

## General Terms and Conditions of Supply

### For the purposes of this Agreement:

"**Agreement**" shall mean the contract between Afrox and the Customer for the supply of Gas, Afrox Equipment, Goods and/or Services. Each order from the Customer for Gas, Afrox Equipment, Goods or Services which is accepted by Afrox shall constitute a separate Agreement which shall be governed by these terms and conditions;

"**Afrox**" or "**we**" means African Oxygen Limited (registration number 1927/000089/06) whose registered office is at 23 Webber Street, Selby, Johannesburg, 2001;

"**Afrox Equipment**" means any Containers, manifolds and/or other equipment provided by Afrox (but not sold) to the Customer under this Agreement;

"**Afrox Product Return Policy**" means the Afrox policy governing the return of faulty and non-faulty Afrox Gas and Goods which is available upon request to the Customer;

"**Container**" means any container, cylinder or other storage vessel provided by Afrox (but not sold) to the Customer in which Gas is stored;

"**Customer**" or "**you**" means the individual, partnership or company entering into the Agreement with Afrox;

"**Customer Equipment**" means the Customer containers and any other equipment owned by the Customer used in connection with the supply of Gas, Goods and/or Services under this Agreement;

"**Effective Date**" is the date when the last party signs the Agreement and/or account application, as the case may be;

"**Factored Products**" means Gas and Goods that Afrox purchases from other suppliers (including, but not limited to, Liquefied Petroleum Gas (LPG));

"**Gas**" means any gas or gas mixture supplied by Afrox to the Customer including liquefied, solidified, compressed or dissolved gas;

"**Goods**" means any goods or materials sold by Afrox to the Customer, excluding Gas;

"**Product Source**" means Afrox's normal source of supply of Gas and/or Goods to the Customer;

"**Safety Data Sheet**" means a sheet prepared by Afrox containing material safety and other data relating to the applicable Gas; and

"**Services**" means any services provided by Afrox to the Customer (including, without limitation, the provision of training, technical advice and the inspection and maintenance of Customer Equipment).

### 1. DELIVERY/COLLECTION AND INSTALLATION/COMMISSIONING

- (a) Save as set out in Clauses 1(b), 1(c) and 7(g) below and the other terms of this Agreement, or as otherwise agreed in writing between the parties, Afrox will supply Gas, Afrox Equipment, Goods and Services against orders placed by the Customer and which are accepted and confirmed by Afrox. Subject to Clause 18 below, all orders or variations to orders once accepted by Afrox may not be revoked or cancelled by the Customer without Afrox's prior approval.
- (b) In relation to bulk Gas and Gas in trailers for scheduled deliveries, Afrox will use reasonable endeavours to deliver such Gas in appropriate quantities and frequency having regard to the Customer's average Gas consumption rate based on historical data held by Afrox and the Container or Customer Equipment storage capacity or telemetry data if available to Afrox. The Customer's attention is drawn to its obligations under Clause 3(f) below.
- (c) Dates for completion of Services will be subject to further agreement between Afrox and the Customer.
- (d) Except as set out in the Clause 1(o), deliveries of all cylinder Gas, non-scheduled bulk Gas, Afrox Equipment and Goods will be made during Afrox scheduled delivery rounds. Any dates quoted for such delivery rounds are estimates only and Afrox shall have no liability if the delivery is not made at the time originally quoted. The Customer shall be entitled to amend any delivery date by providing written notice to Afrox no less than 24 hours prior to the original intended delivery time.
- (e) Where Afrox is unable to supply the Gas, Afrox Equipment, Goods or Services ordered, in accordance with its scheduled delivery obligation under Clause 1(b), any agreed date under Clause 1(c), or for all deliveries/performance covered by Clause 1(d) within what Afrox at its discretion considers to be a reasonable period, Afrox shall endeavour to notify the Customer in advance and offer it the following options:
  - (1) offer alternative delivery times (including split deliveries) for the affected Gas, Afrox Equipment, Goods or Services; and/or
  - (2) where possible, offer alternative Gas, Afrox Equipment, Goods or Services of equivalent quality or quantity; and/or
  - (3) offer to cancel the part of the order relating to the Gas, Afrox Equipment, Goods or Services that Afrox is unable to supply;The options above are in addition to any rights the Customer may have under Clause 18 below. If Afrox offers the options set out above (where possible), then Afrox shall not be deemed to have delayed or failed such delivery for the purposes of the rest of this Agreement.
- (f) The Customer acknowledges that collection of Containers from an Afrox site or agent shall be at the Customer's own risk and that the Customer is responsible for handling and transporting the load safely, training the driver on the hazards of the Gas and Containers and compliance with all relevant legislation including (without limitation) the National Road Traffic Regulations, 1999.
- (g) Afrox reserves the right to introduce an electronic identification system for Containers. If such a system is introduced, any delivered, returned or collected Containers will be reconciled against the account of the Customer to which they were supplied.
- (h) Prior to signing such delivery note/waybill the Customer shall inspect the Gas, Afrox Equipment, or Goods to satisfy itself that these conform in all respects to the quality and quantity ordered and are free from any defects and suitable for the use for which they are

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intended. Once signed by or on behalf of the Customer Afrox's delivery note/waybill shall be conclusive evidence of the quantity of the Gas, Afrox Equipment and Goods delivered.

- (i) Subject only to Clause 18(c), failure by Afrox to deliver or perform by any time specified by Afrox shall not entitle the Customer to terminate this Agreement and this failure is not material in respect of deliveries or performance.
- (j) If delivery and/or collection of any Gas, Afrox Equipment, or Goods or provision of Services, cannot be made due to the act or omission of the Customer (or the act or omission of any employee, agent or contractor of the Customer), the items shall be deemed to have been delivered/collected and Afrox may charge for waiting time, abortive journeys or part deliveries and for storage thereof until delivered.
- (k) Afrox can provide a certificate of analysis for the Gas supplied on the Customer's prior written request upon reasonable notice. Afrox reserves the right make an additional charge for this.
- (l) Afrox may suspend deliveries of Gas if the Gas storage or handling equipment or process equipment to be used by the Customer is considered by Afrox not to be safe.
- (m) Customers shall be afforded a 10 (ten) day period within which Afrox shall accept the return of non-faulty Gas and Goods, with the exception of the following Gas and Goods, which may not be returned within the aforesaid 10 (ten) day period:
  - (1) Medical Gas;
  - (2) Medical Consumables;
  - (3) Liquid state cryogenic gases;
  - (4) Make to Order (MTO) Gas and Goods;
  - (5) Obsolete or discontinued items; and/or
  - (6) Bulk gases and any bulk equipment ancillary to the supply of bulk gases.

Where accepted such non-faulty returns will be subject to the Afrox Product Return Policy and may also be subject to a handling fee of up to 25% of the invoice value for the return of Gas or Goods. No refund shall be made or credit given for rental of Afrox Equipment or unused products which are returned to Afrox in broken packaging or Containers without intact Afrox seals. The Customer must present Afrox with a copy of the original document which substantiates proof of purchase.

- (n) Where the Customer requires a delivery outside the normal quoted delivery, such a delivery will be regarded as an emergency delivery. If Afrox is able to deliver the Gas, Goods and/or Afrox Equipment then Afrox may charge the Customer an emergency delivery charge, as per the Standard Rates of Afrox (available on request). Afrox does not guarantee to make emergency deliveries, but will use reasonable endeavours to do so, subject to availability of resources. Afrox reserves the right to charge for any emergency call out of our technical staff where such call out is required due to circumstances outside of Afrox's control or for a reason which is not Afrox's fault.
- (o) All Gas, Afrox Equipment and/or Goods taken on an evaluation or consignment basis by the Customer are deemed sold if not returned within 10 (ten) days of issue in the original condition, in the original packaging and with all accessories and manuals intact.
- (p) If the customer takes delivery of any Gas Goods and/or Afrox equipment the value of which is less than a minimum order value of ZAR1500 (One Thousand Five Hundred Rand) exclusive of VAT, Afrox shall be entitled to charge a delivery fee as set out in the Standard Rates of Afrox (available on request).

### 2. AFROX EQUIPMENT

- (a) Except as provided in Clause 2(b), or as otherwise agreed to in writing between the parties, the Customer shall not refill or allow the refilling of Containers by anyone other than Afrox or allow them to be used otherwise than for storage, transport or use of Gas placed in them by Afrox.
- (b) Subject to the remainder of this Clause 2, Afrox Equipment shall only be used for handling Gas supplied by Afrox. Where Afrox is unable to supply bulk Gas, the Customer may use bulk Containers and manifolds for handling equivalent Gas obtained from another source, provided that the Customer notifies Afrox in advance. Afrox shall have no liability whatsoever in relation to any such supply, and the Customer hereby indemnifies and keeps indemnified and holds harmless Afrox at all times against all claims, demands, liability, loss, damages, costs (including legal costs on a full indemnity basis) and expenses incurred by Afrox arising out of or in connection with such supply.
- (c) If Afrox Equipment is used for handling Gas not supplied by Afrox, other than in the circumstances set out in Clauses 2(b) or 8(c), Afrox reserves the right to, without prejudice to any other rights that Afrox may have, impose a penalty charge in respect of this breach of contract. The amount of the penalty charge shall be the full Afrox purchase price of the quantity of Gas that the Customer has purchased from another supplier for use with the Afrox Equipment.
- (d) Afrox Equipment will comply with any technical specifications provided by Afrox and applicable legal and statutory requirements.
- (e) Afrox will maintain Afrox Equipment in accordance with Afrox procedures and current safety requirements. If this requires interruption of supply this will, whenever possible, be by arrangement with the Customer. If the Customer causes undue delay to Afrox's maintenance service Afrox may charge for all costs and expenses incurred.
- (f) Where appropriate installation and commissioning of Afrox Equipment shall be carried out by or on behalf of Afrox in accordance with Afrox's engineering survey report. Afrox may increase its charges for the installation and/or commissioning of Afrox Equipment in order to cover the extra costs incurred by it as a result of additions or variations to Afrox's engineering survey report, installation or commissioning requested by the Customer or for delays caused by the Customer.
- (g) The parties shall prior to the installation, removal, relocation, or modification of the Afrox Equipment, agree on the timings and cost of the installation, removal, relocation and/or modification of the Afrox Equipment, and the mechanism by which such cost shall be recovered. If the parties fail to reach an agreement, the installation, removal, relocation or modification shall not take place and (where relevant) the Customer shall be liable for the costs incurred by Afrox in removing the Afrox Equipment from the original premises and relocating same to Afrox's premises. Only Afrox and its authorised agents shall be entitled to effect the installation, removal, relocation, or modification of the Afrox Equipment.

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- (h) If the Customer ceases to operate from the original premises where the Afrox Equipment is installed and transfer his/her operations to other premises (the new premises) or; should the Customer request that the Afrox Equipment be moved, relocated or modified Afrox shall remove the Afrox Equipment from the original premises and install the same and/or other Afrox Equipment at the new premises at the Customer's cost.

### 3. CUSTOMER'S DUTIES AND RESPONSIBILITIES

The Customer shall:

- (a) provide free of charge adequate and safe access to the Customer's sites, information, documents and facilities (including labour for loading and unloading of Gas, Afrox Equipment and Goods and the provision of electricity and materials for use during testing and commissioning) as are reasonably necessary for Afrox (subject to Afrox complying with a Customer's reasonable site safety rules) to carry out its duties and rights under this Agreement;
- (b) be responsible for the safe custody of Afrox's and its sub-contractors' property left on the Customer's site for the purposes of installation, commissioning, maintenance and removal of Afrox Equipment and for the performance of any other Services;
- (c) insure Afrox Equipment to its full replacement cost against "all risks" and against all normal public liability risks. All insurance shall be on terms satisfactory to Afrox;
- (d) ensure that all work and materials for which the Customer is responsible meet and comply with all legal and statutory requirements and with Afrox's specifications;
- (e) obtain all necessary consents and comply with all legal obligations in connection with installation or use of any Gas, Afrox Equipment, Goods and/or any Services performed at the Customer's or its nominee's site;
- (f) notify Afrox immediately if at any time it: (1) anticipates a significant change in its Gas consumption rate; or (2) it becomes aware of any defect, malfunction or damage to Afrox Equipment or Customer Equipment (including but not limited to any telemetry fitted); or (3) reasonably believes, based on current usage and historical frequency of deliveries by Afrox, that it will run out of any Gas;
- (g) keep and return all Afrox Equipment in a clean and serviceable condition. If they are not, the Customer will report any loss or damage promptly and pay a sum equal to (1) the cost of new Afrox Equipment if the Afrox Equipment is lost or damaged beyond repair, or (2) the cost of restoring the Afrox Equipment to a clean and serviceable condition;
- (h) not mortgage, pledge, sell or lend Afrox Equipment to a third party;
- (i) subject to Clause 5, not part with possession of Afrox Equipment to a third party, including allowing a third party to return the Containers to Afrox for refilling or otherwise;
- (j) not obliterate, remove or deface identification marks or notices on the Afrox Equipment and/or alter or tamper with Afrox Equipment without the prior written consent of Afrox;
- (k) comply with any operating manual (or other instructions) provided, and not otherwise adjust, repair or interfere with Afrox Equipment;
- (l) be responsible for the safety and condition of, and comply with applicable legal requirements in respect of, any Customer Equipment and other Customer-owned equipment, goods or materials used in connection with and attachments to Afrox Equipment;
- (m) be responsible for any risks to health or safety from Gas, Afrox Equipment and Goods in the Customer's possession and/or control. The Customer acknowledges that the Customer has received the relevant Safety Data Sheets and that it is aware of the cautionary labels attached to Afrox's cylinders and equipment, the precautions for the use of the cylinders as set out in the South African Bureau of Standards' Code of Practice SANS10019:2001 (and all its amendments), and those contained on the products themselves (including but not limited to the hazards and dangers of welding fumes), the Occupational Health and Safety Act 85 of 1993 and the Instruction Booklets/Charts published by Afrox which are available on request. The Customer undertakes as "user" of the Goods and Afrox Equipment to draw the above to the attention of all persons using, handling or transporting the Goods and Afrox Equipment, and indemnifies Afrox against any and all claims that may arise as a result of the Customer's failure to do so; and
- (n) ensure that it and all of its employees, contractors and subcontractors comply with all legislation (including but not limited to the Occupational Health and Safety Regulations, Environmental Impact Assessments, flammable licenses, etc.), municipal by-laws and the like thereof ("laws") applicable to the use of the Gas and Goods on its premises and indemnifies Afrox against any and all liability incurred by Afrox as a result of the Customer or any of its employees', contractors' or subcontractors' failure to comply with the laws. Afrox reserves the right to remove the Gas, Goods and/or Afrox Equipment when justified due to safety issues.

### 4. TITLE AND RISK

- (a) Property in any Goods and/or Gas shall only pass to the Customer on receipt by Afrox in full of:
  - (1) the price (and value-added tax in terms of the Value-Added Tax Act 89 of 1991 "VAT") for the relevant Goods and/or Gas; and
  - (2) all other sums due from the Customer under this Agreement; and
  - (3) all sums due from the Customer under any other contracts, agreements or arrangements between the Customer and Afrox.
- (b) Afrox Equipment remains, as between Afrox and the Customer, the property of Afrox and is supplied to the Customer for the Customer's sole use.
- (c) The Customer shall have no rights over any other property of Afrox or its contractors brought onto the Customer's or its nominee's site.
- (d) Until such time as the property in any Goods or Gas has passed to the Customer under Clause 4(a) the Customer shall:
  - (1) hold such Goods and/or Gas as a fiduciary of Afrox;
  - (2) not pledge or allow any encumbrance, lien, charge or other interest to arise or be created over the Goods and/or the Gas; and

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- (3) not dispose of or deal with the Goods and/or the Gas or any documents of title relating to them or any interest in them, except that the Customer may, without prejudice to Clause 4(d)(1), and subject to the other terms of this Agreement, on its own account use the Goods and/or the Gas in the ordinary course of its business.
- (e) The risk of loss or damage to Gas, Afrox Equipment and Goods shall pass to the Customer upon delivery to or collection by the Customer.

### 5. GAS RE-SALE

- (a) The Customer may not re-sell Gas supplied by Afrox unless it has received the prior written consent of Afrox. Such consent shall be at the discretion of Afrox and shall be subject to the Customer's agreement to further contractual terms with Afrox, including indemnities.

### 6. PRICE AND PAYMENT

- (a) The prices for the Gas, Afrox Equipment, Goods and Services will be adjusted by Afrox from time to time to reflect changes in Afrox's costs, which may occur with or without notice to the Customer, but such changes shall not affect orders that have already been accepted by Afrox. In addition, Afrox may at its own discretion, levy any of the charges (e.g. waiting time, free rider etc.) as set out in the Standard Rates of Afrox available on [www.afrox.com](http://www.afrox.com). It is the responsibility of all Customers without contracted pricing to satisfy themselves of the acceptability of the current prices and charges before placing an order. This Clause 6(a) shall not apply to the extent that it conflicts with the provisions of a signed supply contract between the Customer and Afrox.
- (b) Unless otherwise agreed, rental charges for Afrox Equipment are payable in advance from the earlier of (1) collection or delivery of the Afrox Equipment; or (2) the Effective Date. If delivery, installation or commissioning of Afrox Equipment cannot be carried out on the agreed date(s) due to the act or omission of the Customer (or the act or omission of any employee, agent or contractor of the Customer), Afrox may charge the rental charge or a proportion thereof during the period of delay.
- (c) When a Customer rents Afrox Equipment which is additional to and of the same type as Afrox Equipment already rented on a yearly payment frequency this Afrox Equipment will be charged immediately on a yearly payment frequency, a proportionate part of the full yearly payment being charged for the part of the period that remains, until the next yearly payment is due for the Afrox Equipment already rented on yearly payment frequency.
- (d) Afrox shall be entitled to invoice each delivery/performance separately. Afrox will provide the Customer with a tax invoice: (1) for cash sales at the point of delivery/performance; or (2) for credit approved Customers a tax invoice will be dispatched shortly after order processing. Afrox will also provide a monthly statement to account Customers where there have been transactions on the account during that month.
- (e) The Customer agrees that the full amounts for all Gas, Afrox Equipment, Goods and Services ordered shall be due and payable by it, either: (1) cash at the point of ordering/delivering; or (2) if the Customer is a credit approved Customer, full payment must be received by Afrox in cleared funds within the granted credit period (as notified by Afrox from time to time) measured from the date of the relevant monthly statement. The risk of payment by cheque through the post rests with the Customer.
- (f) Afrox may at its absolute discretion increase or decrease credit terms provided to the Customer. Without prejudice to its other rights or remedies (including its rights of termination) Afrox may withdraw any credit terms provided to the Customer in the event that the Customer fails to make any payment due to Afrox.
- (g) Afrox reserves the right to introduce electronic invoicing. If Afrox introduces electronic invoicing Afrox reserves the right to charge any additional costs Afrox incurs in generating paper invoices or non-standard invoices for the Customer.
- (h) All quotations:
  - (1) will remain valid for a period of 30 days from the date of quotation, excluding LPG for which quotations remain valid until the end of the day in which they are given; and
  - (2) are subject to the availability of the relevant, Gas, Afrox Equipment, Goods and Services; and
  - (3) are subject to the correction of good faith errors by Afrox.
  - (4) For the avoidance of doubt quotations shall not affect Gas, Afrox Equipment, Goods or Services which are subject to contracted pricing.
- (i) Afrox should be notified of any error on an invoice or online order confirmation within 14 days of date of the invoice or online order confirmation, as the case may be. By paying an invoice/online order confirmation the Customer certifies that the invoice is correct and waives any rights to challenge such voice/online order confirmation at a later date.
- (j) The Customer agrees that where it fails to pay any sum by the due date Afrox may at its discretion: (a) charge interest on the overdue debts at an annual rate equal to 5% above the prime overdraft rate charged by First National Bank, if that Act is not applicable. Such interest shall be calculated daily and compounded monthly from the date payment first became overdue; or (b) apply a late payment penalty fee at the then applicable rate as set out in the Standard Rates (copies of which are available on request or at [www.afrox.com](http://www.afrox.com)).
- (k) All prices and charges are expressed exclusive of VAT which shall be charged and paid as applicable.
- (l) If at any time Afrox's costs change due to government action or to a change in the law, Afrox reserves the right to adjust prices to take account of such change in its costs.
- (m) If the price variation indices (or any substitute indices) are changed or discontinued, Afrox will adopt an appropriate substitute. If the date when Maximum Refinery Gate Price (MRGP) is published changes Afrox will also change the LPG price variation date accordingly.
- (n) Where Afrox charges rent on Afrox Equipment, payment of a rental invoice is deemed conclusive (subject to transactions prior to the date of invoice which have not been included in the invoice and subject to (p) below as to the Customer's holding of Afrox Equipment during the period to which the invoice relates.

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- (o) If the Customer has an Afrox Equipment holding that is greater than is recorded by Afrox, Afrox reserves the right to amend its records and charge the Customer the correct amount of rental accordingly. If the aforementioned increase is due to the fact that the account holder filled cylinders on behalf of a third party, the account holder will be liable for the additional rental charges as well as the replacement cost of such cylinders in the event where these cylinders are not returned to Afrox.
- (p) Afrox shall have the right upon reasonable notice to enter the Customer's sites to audit and inspect any Afrox Equipment.
- (q) Where Afrox Equipment is on a monthly payment frequency, rental is payable for each calendar month or part of a calendar month during which the Afrox Equipment is rented. Where Afrox Equipment is on a yearly or longer payment frequency, the period covered by the first rental payment for the Afrox Equipment is calculated from the beginning of the calendar month in which the Afrox Equipment is first hired to the Customer.
- (r) If the Customer returns Afrox Equipment which is subject to an annual rental period without taking replacements before the rental period paid for expires, a pro rata refund will be made for any whole month(s) unexpired.
- (s) Afrox reserves its rights to levy deposits on Afrox Equipment which deposits will be repaid to the Customer on the return of the Afrox Equipment. The Customer shall neither cede the deposit refund claim to any third party nor the cede possession the Container to a third party in lieu of the deposit.
- (t) Where the Customer is a juristic person the Customer undertakes to inform Afrox in writing within 7 days of any change greater than 20% of the legal or beneficial ownership of the Customer, and failure to do so will constitute a material breach of this Agreement. Upon receipt of such written notification, Afrox reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Customer.
- (u) Any item handed in for repair may be sold by Afrox to defray the cost of such repairs if the item remains uncollected within 30 days of the repairs being completed. Any excess balance will at Afrox's discretion be offset against the Customer's account or paid to the Customer.
- (v) Any item delivered to Afrox for repair shall serve as pledge in favour of Afrox for present and past debts and in the event of any breach of Agreement by the Customer Afrox shall be entitled to retain or realise such pledges as it deems expedient at the value as determined by a sworn valuator and such valuation shall be conclusive proof of the value. The sworn or realised value of pledged Goods will be offset against the Customer's debts, the valuator's expenses deducted and any excess balance will be paid to the Customer.
- (w) All amounts due shall be paid by the Customer in full without any set-off, counterclaim, deduction or withholding whatsoever as per agreed terms.
- (x) The Customer hereby consents to the storage and use by Afrox of the personal information that it has provided to Afrox for providing any trade references requested by the Customer and establishing its credit rating and to Afrox disclosing such information to credit control companies, banks and other institutions involved in rating credit. Afrox shall at all times, and as it is required to, comply with the provisions of the Protection of Personal Information Act, 2013 in the collection and use of this information.
  - (1) The Customer agrees that Afrox will not be held liable for the good faith disclosure of any of this information to such third parties referred to in clause 6(x) and that no further specific consent needs to be obtained for the transfer of such information to a specific third party.
  - (2) The Customer further consents to the sharing of personal information with other customers in the event of electronically identified Afrox Equipment being returned by another party, other than the one to whom the Afrox Equipment was issued to.
- (y) Relating to the sale of any Cylinders in the Porta range of compressed gas cylinders, the Customer shall be liable to pay a non-refundable maintenance fee for each new Afrox owned cylinder that it takes without returning an empty comparable cylinder. The non-refundable maintenance fee shall be equal to the price at the time of the sale as determined by Afrox. This non-refundable maintenance fee excludes the price for the gas that will be charged and billed for separately.

### 7. LIABILITY AND EXCLUSIONS

- (a) Afrox shall have no liability of whatsoever nature, howsoever arising subject to this Clause 7 and Clause 16. Notwithstanding any other provision of this Agreement, but subject to Clause 7(b), Afrox shall have no liability arising out of or in connection with this Agreement, the Gas, the Afrox Equipment, the Goods or the Services, howsoever arising, for any:
  - (1) other loss or damage (whether direct or indirect); or
  - (2) loss of or damage to revenue, profits, savings, use, contracts, goodwill or business (whether direct or indirect); or
  - (3) consequential or indirect loss or damage.When used or referred to in this Clause 7 the term "howsoever arising" shall cover all causes and actions giving rise to liability whether in contract, delict (including negligence), restitution, for breach of statutory duty, misrepresentation or otherwise.
- (b) Nothing in this Agreement limits or excludes either Party's liability:
  - (1) for death or personal injury to the extent that it results from that Party's negligence; or
  - (2) for fraud or fraudulent misrepresentation; or
  - (3) to the extent not permitted by law.
- (c) Afrox accepts liability, to the extent that it results from breach of contract or Afrox's gross negligence in connection with the performance of this Agreement, for the Customer's proven losses, costs, expenses or damage:
  - (1) caused by Afrox supplying any defective Gas, Afrox Equipment or Goods up to a limit of an amount equal to Afrox's price for the relevant Gas, Afrox Equipment or Goods, for any one incident; and
  - (2) arising from delay or failure by Afrox in delivery of any Gas, Afrox Equipment or Goods up to a limit of an amount equal to Afrox's price for the Gas, Afrox Equipment or Goods that Afrox has failed to deliver or, for any one incident; and

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- (3) resulting from the provision of Services by Afrox in return for a specific fee up to a limit of the amount of the fee received for such Services.
- (d) The provisions of Clause 7(c) shall not apply to physical damage to the Customer's real property and Afrox accepts liability for physical damage to the Customer's real property to the extent that it results from wilful breach of contract or Afrox's gross negligence in connection with the performance of this Agreement subject to a limit of ZAR1,000,000 (One Million Rand) per claim or series of claims arising out of the same event or circumstances.
- (e) Afrox shall not be liable for any shortage, loss, damage or discrepancy in Gas, Afrox Equipment or, Goods or failure to perform the Services unless notified to Afrox in writing within 14 days of completion of the Services or receipt of the relevant Gas, Afrox Equipment or Goods by the Customer. This exclusion of liability shall not apply if the Customer proves that it was not reasonably possible to notify Afrox within this time period, and such notification was given as soon as was practicable and in any event within 14 days after the Customer became aware, or could reasonably be expected to have become aware, of the claim. If acceptance tests are provided in this Agreement for Gas, Afrox Equipment, Goods or Services this Clause 7(e) shall not apply to such Gas, Afrox Equipment, Goods or Services and the Customer shall be deemed to have accepted the Gas, Afrox Equipment, Goods or Services upon successful completion of those tests.
- (f) Subject to the other terms of this Agreement (and in particular Clause 16), where any shortage, loss, damage, defect or discrepancy in Gas, Afrox Equipment or Goods and/or failure to perform the Services is notified to Afrox in accordance with Clause 7(e), Afrox shall at its option rectify the shortage, loss, damage or discrepancy in the Gas, Afrox Equipment or Goods free of charge, re-perform the Services or refund or forego an appropriate proportion of the price for the Gas, Afrox Equipment, Goods or Services. If Afrox complies with this obligation it shall have no further liability in respect of, or arising from the relevant Gas, Afrox Equipment, Goods or Services under this Clause 7(f).
- (g) Under no circumstances shall Afrox be liable for any damage arising from any misuse, abuse or neglect of the Gas, Afrox Equipment or Goods by any person other than Afrox or its employees or authorised agents.
- (h) The Customer shall indemnify and keep indemnified and hold harmless Afrox at all times against all claims, demands, liability, loss, damages, costs (including legal costs on a full indemnity basis) and expenses incurred by Afrox arising out of or in connection with Afrox's presence on the Customer's or its nominee's site except to the extent caused by the negligence of Afrox.
- (i) The Customer and Afrox both recognise that it is open to either party to consider insuring against the risks apportioned in this Clause 7.

### 8. SHORT SUPPLY

- (a) In the event of part or all of Afrox's supply of Factored Products from their Product Source being interrupted for any reason then for the duration of the period Afrox is affected by such cause Afrox may (where possible) obtain such Factored Products from another source, in which case Afrox reserves the right to implement a surcharge for the duration of the affected period to recover its additional costs, such additional costs to be notified to the Customer in advance. If the Customer objects to such price increase, then Afrox shall cease supplying the relevant Factored Products for the remainder of such period of interruption but this shall not be deemed to be a failure or inability to supply for the purposes of the remainder of this Agreement. In the event that Afrox is unable to find an alternative source of the Factored Products then Afrox's obligation to supply the relevant Factored Products shall be deemed to be suspended for the duration of the interruption. This Clause shall not prejudice any rights the Customer may have under Clause 18(c). For the avoidance of doubt this suspension shall not be deemed to be a failure by Afrox to supply but it shall be an inability to supply allowing the Customer to exercise its rights (where relevant) under Clause 2(b) above.
- (b) If Afrox's performance of any of its obligations under this Agreement by its normal means is prevented or delayed due to any war, civil disturbance, riot, government action, state of emergency, act of God, interruption of utilities, strike or labour dispute, or any other cause beyond Afrox's reasonable control, that obligation shall be suspended during the period Afrox is affected by such cause.
- (c) In the event of Afrox's supply of Gas and/or Goods (which are not Factored Products) from their Product Source being interrupted under Clause 8(b) and for the duration of the period Afrox is affected by such cause Afrox may obtain such Gas and/or Goods from another source, in which case Afrox reserves the right to vary the price for the duration of the affected period to recover its additional costs, such additional costs to be notified to the Customer in advance. If the Customer objects to such price increase then Afrox's obligation to supply shall remain suspended under Clause 8(b) above.

### 9. RECOVERY OF GAS, GOODS AND AFROX EQUIPMENT

- (a) If:
- (1) payment becomes overdue; or
  - (2) the Customer is in breach of any of its obligations relating to the Gas or Afrox Equipment (including, without limitation, any obligations under Clause 4(b)); or
  - (3) Afrox exercises any right to suspend or terminate this Agreement; or
  - (4) Afrox reasonably determines that the Customer's use of any Gas or Afrox Equipment poses a risk to health and safety; or
  - (5) any event referred to in Clause 10(a)(i) occurs;

Afrox shall be entitled upon demand to the immediate return of all or any Gas, Goods, Afrox Equipment and any gas owned by the Customer stored in the Afrox Equipment. The Customer irrevocably authorises Afrox to recover such Gas, Goods, Afrox Equipment and Customer owned gas and any documentation relating thereto and for that purpose, to enter any sites, vehicle or other location of, or under the control of, the Customer. Where Afrox Equipment contains any gas owned by the Customer credit will only be given for such unused Gas at Afrox's discretion. The Customer shall take all reasonable steps to help Afrox to recover the Gas, Goods and Afrox Equipment. Demand for, or recovery of, Gas Goods or Afrox Equipment shall not of itself discharge the Customer's

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liability to pay the whole of the price or any other rights of Afrox under this Agreement. Afrox may also charge and the Customer will pay all reasonable costs of removal of Gas, Goods and/or Afrox Equipment.

### 10. BREACH AND TERMINATION

- (a) Without affecting any other rights or remedies that Afrox may have, Afrox may cancel any order the Customer has placed and/or terminate this Agreement immediately at any time by written notice to the Customer if the Customer:
  - (1) has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up other than for the purpose of a bona fide scheme of solvent reconstruction or amalgamation, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets which is not discharged or paid out in full within three working days or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the Customer is incorporated, resident or carries on business; or
  - (2) fails to make any payment due to Afrox; or
  - (3) there is a material change in the ownership of the shares in the Customer, or any parent company.
- (b) Without prejudice to either party's other rights and remedies either party may terminate this Agreement by written notice at any time if the other party is in material breach of any of its terms and (in the case of a remediable breach) the breach is not remedied within 28 (twenty-eight) days of receipt of a notice specifying the breach and requiring it to be remedied.
- (c) Without prejudice to its other rights or remedies (including its rights of termination) Afrox may elect to suspend performance of all or any of its obligations under this Agreement by written notice to the Customer upon the occurrence of any of the events specified in Clauses 10 (a)(1), (a)(2) or (b). In the case of a remediable breach referred to in Clause 10(b) Afrox may elect to suspend performance upon the occurrence of the breach and shall not be required to wait until the 28 (twenty-eight) day period referred to in Clause 10(b) has expired.
- (d) Termination shall be without prejudice to any accrued rights of either party.
- (e) If this Agreement is terminated and any charges which are payable in instalments are still outstanding, an amount representing the outstanding instalments shall become due and payable by the Customer on termination of this Agreement.
- (f) The Customer shall be liable to Afrox for all legal expenses on the attorney-and-own-client scale incurred by Afrox in the event of (a) any default by the Customer or (b) any litigation in regard to the validity and enforceability of this Agreement. The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that Afrox may demand.
- (g) Upon termination of this Agreement for any reason Afrox will at the Customer's cost remove all the Afrox Equipment from the Customer's premises, or where the Customer opposes such removal Afrox shall render the Afrox Equipment unusable. Failure by Afrox to remove any Afrox Equipment within any set period shall not preclude Afrox from removing the Afrox Equipment at a later date, nor shall it allow or infer that the Customer may take ownership of the Afrox Equipment. The Customer agrees that no storage charges will be levied against Afrox if the Afrox Equipment are not removed by Afrox within any set period.

### 11. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- (a) Afrox's trade marks and names shall not be used otherwise than as applied by Afrox to Containers and other Afrox Equipment or Goods and Services.
- (b) No right or license is granted under this Agreement to the Customer under any patent, trade mark, copyright, registered design or other intellectual property right, except the right to use or re-sell the Gas and/or Goods as permitted under this Agreement. No warranty is given as to whether that use or re-sale will infringe the rights of any third party.
- (c) Any know-how, information or documents supplied at any time by Afrox to the Customer shall be treated as confidential by the Customer and shall not be disclosed to any third party or used for any purpose other than for the purpose of this Agreement without the prior written consent of Afrox, unless and until the same is public knowledge other than through default of the Customer or comes into the Customer's possession bona fide from a third party.
- (d) Afrox retains all intellectual property rights in its drawings, specifications, data and all other information and documents prepared by Afrox for the Customer in whatever medium.

### 12. NOTICES

- (a) Any notices under this Agreement shall be in writing and signed by or on behalf of the party giving it.
- (b) Any such notice may be served by delivering it personally or by sending it by pre-paid recorded delivery post or email at or to the address shown above of the relevant party or any other address which it may from time to time notify in writing to the other parties.
- (c) Any such notice delivered personally shall be deemed to be received when delivered; any notice sent by pre-paid registered post shall be deemed to be received 5 days after posting and in proving the time of dispatch it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and posted; and any such notice sent by email transmission shall be deemed to have been received at the time of transmission, and in proving the service of the same it shall be sufficient to show a delivery receipt from an email address that the other party has nominated (where applicable) or has otherwise consistently used to communicate with the other party.
- (d) The parties choose as their domicilium citandi et executandi the addresses provided in accordance with Clause 12(b) above, or if the Customer is a juristic person its registered address from time to time.

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### 13. ASSIGNMENT

- (a) Afrox shall be entitled to cede, assign, novate, charge or hold on trust for another all or any of its rights and obligations under this Agreement on giving written notice to the Customer, but without any further consent of the Customer being requested. Afrox shall be entitled to sub-contract any of its obligations under the Agreement provided that Afrox shall remain liable for the acts and/or omissions of its sub-contractors.
- (b) The Customer shall not without the prior written consent of Afrox cede, assign, novate, charge or hold on trust any of its rights or sub-contract any of its obligations under this Agreement in whole or in part to any third party.

### 14. GENERAL

- (a) If by arrangement with the Customer, Gas, Afrox Equipment, Goods, or Services are supplied to an Affiliate of the Customer who is not a party to this Agreement, the Customer shall procure that such person agrees to be bound by the terms of this Agreement as though a party to this Agreement. The Customer shall indemnify and hold harmless Afrox against any consequences (including any claim made by such person which he could not make if a party to this Agreement) of the Customer failing to do so or of such person not fulfilling the obligations applicable to it under this Agreement. Any order from or supply to such person shall be on behalf of the Customer and is made pursuant to the terms of this Agreement. Nothing in this Clause 14 shall relieve the Customer of any of its obligations under this Agreement, in particular, without limitation, payment of any Charges and any liability in relation to Afrox Equipment. For the purposes of this Clause 'Affiliate' means in relation to the Customer, a company which is, from time to time, a subsidiary or holding company of the Customer, or is a subsidiary of the Customer's holding company.
  - (b) The sale of medical gases is subject to and made strictly in accordance with the current medicines regulatory authority approved indications and the use of the product outside such approved indications is a contravention of the applicable medicines legislation. Details of the approved indications may be obtained from Afrox on request and on Afrox's website: [www.afrox.com](http://www.afrox.com).
  - (c) This Agreement cannot be varied, added to, or cancelled by agreement otherwise than by means of a further written agreement between the parties. No relaxation of the terms of this Agreement and no indulgence which one party may grant to the other, will in any way operate as an estoppel against the former party or be deemed to be a waiver of his rights, or in any other way limit, alter, or prejudice those rights.
  - (d) To the extent that a Customer places orders online the terms applicable shall be as agreed to at the time of the order having been placed. If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any way under any law, it shall to the extent of such invalidity, illegality or unenforceability be deemed severable and the remaining provisions of this Agreement and the remainder of such provision shall continue in full force and effect.
  - (e) This Agreement contains the entire agreement between the parties. Neither party will have any right or remedy arising from any undertaking, warranty, or representation not included in this document.
  - (f) The Customer acknowledges and agrees that:
    - (1) in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty (in each case whether negligently or innocently made), or understanding of any person (whether party to the Agreement or not) which is not expressly set out in these terms and/or the Agreement; and
    - (2) the only remedy available to it for breach of any statement, representation or other term that is expressly set out in the Agreement shall be for breach of contract under the terms of this Agreement.
- Nothing in this Clause 14(f) shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation
- (g) This Agreement shall be governed by South African law.
  - (h) These South African courts shall have exclusive jurisdiction in any litigation between the parties arising from whatsoever source. The parties each agree that they will institute any proceedings in either the Pretoria Magistrates Court or the South Gauteng High Court.

### 15. WARRANTY FOR GAS, AFROX EQUIPMENT AND SERVICES

- (a) Subject to clause 1(m), Afrox warrants that: (a) at the time of delivery the Gas is to the specification set out in the relevant Afrox Safety Data Sheet; (b) to the extent that the Afrox Equipment is utilised for the storage and/or use of Gas, it will be suitable for such storage and/or use; and (c) the Services (if any) will be provided with reasonable care and skill. All warranties and conditions which arise from statute and relate to the supply of goods and services are excluded from this Agreement except to the extent that such exclusion is prevented by law.
- (b) Recommendations relating to the use of the Gas made by Afrox in its technical literature or in response to a specific enquiry or otherwise are given in good faith, but no warranty is given by Afrox as to the suitability of the Gas for any particular purpose.
- (c) Technical advice or training supplied to the Customer by Afrox shall be prepared or delivered in good faith, in the context of the law in force as at the date of its preparation and on the basis of the matters and information disclosed by the Customer to Afrox. Afrox 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.
- (d) Subject to the Afrox Product Return Policy, the Customer may return any faulty cylinders within 6 (six) months of purchase or within 6 (six) months of having accepted delivery of the cylinders, if the cylinders are defective, provided that:
  - (1) the Customer notifies Afrox promptly in writing with details of any alleged defects or malfunction; and
  - (2) the Customer gives Afrox the opportunity to inspect the cylinder and, if Afrox so requests, the cylinders are returned promptly carriage paid by Afrox (and details of carriage notified in writing to Afrox in advance); and
  - (3) the cylinders have not been repaired, tampered with, modified or altered by anyone other than Afrox; and
  - (4) the Customer provides proper proof of purchase for the relevant Goods.



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- (e) If the outcome of the faulty return investigation concludes that Afrox is not at fault, or the reason for the return is deemed invalid, the Customer will be liable for the replacement charge as well as a handling fee.

### 16. WARRANTY FOR GOODS

- (a) Subject to clause 1(m), Afrox undertakes to repair or, at its option, replace or credit Goods of its own manufacture or parts thereof which fail (fair wear and tear excepted) as a result of a defect in Afrox's materials or workmanship, arising within 6 (six) months of purchase or within 6 (six) months of the Customer having accepted delivery of the Goods (or within such other period as may be specified by Afrox having regard to the nature and properties of the Goods concerned), and occurring under normal conditions and subject to proper storage, use and maintenance, provided that:
- (1) the Customer notifies Afrox promptly in writing with details of any alleged defects or malfunction; and
  - (2) the Customer gives Afrox or its agent the opportunity to inspect the Goods and, if Afrox so requests, the Goods are returned promptly carriage paid by Afrox (and details of carriage notified in writing to Afrox in advance); and
  - (3) the Goods have not been repaired, tampered with, modified or altered by anyone other than Afrox or its agents; and
  - (4) the Customer provides proper proof of purchase for the relevant Goods.
- (b) In the event of Afrox carrying out any repairs which are covered under a current warranty, or which have been requested by the Customer, Afrox will extend the warranty for a period of 3 (three) months for the item repaired, which period runs from the date of the replacement or repair as the case may be.

### 17. EXPORT CONTRACTS

If the Customer is located outside South Africa, the following additional provisions shall apply, unless otherwise agreed:

- (a) all Gas and/or Goods shall be supplied ex-works as defined in accordance with Incoterms as in force on the date of this Agreement;
- (b) the Customer shall be responsible for complying with any legislation or regulations governing the export of the Gas and/or Goods from South Africa and import into the country of destination and for the payment of any duties;
- (c) the Customer may at its cost inspect the Gas and/or Goods at Afrox's works before shipment, at a time to be agreed, and Afrox shall rectify any defects notified by the Customer during such inspection. Afrox shall not be liable for any defect discovered after shipment from Afrox which would have been apparent on inspection (whether or not carried out), or any claim in respect of damage during transit;
- (d) in the event of a claim under the warranty in Clause 16 the Customer shall arrange and pay for transport of defective Gas and/or Goods to Afrox and replacement Gas and/or replacement or repaired Goods shall be supplied to the Customer ex-works; and
- (e) payment shall be made by means of an irrevocable letter of credit in a form agreed by Afrox and confirmed by a bank in South Africa acceptable to Afrox.

### 18. CONSUMER ORDERS PLACED ONLINE

The provisions of this Clause 18 only apply to purchases that are made online by Customers who are natural persons purchasing Gas, Afrox Equipment, Goods, or Services for their own use. Subject to clause 15 (fifteen) and 16 (sixteen).

- (a) The Customer shall be entitled to cancel any order within 7 (seven) days of after receipt of order confirmation of such Gas, Afrox Equipment or Goods and Services. Subject to Clause 18(b) Afrox will refund within 30 days any payment (with the exception of rental charges) that the Customer has already made for such Gas, Afrox Equipment, Goods and/or Services minus the costs incurred by Afrox in recovering possession of such Gas, Afrox Equipment or Goods.
- (b) Afrox will not refund the price paid for any Gas in Containers without intact Afrox seals, Goods that have been consumed and/or Services where performance has already begun.
- (c) If Afrox fails to fulfill any order for any reason within 30 days of the date of order then the Customer may cancel this agreement on giving 7 (seven) days written notice to Afrox.
- (d) For the purposes of Clause 12 above where the Customer does not have an account with Afrox the Customer's delivery address as stipulated in the confirmed order shall be deemed to be its domicilium citandi et executandi.