

Subscription to Elearning Courses

Terms and Conditions

Subscription to Elearning Courses – Terms and Conditions (“Terms”)

NB: A request from a Customer for cancellation cannot be accepted by BOC, and no refunds for the purchase of access to an Elearning Course will be provided, once an Authorised User has accessed their Elearning Course. If a request for cancellation is made before access by an Authorised User BOC will consider the cancellation and refund request in accordance with its returns policy.

1. Interpretation

1.1 Definitions:

Admin User: an Authorised User allocated by the Customer to have certain administration rights to view the status of the accounts of each Authorised User (as detailed in clause 3.8).

Agreement: the agreement between the Customer and BOC for the supply of the Services in accordance with, and subject to, these Terms.

Authorised Users: those persons who are nominated and authorised by the Customer to have access to and use the Elearning Courses, the details of such persons being notified by the Customer to BOC as part of the ordering process, and including the Admin User.

BOC: BOC Gases Ireland Limited (Company Registration Number 8982).

BOC IPRs: all Intellectual Property Rights subsisting in the Elearning Courses and in all other documents, products and materials developed by, or licensed to, BOC or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including the LMS Platform.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Customer: means the person or entity that purchases access to an Elearning Course or Courses for an Authorised User or Users.

Controller (or data controller), **Processor** (or data processor), **Data Subject**, **Personal Data** and **processing** all have the meanings given to those terms in the DP Laws (and related terms such as **process** shall have corresponding meanings).

DP Laws: means any law relating to the processing of Personal Data, as applicable to BOC, the Customer and/ or the Services, including: (i) the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any laws or regulations implementing Council Directive 2002/58/EC (“ePrivacy Directive”); and/or (ii) the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”) and any corresponding or equivalent national laws or regulations, in force and applicable, and/or (iii) any laws that replace, extend, re-enact, consolidate or amend any the foregoing; and/or (iv) any judicial or administrative interpretation of such DP Laws, and any mandatory guidance, guidelines or codes of practice relating to such DP Laws.

Elearning Course: the elearning course available from time to time on the BOC online shop at boconline.ie/elearning.

Fees: the cost of each Elearning Course as per the price list (as may be amended by BOC from time to time) on the following page: boconline.ie/elearning.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights,

rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

LMS Platform: means the learning management system used by BOC to host access to the Elearning Courses and provide the Services.

Processing Purposes: means the purposes set out in (i) this Agreement; (ii) any notifications given by BOC to Authorised Users; and (iii) in BOC's Privacy Statement (a copy of which is available at boconline.ie/privacy).

Services: the provision of, and access to, Elearning Courses that the Customer has selected and purchased for access by its nominated Authorised Users.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** includes email.

2. How to Purchase and Access Elearning Courses

- 2.1 To purchase access to an Elearning Course a Customer will need to:
 - (a) access the BOC online shop at boconline.ie/shop and select the Elearning Course(s) required and the quantity of licenses;
 - (b) add those to the shopping cart; and
 - (c) navigate to checkout either through the guest checkout facility and pay by debit or credit card; or checkout via the Customer's BOC customer account and pay for the Elearning Course(s) selected either on account or by debit or credit card.
- 2.2 Following confirmation of the order from BOC the following steps will take place:
 - (a) the Customer will need to provide details to BOC of the Authorised Users (including the Admin User) including names and email addresses. Such information can be provided online when logged in via My Account at boconline.ie/shop or utilising a link that will be emailed to the Customer; and
 - (b) each Authorised User then will receive an email confirming details of their user account for logging in to the LMS Platform and the details for accessing the Elearning Course via their user account. Authorised Users must not share the details of, or allow anyone else access to, their user account.
- 2.3 The purchase of access to an Elearning Course is for use by the designated Authorised Users only. Once accessed by the Authorised User for the first time the Elearning Course will only be available for a set period of time, after which access will automatically be blocked.
- 2.4 The order by the Customer constitutes an offer by the Customer to purchase the Services in accordance with these Terms. The contract, and therefore Agreement, will

be deemed to have been created between the parties when BOC issues to the Customer BOC's confirmation of acceptance of the Customer's order.

3. Supply of Services

- 3.1 Subject to clause 3.2, in supplying the Services, BOC will:
- (a) perform the Services with reasonable care and skill;
 - (b) ensure that the Elearning Courses are of satisfactory quality;
 - (c) comply with all applicable laws, statutes, regulations from time to time in force provided that BOC shall not be liable under the Agreement if, as a result of such compliance, it is in breach of any of its obligations under these Terms.

- 3.2 The Services, the Elearning Courses and the LMS Platform are:
- (a) provided "as is"; and
 - (b) all technical advice or training supplied to the Customer by BOC shall be prepared or delivered in good faith, in the context of the law in force as at the date of its preparation and, where relevant, on the basis of the matters and information disclosed by the Customer to BOC.

BOC accepts no responsibility for subsequent changes in law which may affect the conclusions of and/or recommendations in technical advice or training or for any loss or damage incurred or suffered by the Customer arising out of a failure by the Customer to disclose facts or circumstances necessary for the preparation of technical advice or training.

- 3.3 BOC shall use reasonable endeavours to meet any performance dates that may be agreed to, but any such dates shall be

estimates only, and time for performance by BOC shall not be of the essence.

- 3.4 BOC does not warrant that the LMS Platform and an access to an Elearning Course will be uninterrupted, error-free or free from viruses.
- 3.5 If an Authorised User cannot access their Elearning Course, please call BOC's customer service department on 0800 111 333. BOC's target response times are as set out on the Help and Support section (boconline.ie/elearning-faqs) (such response times may be amended by BOC from time to time).
- 3.6 For certain specified Elearning Courses, on completion of the Elearning Course by an Authorised User BOC will retain certain course information and records. The records may include matters such as course information, pass/fail % marks, date of course completion. The records will be retained by BOC for a maximum period of 5 years after which the records will automatically be deleted by BOC (except for copies retained as part of BOC's automatic electronic archiving and back-up procedures).
- 3.7 Notwithstanding clause 3.6, the Services (and access to the LMS Platform) do not include BOC providing to the Customer repository or document storage services for the retention of training records. **On completion of an Elearning Course the obligation is on the Customer, its Admin User and its Authorised Users to download the course completion records and to manage their own training records on the Customer's own systems.**
- 3.8 The Customer will be asked to allocate one of its Authorised Users as the Admin User. The Admin User will have access via

the LMS Platform to view the status of the accounts of all Authorised Users, including the status of the Elearning Courses completed and related training records (including the records referred to in clause 3.6).

- 3.9 If at the time of purchasing access to an Elearning Course the Customer is also purchasing from BOC gas and/or goods, renting BOC equipment or purchasing any other services, such purchases and rentals shall be separate to and shall not form part of this Agreement, and instead subject to:
- (a) any written gas and rental supply agreement BOC and Customer have entered into for such supply; or
 - (b) if such a written agreement is not in place then BOC's General Conditions of Sale (a copy of which are available at [boconline.ie/shop/en/uk/conditions-of-sale](https://www.boconline.ie/shop/en/uk/conditions-of-sale)).

4. Customer's Obligations

- 4.1 The LMS Platform is supported on most web browsers and mobile devices. However, it is the Customer's responsibility to ensure compatibility of software for all Authorised Users, and the Customer is solely responsible for the acquisition, operation, costs and maintenance of all equipment, software and data connections required by it and its Authorised User for the use of the Services including access to the Elearning Courses, and including all network and internet usage charges.
- 4.2 The Customer shall:
- (a) co-operate with BOC in all matters relating to the Services;
 - (b) provide to BOC, such other information as may be reasonably required by BOC; and
 - (c) not assert ownership of any Intellectual Property Rights owned by or licenced to BOC.

- 4.3 In relation to Authorised Users, the Customer undertakes:
- (a) to ensure that the Authorised Users use the Elearning Courses and LMS Platform in accordance with these Terms and shall be liable for the actions or omissions of its Authorised Users including being responsible for any breach of these Terms by an Authorised User in each case as if they were actions, omissions or breaches of the Customer;
 - (b) to use commercially reasonable efforts to prevent unauthorised access to or use of the Elearning Courses and LMS Platform, and notify BOC promptly of any such unauthorised access or use;
 - (c) that the maximum number of Authorised Users that it authorises to access and use the Elearning Courses shall not exceed the number of Elearning Courses it has purchased access to from time to time.
- 4.4 On completion of an Elearning Course the obligation is on the Customer, its Admin User and its Authorised Users to download the course completion records and to manage their own training records on the Customer's own systems.
- 4.5 If BOC's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees or an Authorised User, BOC shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

5. Use of the Elearning Courses and Intellectual Property

- 5.1 Authorised Users must not share the details of, or allow anyone else, access to their

user account that provide access to the Elearning Courses and the LMS Platform.

5.2 The Elearning Courses remain at all times the property of BOC. BOC may from time to time review the content of the Elearning Courses and assess, at its sole discretion, what amendments and updates are needed (if any). BOC may make improvements, updates or changes to the Elearning Courses at any time. BOC is under no obligation to notify the Customer of such changes.

5.3 For the period the Customer and each Authorised User is granted access to an Elearning Course and the LMS Platform, the Customer and each Authorised User is granted a non-exclusive, non-assignable, royalty-free, limited right to use the Elearning Courses and the LMS Platform for the Customer's internal training use by its Authorised Users. Use of the Elearning Courses and the LMS Platform for any other purpose is expressly prohibited.

5.4 The Customer and Authorised Users shall not sub-license, assign or otherwise transfer the rights granted by clause 5.3, and the Customer and Authorised Users shall not:

- (a) copy, share, modify, transmit, distribute, reverse engineer, sub-licence, sell, or in any way, exploit the Elearning Courses and the LMS Platform other than as permitted under these Terms; or
- (b) record on video or audio tape, broadcast, relay by videophone or other means the Elearning Courses; or
- (c) modify, adapt, merge, translate, disassemble, decompile, reverse engineer (save to the extent permitted by law) any software forming part of the Services.

5.5 The Customer and Authorised Users shall not permit anyone else to:

- (a) copy, use, modify, transmit, distribute, reverse engineer, sub-licence, sell, or in any way, exploit the Elearning Courses and the LMS Platform;
- (b) record on video or audio tape, broadcast, relay by videophone or other means the Elearning Courses; or
- (c) modify, adapt, merge, translate, disassemble, decompile, reverse engineer (save to the extent permitted by law) any software forming part of the Services.

5.6 The Customer and Authorised Users must not remove or modify any markings or any notice of BOC's or its licensors' proprietary rights contained in the Elearning Courses or the LMS Platform.

5.7 In addition to the preceding provisions of this clause 5, BOC and its licensors shall retain ownership of all BOC IPRs.

5.8 Any:

- (a) use of the Elearning Courses or the LMS Platform in breach of these Terms by the Customer or Authorised Users that in BOC's judgment threatens the security, integrity or availability of the Elearning Courses or the LMS Platform; or
- (b) any non-payment by the Customer of Fees due in accordance with clause 6, may result in the immediate suspension and/or termination of the Services.

6. Fees and Payment

6.1 In consideration for the provision of the Services and access to the Elearning Course(s), the Customer shall pay BOC the Fees in accordance with this clause 6.

6.2 All amounts payable by the Customer exclude amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to BOC at the

prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

- 6.3 BOC shall submit invoices for the Fees plus VAT if applicable to the Customer in advance. The Customer shall pay each invoice due and submitted to it by BOC either:
- (a) before access is granted to the Elearning Courses being purchased; or
 - (b) in the case of a Customer that has a credit trade account with BOC within the payment terms agreed to between the Customer and BOC for that credit trade account.
- 6.4 If the Customer fails to make any payment due to BOC under the Agreement by the due date for payment, then, without limiting BOC's remedies under clause 9:
- (a) the Customer shall pay interest on the overdue amount at the then current statutory rate and/or charges otherwise set in Ireland by the DTFE from time to time (which interest rate is, in turn, based on the European Central Bank rate). Such charges or interest shall be payable on demand. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
 - (b) BOC may suspend all Services until payment has been made in full.
- 6.5 All amounts due under the Agreement shall be paid by the Customer to BOC in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6.6 A request from a Customer for a cancellation cannot be accepted by BOC, and no refunds for the purchase of access to an Elearning Course will be provided,

once an Authorised User has accessed their Elearning Course. If a request for cancellation is made before access by an Authorised User BOC will consider the cancellation and refund request in accordance with its returns policy.

7. Data Protection

- 7.1 When the Customer provides BOC with Personal Data or Personal Data is obtained by BOC, or on BOC's behalf, from the Customer (including from the Customer's Authorised Users, employees, agents and other representatives) in connection with the Agreement ("**Shared Personal Data**"):
- (a) the Customer warrants and undertakes that it will be responsible for ensuring that there is a lawful basis on which the Shared Personal Data can be processed, including in respect of the disclosure of Shared Personal Data to BOC and processing of Shared Personal Data by BOC in connection with the Processing Purposes and performance of BOC's obligations under the Agreement; and
 - (b) the Customer warrants and undertakes that it will be responsible for ensuring that appropriate privacy notices and/or policies, are communicated to the relevant Data Subjects which explain how the Shared Personal Data will be processed, including the fact that the Shared Data may be disclosed to BOC in connection with the Processing Purposes and performance of BOC's obligations under the Agreement;
- 7.2 Each party agrees not to do or permit anything to be done through act or omission which would cause the other to incur any liability under DP Laws.
- 7.3 Each party agrees to comply with DP Laws at all times in respect of the processing of the Shared Personal Data.

8. Limitation of Liability

- 8.1 Nothing in these Terms shall limit or exclude BOC's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) any other liability which cannot be limited or excluded by applicable law.
- 8.2 Subject to clause 8.1, BOC shall not be liable to the Customer or an Authorised User, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) any indirect or consequential loss.
- 8.3 Subject to clauses 8.1 and 8.2, BOC's total liability to the Customer and/or an Authorised User, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to one hundred and fifteen per cent (115%) of the Fees paid by the Customer to BOC for access to the Elearning Course(s) pursuant to which the liability has arisen.
- 8.4 The conditions implied by section 4 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement. To the extent not prohibited by law, BOC disclaims all warranties, terms or conditions, whether express or implied, including without limitation any warranties, terms or

conditions of merchantability, satisfactory quality and fitness for a particular purpose.

- 8.5 BOC's website or the LMS Platform may present links to third party websites not owned or operated by BOC. BOC shall not be responsible for the availability of these sites or their content. BOC shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with a Customer's or an Authorised User's use of or reliance on any content of any such site or goods or services available through any such site.

9. Termination

- 9.1 Without affecting any other right or remedy available to it, either party to the Agreement may terminate it with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease

- to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 9.2 Without affecting any other right or remedy available to it, BOC may terminate the Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Agreement on the due date for payment.
- 9.3 Without affecting any other right or remedy available to it, BOC may terminate the Agreement at any time on giving not less than 2 Business Days' notice to the Customer.
- 9.4 On termination of the Agreement for whatever reason:
- (a) the Customer shall:
- (i) immediately pay to BOC all of BOC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, BOC may submit an invoice, which shall be payable immediately on receipt;
- (ii) immediately cease to access the LMS Platform.
- (b) termination of the Agreement shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and
- (c) any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

10. General

- 10.1 **Force majeure.** BOC shall not be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 10.2 **Assignment and other dealings.** The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement without BOC's prior written consent. BOC may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Agreement.
- 10.3 **Confidentiality.**
- (a) Any confidential information including know how, information, pricing or documents disclosed at any time by either party shall be treated by the other party as confidential and shall not for a period of 5 years from the date of disclosure be disclosed to any third party or used for any purpose other than for the purpose of the Agreement without the prior written consent of the disclosing party, unless and until the same is public knowledge other than through default of the receiving party, is independently developed by the receiving party, or comes into the receiving party's possession bona fide from a third party.
- (b) Each party may disclose the other party's confidential information:
- (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees,

officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.3; and
(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- (c) No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Agreement.

10.4 Entire agreement.

- (a) The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Unless otherwise expressly agreed in writing by BOC, no terms or conditions endorsed upon, delivered with or contained in the Customer's acceptance or acknowledgement of this Agreement, purchase order(s), specifications or similar documents will supersede, amend or vary the provisions of this Agreement and the Customer waives any right which it might otherwise have to rely on such terms and conditions.
- (c) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

- 10.5 Variation.** These Terms may be varied by BOC at any time on giving the Customer adequate notice in writing (including by

e-mail or notification posted on the LMS Platform).

- 10.6 Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not: waive that or any other right or remedy; or prevent or restrict the further exercise of that or any other right or remedy.

- 10.7 Severance.** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

- 10.8 Third party rights.** No one other than a party to the Agreement shall have any right to enforce any of its terms.

- 10.9 Governing law and Jurisdiction.** The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the laws of Ireland. Each party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

BOC Gases Ireland Limited

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BOC Gases Ireland Limited registered office: J F Kennedy Drive, Bluebell, Dublin 12. Number 8982 – Republic of Ireland Register. Directors: G Donovan, S Payne. BOC Gases, BOC Healthcare and BOC SURESERVE® are registered business names of BOC Gases Ireland Limited. BOC is a name used by Linde plc and its affiliates. The BOC logo and the BOC word are trademarks or registered trademarks of Linde plc or its affiliates. Copyright © 2023 BOC Gases Ireland Ltd.