use Our Gas Container for handling equivalent Gas obtained from another source, provided that You obtain Our prior written consent (which shall not be unreasonably withheld or delayed). We provide no guarantee and no warranty that the Gas which We have supplied to You under this Agreement that remains in Our Gas Container will meet any particular technical specifications or purity levels once Gas from another source enters into, and is stored in, Our Gas Container. We will have no liability in relation to any such supply, and You will indemnify Us against all claims, costs, expenses or liabilities resulting from such supply.

- (c) Our equipment will comply with any technical specifications provided by Us. We do not warrant that the equipment is suitable for Your intended use or process. If BOC warrants any particular performance levels, any claim for failure to meet those levels in any period is limited to a proportional reduction in the service charge for that period. This clause does not apply to the extent of any inconsistency with the Statutory Guarantees.

- (d) We will maintain Our equipment and Gas Containers in accordance with Our procedures and current safety requirements. If this requires interruption of supply this will, whenever possible, be by arrangement with You.

- (e) Service charges are payable from delivery, or from the date of completion where We provide installation, whichever is earlier.

- (f) We may maintain Our equipment by a program of regular maintenance undertaken during normal business hours. If regular maintenance is carried out outside of normal business hours at Your request then You will incur an additional charge at Our then current rates.

- (g) For any repairs or maintenance required beyond that in 8(f) We will charge You an additional charge at Our then current rates, except We will not charge You to the extent that We caused the need for such repairs or maintenance, or where

GENERAL TERMS AND CONDITIONS OF SUPPLY

such repairs or maintenance are necessitated by a defect.

- (h) You will comply with any manual (or other instructions) provided, and will not otherwise adjust, repair or interfere with Our Gas Containers or equipment. If You do not comply with this clause then, to the maximum extent permitted by law, We will have no liability to You for the consequences and We may charge You for additional service parts and/or maintenance and repair charges as appropriate.

9. Breach and termination

- (a) If either party commits any act of bankruptcy or has a receiver, liquidator or administrator (or similar) appointed, or commits any material breach of any provision of this Agreement and fails to take action to remedy that breach within 30 days of being given notice to do so by the other party, then the other party may by written notice with immediate effect either:

- (i) terminate the whole or any part of this Agreement; or
- (ii) suspend performance of all or any of their obligations (except a payment obligation), and at any time during such suspension terminate the whole or any part of this Agreement. Service charges will continue to accrue and be payable by You during any period of suspension.

(b)

- (i) If You fail to purchase the estimated annual volumes of any product set out in the table/s or schedule/s in the Supply Agreement, and such failure materially adversely impacts:

- A. the appropriateness of the pricing of the relevant product; or
- B. the overall commercial viability of the Agreement,

We may give you notice of such failure, and within 30 days thereafter, the authorised representatives of the parties must discuss Your relevant estimated annual volumes and seek in good faith to reach agreement in relation to any amendments to the terms of this Agreement required to address the effects of the shortfall in those volumes.

- (ii) If within 30 days after the parties have met to discuss, there has been no agreement in relation to the appropriate amendments to the terms of this Agreement:

- A. We may terminate this Agreement in respect of the relevant products; or
- B. if the shortfall in purchased volumes materially adversely impacts the overall commercial viability of the Agreement, We may terminate the Agreement overall, by giving You one month's written notice (three months' notice if Our affected equipment includes bulk tanks or other equipment installed at Your premises).

- (c) Termination will be without prejudice to any accrued rights of either party.

- (d) On suspension or termination under any circumstances, or where You have breached clause 3(k), We may recover possession of any goods, equipment, Gas Containers or materials belonging to Us (and, where relevant, possession and title to any of Your Gas in Our equipment or Gas Containers at no charge to Us), and You must authorise Us to enter Your premises for this purpose on receipt of prior

notice from Us. You must pay Our reasonable charges for the costs of removal of Our equipment and Gas Containers in accordance with clause 9(f)(ii)C below. Any delay by Us in removing Our equipment or Gas Containers will not waive Our rights nor give You any rights over Our property.

(e)

- (i) This clause 9(e) applies if all of the following apply:

- A. You are a Small Business Customer;
- B. this Agreement is an exclusive supply agreement (as indicated either in Part A Item A of the Agreement Details or in the Special Conditions), and/or the Price Increase Notice relates to gas supplied as a bulk gas or a service that relates to such gas, and;
- C. We give You a Price Increase Notice which is issued either:
 - (1) pursuant to clause 6(d) and the percentage by which the price of an Affected Product is increased by the Price Increase Notice is greater than the percentage by which the Consumer Price Index has increased since the Last Price Movement in the Affected Product ;
 - (2) pursuant to clause 6(e)(i) and the price of an Affected Product is increased by that Price Increase Notice by more than 50%; or
 - (3) pursuant to clause 6(e)(ii) and the price of an Affected Product is increased by that Price Increase Notice by more than 25%.

- (ii) If this clause 9(e) applies (meaning You satisfy all of the matters set out in clause 9(e)(i) above), and You object to the price increase set out in the Price Increase Notice, then within 14 days of receiving that notice You may give us notice in writing of that objection (**Price Objection Notice**);

- (iii) Within 14 days after a Price Objection Notice has been received by Us, the authorised representatives of the parties must discuss the relevant Price Increase Notice and seek in good faith to reach agreement in relation to the prices to apply to Affected Products.

- (iv) If within 30 days after a Price Objection Notice has been received by Us, the parties have not agreed the prices to apply to Affected Products, You may terminate this Agreement insofar as it relates to the Affected Products by giving Us one month's written notice (three months' notice if Our equipment includes bulk tanks or other equipment installed at Your premises). Where Your termination of the supply of the Affected Products makes the supply of the remaining products under this Agreement uneconomic, We have the right to terminate the remainder of this Agreement by providing You with one month's written notice (three months' notice if Our equipment includes bulk tanks or other equipment installed at Your premises).

- (v) If the Agreement is to be terminated in respect of Affected Products pursuant to this clause 9(e) then the Price Increase Notice will be of no effect and the Price payable in respect of Affected Products during the period after the Price Increase Notice will be the

GENERAL TERMS AND CONDITIONS OF SUPPLY

price applicable immediately prior to the issuing of that notice.

equipment and Gas containers) and whether to a provider of new value or otherwise.

(f) Upon termination of this agreement for any reason:

(i) If cylinders are supplied under this Agreement, within 7 days of termination or expiry of this Agreement, We will provide You with our cylinder holdings report for all cylinders located on Your sites. You will return all cylinders to Us within 90 days of receiving the cylinder holdings report.

(ii) You must pay to us:

A. the services charges and/or facility charges up until the last to occur of:

(1) the date the equipment and Gas Containers are returned to Us by You; or

(2) 14 days after the equipment or Gas Containers is made available for collection by Us (and You have notified Us of this); or

(3) the Agreement terminates at the end of the termination notice period specified in clause 9(e)(iv);

B. where clause 9(f)(i) applies, the reasonable new replacement costs for any cylinders which have not been returned to Us or which otherwise remain unaccounted for 180 days after our cylinder holdings report is provided to You; and

C. Our reasonable charges for the costs of removal of Our equipment and Gas Containers (except where such termination is for Our unremedied breach of a material term of this Agreement).

(g) If We have a Supply Agreement with You, and the Agreement is terminated by either party (except where such termination is for Our unremedied breach of a material term or pursuant to clause 9(e)) prior to the expiry of the Minimum Period, then upon termination You must pay to us, in addition to those costs set out in clause 9(f) above, such proportion of the Installation Costs as the remaining portion of the Initial Period bears to the Initial Period.

(h) If this Agreement is an exclusive supply agreement (as indicated either in Part A Item A of the Agreement Details or in the Special Conditions) and You repudiate or otherwise end the supply relationship without having a valid right to do so, You must pay to Us a sum calculated in accordance with the following formula by way of liquidated damages:

Formula: $[(A / 365) \times B] \times (C \times D)$; where:

A = Estimated Annual Volume

B = days of the Minimum Period remaining

C = 0.15

D = then current price for the relevant products

(c) You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interests under this Agreement. You agree that You and We contract out of and nothing in the provisions of Sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA shall apply to this Agreement.

(d) You and We acknowledge that You are the grantor and We are the holder of a Purchase Money Security Interest ("PMSI") by virtue of this Agreement and/or the PPSA. You agree to do anything that We reasonably require to ensure that We have at all times a continuously perfected security interest over all of Our property, including Our equipment and Gas Containers.

11. General

(a) If You purchase goods and/or services from Us through any BOC website or other e-commerce process, then (without limiting the foregoing) You agree to also be bound by the applicable terms and conditions set out or referred to in that site or relating to that process.

(b) Nothing in this Agreement will be interpreted or implied as constituting either Us or You as having the relationship of employee and employer or You as Our agent or Us as Your principal.

(c) We may assign or transfer this Agreement and/or any security under the PPSA to a related body corporate at any time by notice to You. A party must not otherwise assign or transfer the benefit or obligations of this Agreement without the prior written consent of the other party, not to be unreasonably withheld.

(d) We will be entitled to the full and unrestricted right, including the right to apply for patent or other protection in Our own name, to exploit any invention, technical information or know-how arising from or developed in the course of carrying out this Agreement.

(e) BOC and the BOC logo are trademarks and/or service marks of BOC. You have no right under this Agreement to use any trademark, service mark, logo, and/or trade name of BOC or its affiliates, suppliers, advertisers, or agents or sponsors.

(f) This Agreement is governed by the laws of New South Wales, Australia.

(g) We have the right to vary the Agreement to the extent that such variation does not adversely affect You.

12. Confidentiality

(a) This Supply Agreement and all pricing information and any other commercially sensitive or confidential information relating to this Agreement must be kept strictly confidential by both Parties at all times (**Confidential Information**).

(b) Except as stated in this Agreement or where required by PPSA, the parties to this Agreement must not and must not permit any of their officers, employees, agents, contractors or related bodies corporate to disclose any Confidential Information to any person, other than their professional advisers or as required by law, without the prior written consent of the party to whom the Confidential Information relates.

10. PPSA

(a) We may allocate amounts received from You in any manner we determine, but in default will apply same first to payment of any unsecured amount owing to Us, next as to any reasonable enforcement expenses and then as to any secured balance owing to Us.

(b) You will not (except with Our written consent) allow to be, or be liable to become, perfected or attached in favour of any person, a security interest or transitional security interest in any of the monies from time to time payable to Us (if any) or otherwise, or in BOC property (including

GENERAL TERMS AND CONDITIONS OF SUPPLY

- (c) This clause 12:
 - (i) operates for the benefit of all parties; and
 - (ii) continues despite the termination of this Agreement.
- (d) Our treatment of personal information will be in accordance with Our Privacy Policy (a copy of which can be obtained from Our website, www.boc.com.au, or by calling 131 262).
- (e) You agree that We may obtain from, and provide to, third parties information about Your creditworthiness and payment record. You agree that We may use, for purposes related to this Agreement, any personal information We hold on You.

13. Dispute Resolution

- (a) If a dispute arises between the parties, either party is to give the other party written notice of the dispute and the authorised representatives of the parties are to attempt to resolve the dispute within 14 days of such notice.
- (b) In the event the parties cannot resolve the dispute within 14 days, the authorised representatives must internally escalate the matter to attempt to resolve the dispute within a further 14 days. Failing resolution by that time:
 - (i) the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute; or
 - (ii) either party can commence legal proceedings.
- (c) The parties shall at all times during the dispute continue to fulfil their obligations under this Agreement.
- (d) Nothing in this clause prevents either party seeking interlocutory relief.

GENERAL TERMS AND CONDITIONS OF SUPPLY

For more information contact the
BOC Customer Service Centre on:

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www.boc.com.au

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Version 10