



SUPPLY TERMS: Packaged Gases

WITH EFFECT FROM 20 JUNE 2019

Air Liquide Australia Limited (ABN 57 004 385 782)
Air Liquide Healthcare Pty Ltd (ABN 41 002 653 045)
Air Liquide New Zealand Limited (NZBN 9429032036121)

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1 APPLICATION

- 1.1 These terms ("**Supply Terms**") apply to the supply by Air Liquide of Packaged Gases, Equipment and/or Services, whether supplied directly by Air Liquide or indirectly via its Agent.
- 1.2 The term "Packaged Gases" means Air Liquide's Gases delivered in Containers. Each time Air Liquide supplies Packaged Gases, then except to the extent otherwise agreed in writing, it sells the Gases and rents the Containers to the Customer.
- 1.3 From time to time, Air Liquide may also supply Equipment other than Containers. Unless otherwise expressly agreed in writing, supply of such Equipment is pursuant to these Supply Terms and such Equipment is supplied on a rental basis, not sold.
- 1.4 When a Customer enters into a Supply Contract, or accepts an Offer from Air Liquide, incorporating the Supply Terms, then (except as otherwise expressly agreed in writing), the Supply Terms prevail over any terms in any other document issued by the Customer (including any terms in its Order).
- 1.5 Except as otherwise agreed in writing:
 - (a) the Customer does not have any obligation to order or buy Packaged Gases, Equipment and/or Services from Air Liquide; and
 - (b) Air Liquide is not obliged to accept any Order or to make any Offer to supply any Gases, Equipment and/or Services to the Customer.

2 BINDING ORDERS

- 2.1 Where an Order is placed under a Supply Contract, except to the extent otherwise agreed in writing, the Order will become legally binding on the first to occur of:
 - (a) Air Liquide accepting the Order; or
 - (b) delivery by Air Liquide of the relevant Packaged Gases, Equipment and/or Services.
- 2.2 When **clause 2.1** does not apply, an Order will only become legally binding once Air Liquide makes an Offer to supply the Order and:
 - (a) the Customer accepts the Offer; or
 - (b) the Customer does not withdraw its Order upon receipt of Air Liquide's Offer by 3pm on the Business Day (or other nominated time) prior to the scheduled delivery date, in which case the Customer will be deemed to have accepted the terms of the Offer.
- 2.3 Prior to an Order becoming a Binding Order, and except to the extent otherwise agreed in writing:
 - (a) the Customer may withdraw or amend the Order; and
 - (b) Air Liquide may withdraw or amend its Offer (including by altering the applicable price or scheduled delivery date or by way of amending or replacing the Supply Terms).
- 2.4 Once an Order becomes a Binding Order, it cannot be cancelled or varied by either party (subject to **clause 2.5**) without the other party's written consent.
- 2.5 Except as otherwise agreed in writing (for example, in a Supply Contract), Air Liquide reserves the right to vary the Fees or the Supply Terms applicable to any Binding Order by giving the Customer no less than thirty (30) days' prior written notice of such change prior to

the scheduled delivery date. In this event, upon receipt of written notification by Air Liquide of the change, the Customer may withdraw its Order until 3pm on the Business Day (or other nominated time) prior to the scheduled delivery date. If the Customer does not do so (in writing) by such time, the Customer will be deemed to have confirmed its acceptance of the change.

3 CONDITIONS FOR DELIVERY

- 3.1 Except where it otherwise agrees in writing, Air Liquide will only supply Gas:
 - (a) in Containers:
 - (i) rented by it to the Customer;
 - (ii) used exclusively by the Customer for storage of Gas supplied from Air Liquide; and
 - (iii) which remain in the possession or control of the Customer pending return to Air Liquide or its Agent;
 - (b) on the condition that the Gas is not decanted into other containers for resale; and
 - (c) in the case of LPG, on the condition that it is not purchased for transportation use.
- 3.2 Unless Air Liquide agrees to deliver to the Customer's premises, delivery of the Packaged Gases or Equipment will occur when collected by the Customer from Air Liquide's or the nominated Agent's place of business. Risk in the Packaged Gases and Equipment will pass to the Customer on delivery.
- 3.3 If Air Liquide agrees that it or its Representative will transport Packaged Gases or Equipment to, or collect Equipment at or from, the Customer's premises, the Customer will ensure that:
 - (a) there is safe and available access to the delivery and/or collection point;
 - (b) the Customer makes available adequate labour and equipment for the prompt unloading of the Packaged Gases from, and loading of Equipment onto, Air Liquide's or its Representative's vehicles;
 - (c) notwithstanding **clause 3.3(b)**, the Customer only assists in such loading or unloading when, as directed by, and under the supervision of, Air Liquide or its Representative; and
 - (d) any Equipment for collection is ready for loading when Air Liquide or its Representative arrives to collect them.
- 3.4 Air Liquide's Delivery Note is evidence as to the description and quantity of Packaged Gases, Equipment or Services delivered to the Customer (or, in the case of Equipment returns) of Equipment returned to Air Liquide.

4 SCHEDULING OF DELIVERY

- 4.1 When delivery of Packaged Gases, Equipment and/or Services on or by a particular date is requested by a Customer, except as otherwise agreed in writing, Air Liquide will endeavour to deliver to the closest applicable date (which may be earlier or later than the requested date).
- 4.2 The scheduled delivery date may appear in Air Liquide's Offer or other document issued by Air Liquide. Where any date for delivery of Packaged Gases, Equipment and/or Services is specified, it is an estimate only.

- 4.3 Subject to **clause 19**, delivery shall not exceed a reasonable period after an Order becomes a Binding Order (except where the Customer requests a later delivery date).
- 4.4 If Air Liquide notifies the Customer of a change (which is greater than three (3) Business Days) to the previously advised scheduled delivery date, then (except where otherwise agreed in writing), the Customer may cancel its Order by providing written notice prior to 3pm on the Business Day prior to the updated scheduled delivery date.
- 4.5 Subject to **clause 19**, if delivery of Packaged Gases occurs more than three (3) Business Days after Air Liquide's previously advised scheduled delivery date, the Customer shall (except in the case of a Daily Rental Customer) be entitled to claim a pro rata refund or credit in respect of Rental Fees paid or payable in respect of the Containers which are the subject of the delayed Order for the period between Air Liquide's initial scheduled delivery date and the actual date of delivery.
- 4.6 Air Liquide may deliver Packaged Gases, Equipment and/or Services ordered by the Customer in instalments and the Customer will accept each instalment.

5 SAFETY WARNING

The Customer acknowledges and agrees that:

- (a) Packaged Gases may constitute "**dangerous goods**" or "**hazardous substances**" under dangerous goods and occupational health and safety legislation and, as such, Laws regulate their storage, handling, transportation, use and disposal (including disposal of the Containers); and
- (b) in the Safety Warning, Air Liquide warns the Customer as to the dangerous qualities of the Gases and safe handling procedures for the Packaged Gases Air Liquide supplies.

6 SAFE USE AND TRANSPORTATION

- 6.1 Except to the extent Air Liquide or its Representative assumes responsibilities under **clause 3.3**, the Customer will ensure that:
- (a) it handles, transports, stores and uses the Packaged Gases and Equipment, and ensures third parties also handle, transport, store and use the Packaged Gases and Equipment, in a safe manner and in accordance with:
 - (i) the relevant SDS;
 - (ii) relevant Laws including road and safety Laws;
 - (iii) Air Liquide's load restraint and transportation guidelines which can be downloaded from Air Liquide's website <https://industry.airliquide.com.au/>; and
 - (iv) any other written instructions Air Liquide provides the Customer regarding safe transportation, storage and use of the Packaged Gases and Equipment; and
 - (b) it provides ongoing training to its Representatives in order to ensure compliance with the above requirements.
- 6.2 The Customer will obtain and strictly comply with all licences, permits, authorisations and approvals required by Law in respect of the Customer's transportation,

ownership, storage, possession and use of the Packaged Gases and any Equipment.

- 6.3 To the extent permissible by Law, the Customer indemnifies Air Liquide and its Representatives against any Loss Air Liquide or its Representatives may incur in respect of death or bodily injury to any person or loss or damage to any property (including but not limited to consequential loss or damage) directly or indirectly caused by or resulting from the Customer's failure to observe this **clause 6**.

7 EQUIPMENT RENTAL

- 7.1 Subject to **clause 12**, the Customer agrees Air Liquide retains title at all times to any Equipment it supplies the Customer (including Containers in which Air Liquide supplies the Gases) and that Air Liquide rents such Containers or Equipment to the Customer.
- 7.2 Other than where expressly agreed in writing, the Customer rents Equipment for:
- (a) an initial Rental Period; and
 - (b) subsequent consecutive Rental Periods (that is, automatically renewed Rental Periods),
- unless and until the end of any Rental Period in which the Customer:
- (i) returns the Equipment to Air Liquide, and does not receive equivalent Equipment from Air Liquide in exchange for the Equipment the Customer returns; or
 - (ii) advises Air Liquide in writing that the Equipment is lost or missing.
- 7.3 Except in the case of a Daily Rental Customer, Air Liquide will issue a written notice of the pending renewal no later than thirty (30) days before the end of the Renewal Period, together with written notification of the Rental Fees and any changed terms and conditions applicable to the new Rental Period. This notice may be in the form of a pro forma invoice.
- 7.4 The Customer must return Equipment by the end of a Rental Period or, where applicable, advise Air Liquide in writing that the Equipment is lost or missing if the Customer does not want the Rental Period to renew in respect of any Equipment.
- 7.5 The Customer will continue to pay Rental Fees on a daily rental basis in respect of any lost or missing Equipment until it pays Air Liquide's Lost Equipment Fee.
- 7.6 The Customer may not claim a refund or credit of Rental Fees if it returns the Equipment during a Rental Period on the basis of "change of mind", unless the Rental Period had automatically renewed under **clause 7.2** and the Customer is not a Daily Rental Customer. In the case of such automatic renewal, the Customer will be entitled to claim a pro rata refund or credit for any period for which it has paid or been invoiced for Rental Fees, but in no case will such refund or credit be in respect of any period which is:
- (a) (in the case of monthly rental) less than a week;
 - (b) (in the case of a renewal Rental Period of greater than a month), less than a month.
- 7.7 Daily rental fees for the purpose of **clauses 7.5** and **7.6(b)** will be calculated as a pro-rated sum of the total rental payable during the previous Rental Period.

7.8 Except to the extent Air Liquide otherwise agrees in writing, Air Liquide may amend or replace the Supply Terms such that the amendment or replacement applies to the Equipment as from the next Rental Period which commences at least thirty (30) days after the date upon which the Customer is advised in writing that new or varied Supply Terms apply.

8 CONTAINER EXCHANGE

- 8.1 In the case of Container rental, the Customer may return Air Liquide's Container at any time during any Rental Period and request a filled Container in exchange for no additional Rental Fee during that Rental Period.
- 8.2 A filled Container which Air Liquide provides to the Customer in exchange will be of an identical type or, if this is not reasonably available, a substitute of equivalent functionality, and each exchange Container will be deemed to be the Container rented by the Customer.
- 8.3 Unless Air Liquide otherwise agrees in writing, if the Customer requests another type of Container at the time of exchange in the place of the current Container, this will be considered a separate rental arrangement and separate Rental Fees will apply.
- 8.4 Except as otherwise agreed in writing, Air Liquide will endeavour to have filled Containers available at Air Liquide's premises for the purpose of exchange but does not warrant availability at all times. **Clause 4** otherwise applies.

9 RESPONSIBILITIES IN RESPECT OF RENTED EQUIPMENT

While renting Air Liquide's Equipment, the Customer will:

- (a) only use Containers as containers for Gases supplied by Air Liquide;
 - (b) except as otherwise agreed, only use other Equipment (other than Containers) in connection with Gases supplied by Air Liquide;
 - (c) keep the Equipment clean and in good condition;
 - (d) not part possession with, sell, offer for sale, or grant any Security Interest over the Equipment;
 - (e) not allow any property to become an accession to the Equipment or allow the Equipment to become an accession to any property;
 - (f) not repair, modify, tamper with or allow or cause the Equipment to become contaminated;
 - (g) not deliver or send the Containers for refilling to any place other than Air Liquide's premises or those of Air Liquide's Representatives;
 - (h) not move the Equipment other than Containers from the Customer's premises;
 - (i) not decant or otherwise remove Gas from any Container to any other container or decant any gas into Air Liquide Containers; and
 - (j) not remove, deface or alter any of Air Liquide's identification marks on the Equipment.
- 9.2 The Customer bears all risk in relation to the Equipment from its delivery to the Customer until its return to Air Liquide or Air Liquide's Representative including:
- (a) the risk of damage to any item (including any damage to, or removal of, Air Liquide's identification marks on the item) and will indemnify Air Liquide for any such damage (except for any fair wear and

- tear or to the extent Air Liquide or Air Liquide's Representatives cause such loss or damage); and
- (b) the risk of loss of any item, in which case, without prejudice to Air Liquide's right to claim for Rental Fees in respect of any Rental Period, **clause 11.2** applies.

10 EQUIPMENT RETURNS

- 10.1 Equipment is deemed to be returned to Air Liquide when:
- (a) the Equipment is physically delivered to Air Liquide's premises or those of Air Liquide's Agent; or
 - (b) Air Liquide or its Representative takes physical possession of the Equipment.
- 10.2 Unless Air Liquide has otherwise agreed in writing to collect the Equipment, subject to any of the Customer's Consumer Rights, Equipment shall be physically returned by the Customer in accordance with **clause 10.1(a)**.
- 10.3 The Customer must return rented Equipment to Air Liquide in the same clean condition and good working order it was in when the Customer received it, ordinary wear and tear excluded. If the Customer does not properly clean the exterior of the Equipment or return it in good working order (ordinary wear and tear excluded), Air Liquide may charge the Customer for the costs Air Liquide incurs for cleaning and repairing the Equipment.
- 10.4 If the Customer fails to return any rented Equipment after Air Liquide duly requires its return, the Customer authorises Air Liquide to enter the Customer's premises during business hours to repossess and remove it.
- 10.5 If any Equipment rented by the Customer appears to be defective or to require repair for any reason, then the Customer:
- (a) will not attempt to, or permit any other person to, maintain or repair the Equipment;
 - (b) will immediately notify Air Liquide of the quantity and description of that Equipment; and
 - (c) subject to and without limiting the Customer's Consumer Rights, return to Air Liquide that Equipment or (where Air Liquide agrees in writing) make such Equipment available for collection, ensuring that it is separately and positively identified to Air Liquide as appearing to be defective or requiring repair (which may include affixing to the Equipment any label provided by Air Liquide for this purpose), and
- if Air Liquide verifies the rented Equipment is defective Equipment or Equipment requiring repair, (except where the Customer is a Daily Rental Customer) the Customer is entitled to claim a refund or credit for Rental Fees which were paid or would be payable for the period from the date the Customer notifies in writing Air Liquide that the Equipment is defective Equipment to the date it receives replacement Equipment.
- 10.6 Subject to **clause 10.5** and **clause 24.2**, and without limiting the Customer's Consumer Rights, no allowance, credit or rebate will be made for any residual Gas contained in any returned Containers.

11 EQUIPMENT HOLDINGS

- 11.1 From time to time, Air Liquide may, on request, send the Customer an Equipment Holdings Statement in respect of rented Equipment. The Equipment Holdings Statement is

evidence of the Equipment Holdings of the Customer.

- 11.2 A Lost Equipment Fee may be charged by Air Liquide where the Customer fails to return any rented Equipment when duly required to do so by Air Liquide and Air Liquide determines that such Equipment is unable to be located.
- 11.3 Upon return of Equipment rented by the Customer from Air Liquide or payment of the applicable Lost Equipment Fee, Air Liquide's records will be adjusted accordingly.
- 11.4 The Customer acknowledges that if the Customer returns to Air Liquide any Equipment which cannot be identified as Equipment rented by the Customer from Air Liquide, then unless Air Liquide agrees otherwise, this will not result in any adjustment to the Customer's Equipment Holdings.
- 11.5 Air Liquide may on reasonable notice enter the Customer's premises during business hours to inspect Air Liquide's rented Equipment and to audit the Customer's Equipment Holdings.

12 SALE OF EQUIPMENT

- 12.1 Air Liquide may from time to time agree in writing to sell Equipment to the Customer.
- 12.2 Subject to any Consumer Rights, the Customer bears all risk in relation to Equipment purchased by the Customer from the time of its delivery (in accordance with **clause 3.2**).
- 12.3 Subject to any rights a Consumer may have under the Australian Consumer Law, where the Equipment Air Liquide sells the Customer is not manufactured by Air Liquide nor sold under a name, brand or mark under which Air Liquide carries on business:
 - (a) all specifications, drawings, and particulars of weights and dimensions submitted to the Customer, whether contained in catalogues, price lists or other advertising matter, are approximate only and do not form part of the Contract or form part of the description applied to the Equipment;
 - (b) Air Liquide shall not be liable for any alteration or variation in the Equipment from any published specifications which are made available with respect to the Equipment; and
 - (c) Air Liquide agrees to assign to the Customer, on the Customer's request, the benefit of any warranty that the manufacturer has granted to Air Liquide under any contract or by implication or operation of Law to the extent that the benefit of any warranty or entitlement is assignable.

13 FEES

- 13.1 The Customer will pay Air Liquide the Fees as determined in accordance with the applicable Supply Contract or Binding Order.
- 13.2 Unless otherwise stated by Air Liquide in writing, Fees quoted for Packaged Gases and Equipment do not include freight costs or costs of insurance (which after delivery is the Customer's responsibility). Any Fees quoted for export are FCA (Incoterms 2010) dispatch location nominated by Air Liquide and do not include import duties or government taxes in the destination country, or costs of delivery within the destination country, which are the sole responsibility of the Customer. In addition, unless otherwise agreed, the Buyer assumes the responsibility and costs of export formalities.

- 13.3 Each amount quoted by Air Liquide as Fees is the goods and services tax (**GST**) exclusive amount, unless described as "GST inclusive". If GST under the GST Act is chargeable on any supply Air Liquide makes to the Customer, then the Customer shall pay such GST in addition to the GST exclusive consideration that is payable for the supply, at the same time and in the same manner as payment is required to be made in respect of the Fees.

- 13.4 Unless Air Liquide otherwise agrees with the Customer in writing, Rental Fees applicable to any Rental Period will be calculated by reference to the applicable rental unit rate multiplied by the items of Equipment rented to the Customer during the relevant Rental Period. Subject to the Customer's Consumer Rights and **clauses 4.5, 7.6, 10.5 and 24.2**, no adjustment will be made to Rental Fees for early return of Equipment during any Rental Period.

- 13.5 If a party (**First Party**) is required to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (**Other Party**) under or in connection with these Supply Terms (including under or in connection with a Binding Order or a Supply Contract), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:
 - (a) the amount of the Reimbursable Expense net of input tax credits or other deductions from output tax (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (Net Amount); and
 - (b) if the Other Party's recovery from the First Party is a taxable supply, any GST payable in respect of that supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

14 INVOICING AND PAYMENT TERMS

- 14.1 Except where Air Liquide otherwise agrees in writing, and subject to **clause 14.5**, Air Liquide will issue a tax invoice in respect of the Fees for the Packaged Gases, Equipment and the Services at the time of or after delivery to the Customer.
- 14.2 Unless the Customer has a credit account open with Air Liquide or Air Liquide otherwise agrees in writing, Air Liquide requires payment of Air Liquide's invoices at the time of delivery.
- 14.3 Where and so long as the Customer has a credit account open with Air Liquide, Air Liquide's invoices will be payable within fourteen (14) days of the invoice date (unless otherwise agreed in writing).
- 14.4 Except where Air Liquide otherwise agrees in writing, Air Liquide may open, suspend or terminate the Customer's credit account at its discretion.
- 14.5 The Rental Fees are payable in advance upon invoicing at the commencement of the Rental Period, except where otherwise agreed in writing.
- 14.6 Where any amount is payable to Air Liquide by the Customer, Air Liquide may set such amount off against any amount owed to the Customer by Air Liquide. The Customer is not entitled to recover from Air Liquide any amounts due to it in connection with the supply of the Packaged Gases, Equipment and/or Services by way of set-off unless agreed in writing by Air Liquide.

14.7 Where a Customer is entitled to a refund of Rental Fees under any clause in these Supply Terms, this must be claimed directly from Air Liquide (via the relevant office shown at the end of the Supply Terms) and not via Air Liquide's Agent (unless the refund relates to Equipment rented from Air Liquide Healthcare Pty Ltd).

14.8 To the extent permitted by law, the Customer may not make any claim against Air Liquide in respect of an invoice paid by it unless the Customer gives Air Liquide full details of the Claim within twelve (12) months of the date of issue of the invoice.

15 LATE PAYMENT

If the Customer fails to pay any invoice by its due date, which amount is not in genuine dispute, then subject to Air Liquide providing prior written notice to the Customer of the default (and without limiting Air Liquide's other rights, including its rights under **clause 20**):

- (a) all Fees in connection with Packaged Gases, Equipment and Services supplied will become immediately due and payable by the Customer;
- (b) Air Liquide may suspend or terminate the Customer's credit account and require that payment of Air Liquide's invoices occurs at the time of delivery;
- (c) Air Liquide may charge interest on the outstanding amount:
 - (i) if in respect of the supplies in Australia, at the general interest charge (GIC) daily rate published on the website of the Australian Tax Office from time to time; or
 - (ii) if in respect of supplies in New Zealand, at the current debit interest rate published on the website of New Zealand Inland Revenue from time to time;
- (d) Air Liquide may take action to recover the unpaid monies and charge the Customer for Air Liquide's reasonable administration and debt recovery costs; and
- (e) Air Liquide may disclose the details of the Customer's default along with some or all of the information provided by the Customer in connection with the supply of the Packaged Gases, Equipment and/or Services to appropriate credit reporting companies or agencies in accordance with its credit reporting policy (refer **clause 26**).

16 TITLE

16.1 Title to the Gases supplied to the Customer will only pass to the Customer once Air Liquide has received payment in full for all amounts owing to Air Liquide in respect of a Binding Order or Supply Contract in cleared funds. In the meantime, subject to **clause 20**, the Customer may use the Gases in the ordinary course of the Customer's business.

16.2 Where Air Liquide offers to sell the Customer Equipment, Air Liquide retains title in the Equipment until Air Liquide has received payment in full in cleared funds for such Equipment. In the meantime, subject to **clause 20**, the Customer may use such Equipment in the ordinary course of the Customer's business.

16.3 As between Air Liquide and the Customer, the Equipment will always be regarded as a chattel and not a fixture.

17 PPSA

17.1 Air Liquide has a Security Interest in the Equipment and Gases and the Supply Contract constitutes a security agreement for the purposes of the PPSA. The Customer grants Air Liquide a Security Interest in the Gases as security for all indebtedness owed by the Customer to Air Liquide. On Air Liquide's request, the Customer will promptly:

- (a) do all things reasonably necessary for the purposes of:
 - (i) ensuring that any Security Interest created under, or provided for by, the Supply Terms or Supply Contract:
 - A. attaches to the collateral that is intended to be covered by that Security Interest;
 - B. is enforceable, perfected, maintained and otherwise effective; and
 - C. has the priority contemplated by the Supply Terms and Supply Contract;
 - (ii) enabling Air Liquide to prepare and register a financing statement or financing change statement; and
 - (iii) enabling Air Liquide to exercise any of Air Liquide's powers in connection with any Security Interest created under, or provided by, the Supply Terms and Supply Contract; and
- (b) provide any information requested by Air Liquide in connection with the Supply Contract to enable Air Liquide to exercise any of Air Liquide's powers or perform Air Liquide's obligations under the PPSA.

17.2 Except if section 275(7) of the AU PPSA applies, and to the extent that the AU PPSA applies, each party agrees not to disclose any information of the kind referred to in section 275(1) of the AU PPSA that is not publicly available.

17.3 Any payments received by Air Liquide from the Customer will be applied in accordance with section 14(6) of the AU PPSA, if the AU PPSA applies.

17.4 The Customer waives the Customer's rights to receive any notice under the PPSA (including a notice of any verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

17.5 The Customer agrees that:

- (a) Air Liquide is under no obligation to dispose of or retain any Equipment or Gases which it seizes within a reasonable time under section 125 of the AU PPSA;
- (b) following a default, neither the Customer nor any other person have any rights to redeem the Equipment or Gases under section 142 of the AU PPSA; and
- (c) the Customer has no rights to reinstate the Supply Contract following a default under section 143 of the AU PPSA or sections 133 and 134 of the NZ PPSA (as applicable).

17.6 The Customer waives the Customer's rights to receive:

- (a) a notice of Air Liquide's proposal to dispose of any personal property under section 130 of the AU PPSA or section 114(1)(a) of the NZ PPSA (as applicable);
- (b) details of the amounts paid to other secured parties in a statement of account provided by Air Liquide under section 132(3)(d) of the AU PPSA;
- (c) a statement of account under section 132(4) of

the AU PPSA or section 116 of the NZ PPSA (as applicable); and

- (d) a notice of Air Liquide's proposal to retain any personal property under section 135 of the AU PPSA and section 120(2) of the NZ PPSA (as applicable).

17.7 The Customer waives its rights under sections 121, 125, 126, 127, 129 and 131 of the NZ PPSA.

18 LIABILITY

18.1 In this **clause 18**, references to supply include supply by way of sale, lease, rental or loan; references to goods include the Gases and Equipment; and references to services include the Services.

18.2 If the Equipment, Gases and/or Services are being delivered to a Customer in Australia, and the Customer is a Consumer, the Customer is entitled to certain Consumer Rights that cannot be limited or excluded. Nothing in these Supply Terms, or any Binding Offer or Supply Contract incorporating these Supply Terms, is intended to unlawfully restrict, modify or limit such rights.

18.3 If the Equipment, Gases and/or Services are being delivered to a Customer in New Zealand, then for the purposes of the *Consumer Guarantees Act 1993 (CGA)*:

- (a) if the Customer is in trade, then the Customer and Air Liquide agree that the provisions of the CGA will not apply to the supply of the Equipment, Gases and/or Services; or
- (b) if the Customer is a consumer (as defined in the CGA) and is not in trade, then the provision of the CGA will apply to the supply of the Equipment, Gases and/or Services and nothing in the Supply Contract or Supply Terms is intended to have the effect of contracting out of the provisions of the CGA.

18.4 Otherwise, the Customer agrees that all terms, conditions, warranties, guarantees and obligations in relation to Air Liquide's supply to the Customer of goods and services which are implied or granted by Law are excluded to the extent possible. Subject to **clauses 18.2** and **18.3**, the Customer agrees that all terms, conditions, warranties, guarantees and obligations which would be implied or granted by Law are excluded from these Supply Terms or any document in which they are excluded, to the extent legally permissible, including as to fitness for purpose or the suitability of the Packaged Gases, Equipment or the Services for the Customer's intended use.

18.5 If the Customer is a Consumer, except to the extent prohibited by Law, Air Liquide's total liability to the Customer for Loss suffered or incurred by the Customer as a result of a breach of the Customer's Consumer Rights is limited (at Air Liquide's election) to Air Liquide:

- (a) in respect of goods Air Liquide has supplied:
 - (i) replacing the goods or supplying equivalent goods;
 - (ii) repairing the goods;
 - (iii) paying the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) paying the cost of having the goods repaired;
- (b) in respect of services supplied:
 - (i) resupplying the services; or
 - (ii) paying the cost of having the services supplied again.

18.6 Where Air Liquide is liable to the Customer in circumstances which are not covered by **clause 18.5**, and subject to **clause 18.7**, Air Liquide's total liability to the Customer for all events and occurrences, arising out of or in connection with the supply of goods or services or information or advice by Air Liquide, whether in contract, tort (including negligence), under statute or otherwise, is limited as follows:

- (a) if the Customer's claim arises under or in connection with a Supply Contract, in respect of any event or series of connected events giving rise to the liability, to the total Fees paid by the Customer under that Supply Contract during the month prior to the date of the event (or in the case of a series of connected events, the date of the first event); provided that in any twelve (12) month period of the Supply Contract, Air Liquide's aggregate liability for all such claims shall not exceed three (3) months' equivalent of the average monthly fees payable during that twelve (12) month period; or
- (b) if the Customer's claim relates to a Binding Order which is not placed under Supply Contract, to the total Fees paid by the Customer during the month prior to the date on which the relevant event or circumstance giving rise to the liability arises.

18.7 **Clause 18.6** does not apply to any Loss suffered or incurred by the Customer out of or in connection with the supply of goods or services by Air Liquide arising out of:

- (a) property damage or personal injury caused or contributed to by Air Liquide's negligent act or omission or Wilful Misconduct (and to the extent not caused or contributed by the Customer), in which case Air Liquide's aggregate liability during any twelve (12) month period of a Supply Contract (or, where there is no Supply Contract, from the date of a Binding Order) will not exceed \$1 million (Australian or New Zealand currency, as applicable to the particular Supply Agreement); or
- (b) Air Liquide's fraudulent or criminal acts.

18.8 Except to the extent prohibited by Law, in no case will Air Liquide be liable to the Customer, its Representatives or any other person for any indirect, economic, special or consequential loss or damage, including loss of revenue, time, goodwill, data, anticipated savings, opportunity, loss of production and loss of profit out of or in connection with the supply of goods or services by Air Liquide.

18.9 The Customer will indemnify Air Liquide against any Loss suffered or incurred by Air Liquide or its Representatives:

- (a) to the extent caused by or contributed to by the Customer's negligence, breach of contract, fraud or Wilful Misconduct;
- (b) arising in relation to the ownership, possession or use of the Packaged Gases or Equipment supplied by Air Liquide to the Customer; or
- (c) in exercising any of Air Liquide's contractual rights or remedies or which are available to Air Liquide at Law, in equity or under statute, except to the extent caused by Air Liquide's negligence, breach of contract or fraud or Wilful Misconduct.

19 FORCE MAJEURE EVENT

19.1 The parties agree that the obligations of a party under a Binding Order or Supply Contract (except in respect of any Fees that are due and payable by the Customer to Air Liquide or other payment obligation) are suspended during any period of a Force Majeure Event, but only to the extent that the performance of such obligations by the party (the “affected party”) is prevented or impeded by such Force Majeure Event.

19.2 The affected party will give the other party notice as soon as possible after:

- (a) the happening of the event or circumstances relied upon as a Force Majeure Event; or
- (b) determining that the event was or circumstances were in the nature of a Force Majeure Event and would affect its ability to observe and perform its obligations under a Binding Order or Supply Contract,

that the affected party is or will be unable by reason of the Force Majeure Event to perform its obligations under the Binding Order or Supply Contract.

19.3 If the Force Majeure Event limits Air Liquide's ability to supply its customers, then Air Liquide may make partial delivery and/or supply to the Customer in such proportions that are reasonable under the circumstances.

20 SUSPENDING OR CEASING SUPPLY OR TERMINATION BY AIR LIQUIDE

20.1 If the Customer causes or is the subject of a Default Event, then (subject to Air Liquide's provision of prior written notice to the Customer), Air Liquide may immediately (and without limiting Air Liquide's rights):

- (a) revoke the Customer's authority under **clause 16.1** to use in the course of the Customer's ordinary business the Gases and/or Equipment in the Customer's possession in which Air Liquide retains title; and/or
- (b) suspend Air Liquide's performance of any obligations it has under the relevant Binding Order or Supply Contract until Air Liquide is reasonably satisfied that the Default Event has been rectified.

20.2 Air Liquide may terminate a Binding Order and/or Supply Contract, wholly or partially, immediately by written notice to the Customer (or later if Air Liquide advises otherwise) and require the immediate return of any or all of Equipment and Packaged Gases in which Air Liquide retains title, if the Customer:

- (a) fails to remedy:
 - (i) an overdue payment within five (5) Business Days of Air Liquide providing written notice to the Customer of such failure to pay (which amount is not in genuine dispute); or
 - (ii) any breach of a term of the Binding Order and/or Supply Contract which is capable of remedy, within twenty (20) Business Days of Air Liquide providing written notice to the Customer; or
- (b) commits a breach of a material term of the Binding Order or Supply Contract which is not capable of remedy; or
- (c) repeats a failure to pay amounts due on time in a subsequent invoicing period;

- (d) is subject to or commits an Insolvency Event; or
- (e) there is a Sanctions Event.

21 TERMINATION BY THE CUSTOMER

The Customer may terminate a Binding Order or Supply Contract immediately by written notice to Air Liquide if Air Liquide:

- (a) fails to remedy any material breach in respect of a term of the Binding Order or Supply Contract which is capable of remedy, within twenty (20) Business Days of the Customer providing written notice to Air Liquide; or
- (b) commits a breach of a material term of a Binding Order or Supply Contract which is not capable of remedy; or
- (c) is subject to an Insolvency Event.

22 TERMINATION BY AIR LIQUIDE OR THE CUSTOMER

If a Force Majeure Event continues under a Binding Order or Supply Contract for a period of greater than sixty (60) Business Days, then either party may terminate the Binding Order or Supply Contract, effective immediately, by written notice to the other party.

23 NOTICE OF SUSPENSION OR TERMINATION

A notice provided by a party under **clauses 20, 21** or **22** must set out reasonable details (as the case may be) of the:

- (a) breach which a party is requiring the other party to remedy and that failure to remedy the breach (or in the case of **clause 20.2(c)**, repetition of the breach) will, or is likely to, result in the non-defaulting party terminating the Binding Order or Supply Contract; or
- (b) the breach, event or circumstance constituting the event upon which a party is relying to suspend performance or terminate the Binding Order or Supply Contract,

before the party is entitled to exercise its rights to suspend or terminate on such basis.

24 CONSEQUENCES OF TERMINATION

24.1 Except where termination occurs pursuant to **clause 21**, or to the extent otherwise agreed in writing, upon termination of a Binding Order or Supply Contract, the Customer must return the Equipment to Air Liquide or its Representatives at the Customer's cost and the Customer may not claim a refund of the pro rata price in respect of any unused Gas in the returned Equipment.

24.2 If termination occurs under **clause 21**, Air Liquide will arrange to collect (and the Customer will make available for collection) the relevant Equipment and the Customer may claim a refund of the pro rata price in respect of any unused Gas in the returned Equipment and (except in the case of a Daily Rental Customer) any Rental Fees paid in advance applicable to the period after the date of termination.

24.3 A party's rights under this clause are without prejudice to any other rights or remedies to which it is entitled under a Binding Order or Supply Contract, or Law.

24.4 All indemnities set out in the Supply Terms and any Binding Order or Supply Contract, and any clauses which expressly or impliedly have effect after termination, will continue to be enforceable notwithstanding termination of the Binding Order or Supply Contract (or any part thereof).

25 CONFIDENTIALITY AND AIR LIQUIDE'S IP

25.1 A party receiving Confidential Information will ensure that it is:

- (a) maintained, so as to prevent disclosure or unauthorised use, with at least the standard of care that the receiving party maintains to protect its own Confidential Information;
- (b) only used by the receiving party to the extent necessary for the purpose for which such Confidential Information has been disclosed to it or to enforce its rights under or in respect of any Binding Order or Supply Contract;
- (c) only given to those of its Representatives that require access for such purpose, with such Representatives informed of its confidential nature and required to keep that information confidential; and
- (d) not disclosed to or used by any other third party (without the prior written consent of the disclosing party), except to the extent required to be disclosed by Law.

25.2 All Confidential Information remains the exclusive property of the party disclosing the Confidential Information. Any IP created by Air Liquide in respect of the Packaged Gases, Equipment and Services is, and remains, Air Liquide's property. Nothing in the Supply Terms operates as a sale, transfer, licence, assignment or other dealing with respect to any IP or Confidential Information.

26 PRIVACY

26.1 For details of how Air Liquide collects, holds, uses and discloses non-credit-related personal information, please refer to Air Liquide's AU/NZ Privacy Policy which can be located at <https://industry.airliquide.com.au/legal>.

26.2 For details on how Air Liquide collects, holds, uses and discloses the Customer credit-related personal information, refer to Air Liquide's AU/NZ Credit Reporting Policy which can be located at <https://industry.airliquide.com.au/legal>.

26.3 Except to the extent the Customer notifies Air Liquide that it opts out, the Customer authorises Air Liquide to collect, use and disclose the Customer's personal information in accordance with those policies.

27 COMPLIANCE WITH LAWS

27.1 Each party agrees to comply with the Laws applicable to the performance of any Binding Order or Supply Contract.

27.2 In particular, each party represents that it has implemented and will continue to implement policies and procedures to foster compliance with the anti-corruption and anti-bribery laws and regulations applicable to it. Where the Customer does not have its own code of conduct addressing anti-corruption behaviour, it agrees to adhere to the principles stated in the Air Liquide Anti-corruption Code of Conduct, available at <https://www.airliquide.com/group/anti-corruption-code-conduct>, and to take reasonable and customary measures to ensure that its employees implement these principles when carrying out any activity in connection with these Supply Terms.

27.3 To the extent of any resale or resupply by the Customer (where agreed in writing by Air Liquide), or in the event of supply by Air Liquide to a Customer for use in another

country than the one in which the relevant Air Liquide entity has its registered office, the Customer agrees to comply with any laws relating to export and/or import control and acknowledges that it shall not directly or indirectly export or import any Gases, Containers or other Equipment to any country to which such export or import is restricted or prohibited. The Customer acknowledges its responsibility to obtain any licence to export, re-export or import as may be required. Air Liquide shall not be liable for any loss or damage arising from export and/or import control Laws or any other restrictions imposed by legislation on the resale or resupply into or use in such other country, and any costs or expenses incurred by Air Liquide in connection with any such use, re-sale or re-supply by the Customer shall be paid by the Customer.

28 ASSIGNING AND SUB-CONTRACTING

28.1 The Customer acknowledges and agrees that Air Liquide may sub-contract the performance of any work under a Binding Order or Supply Contract, including by requesting a Related Company to perform or exercise any of Air Liquide's rights or obligations on Air Liquide's behalf. However, any subcontracting by Air Liquide does not diminish or otherwise affect Air Liquide's obligations to the Customer in respect of such Binding Order or Supply Contract.

28.2 Air Liquide may assign any of Air Liquide's rights under a Binding Order or Supply Contract to any person at any time without the Customer's consent and without providing notice. The Customer also consents to the novation of Air Liquide's rights or obligations under a Binding Order or Supply Contract to any Related Company of Air Liquide, subject to Air Liquide providing written notice to the Customer.

28.3 Subject to **clause 28.2**, neither party will assign or novate any of its rights or obligations under a Binding Order or Supply Contract without the prior written consent of the other party (not to be unreasonably withheld). A request for consent to the assignment or novation of a Binding Order or Supply Contract by either party must be made in writing and provide the other party with such information as the other party may reasonably require concerning the new party.

28.4 The Customer acknowledges and agrees that (and without limitation) it will not be unreasonable for Air Liquide to withhold its consent to a request pursuant to **clause 28.2** if Air Liquide is not satisfied, acting reasonably, that:

- (a) the financial performance and credit rating of the new party is such that the new party will be able to meet the payment obligations of the Customer; or
- (b) in the case of a Supply Contract, that:
 - (i) the new party is sufficiently qualified to efficiently carry on the business operations associated with the consumption of Packaged Gases under the Supply Contract and to meet the other obligations of the Customer under the Supply Contract; or
 - (ii) a material reduction in the requirements for the Packaged Gases at the Supply Location under the Supply Contract will not occur after the assignment or novation.

28.5 The Customer acknowledges and agrees, as a condition to Air Liquide's consent, Air Liquide may require additional security to be provided from the Customer or from the new party and/or a novation of all of the Customer's rights and obligations under the Binding Order or Supply Contract to the new party.

29 GOVERNING LAW AND DISPUTES

29.1 The Supply Terms, and any Supply Contract or Binding Order into which the Supply Terms are incorporated, are governed by and interpreted in accordance with the Laws in force from time to time in the relevant jurisdiction specified below:

- (a) where the Supply Contract or Binding Order is for supplies in Australia:
 - (i) the Laws of the State or Territory in which Air Liquide supplies or offers to supply the Customer with Packaged Gases, Equipment and/or Services; or
 - (ii) if the Supply Contract involves supply in more than one State or Territory of Australia, the Laws of the State or Territory in Australia in which the relevant Air Liquide entity has its registered office,
 and in each case the parties submit to the non-exclusive jurisdiction of the courts in that State or Territory; or
- (b) where the Supply Contract or Binding Order is for supplies in New Zealand, the Laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts in New Zealand; or
- (c) where the Supply Contract or Binding Order is for supplies outside of Australia or New Zealand, the Laws of the jurisdiction in which the relevant Air Liquide entity has its registered office, in which case the parties submit to the exclusive jurisdiction of the courts in that Australian State or Territory or New Zealand (as applicable).

29.2 The parties each agree that they will not commence court proceedings (except proceedings seeking urgent interlocutory relief) about a Dispute unless they have complied with this **clause 29.2**. A party claiming that a Dispute has arisen must notify the other party to the Dispute giving reasonable details and particulars of the Dispute. If the parties are unable to resolve the Dispute within ten (10) Business Days of receipt of the notice of the Dispute, each party must escalate the Dispute to that party's Chief Operating Officer (or that person's equivalent or nominee) and those people must meet and attempt to resolve the Dispute. If notwithstanding a referral to the parties' Chief Operating Officers (or that person's equivalent or nominee) the parties do not resolve the Dispute within twenty (20) Business Days of receipt of the Dispute Notice (or any such longer period agreed between the parties) (**Mediation Commencement Date**), the Dispute must be referred to mediation.

29.3 If the Packaged Gases, Equipment or Services are to be or have been supplied in:

- (a) Australia, then the mediator will be agreed between the parties or, failing agreement within twenty (20) Business Days of the Dispute Notice, decided by the

President of the Law Institute of the relevant State or Territory referred to in **clause 29.1**. The mediation shall be conducted in the capital city of the relevant State or Territory; or

- (b) New Zealand, then the mediator will be agreed between the parties or, failing agreement within twenty (20) Business Days of the Dispute Notice, decided by the chairperson or any other office holder of the New Zealand chapter of LEADR. The mediation shall be conducted in Auckland.

29.4 The mediator shall conduct the mediation in accordance with the guidelines agreed between the parties or, if the parties cannot agree within ten (10) Business Days following appointment of the mediator, in accordance with the guidelines set by the mediator. The costs and expenses of the mediator shall be shared by the parties equally. The mediation is directed towards the resolution of the Dispute, and the parties agree to act in good faith with a view to resolving the Dispute. The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision in relation to the Dispute unless the parties agree in writing. Despite the existence of a Dispute, the parties must continue to perform their obligations under these Supply Terms, unless a party duly exercises its rights under **clauses 20, 21 or 22** (as applicable).

30 NOTICES AND ELECTRONIC COMMUNICATIONS

30.1 A party giving a written notice under a Supply Contract or Binding Order will do so in writing and (subject to **clause 30.2**) such notice will be deemed to have been served when transmitted to the physical address, facsimile number or email address of the relevant party as notified in writing from time to time.

30.2 In the case of an email notice issued to Air Liquide under **clause 21 or 29.2**, such notice will be deemed to have been served when acknowledged by return email or otherwise in writing (provided that an "out of office" message does not constitute an acknowledgement for this purpose).

30.3 Except to the extent otherwise agreed in writing, any document contemplated by the Supply Terms may be issued electronically in accordance with this clause.

31 OTHER MATTERS

31.1 If Air Liquide supplies Gases into Equipment other than Containers (that is, Gases other than "Packaged Gases"), then these Supply Terms shall apply to the extent relevant to such supply, **unless** such Gas and Equipment supply is covered by another agreement between Air Liquide and the Customer which does not incorporate these Supply Terms. In this case, each reference to the supply of "Packaged Gases" shall be read (to the extent necessary) as a supply of "Gases".

31.2 Subject to any Consumer Rights, a Binding Order (where not placed under a Supply Contract) or a Supply Contract (as the case may be) constitutes the entire agreement between the parties as to its subject matter and supersedes all agreements in connection with that subject matter.

31.3 Each party acknowledges and represents and warrants to the other party that, except as expressly set out in a Binding Order or a Supply Contract:

- (a) no warranties, promises, undertakings, statements or conduct (whether express or implied) have induced or influenced it to enter into, or agree to any terms of, the Binding Order or Supply Contract or have been warranted or relied on in any way as being true or accurate by it;
- (b) it has the authority, power and capability to enter into and to perform its obligations under the Binding Order or Supply Contract;
- (c) its obligations under the Binding Order or Supply Contract are binding and enforceable; and
- (d) the Binding Order or Supply Contract does not conflict with or result in the breach of any material term or provision of any agreement, deed, writ, order or injunction, judgment or Law to which it is a party or a subject or by which it is bound.

31.4 Each term of the Supply Terms and any Binding Offer or Supply Contract will be interpreted so as to be effective and valid under applicable Law. If any term is held to be prohibited by or invalid under applicable Law, that term is ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of the relevant agreement.

31.5 A term of a Binding Order or Supply Contract may not be waived except in writing signed by the party granting the waiver. The waiver by a party of a breach by another party of any term does not operate as a waiver of another or continuing breach by that party of that term or any other term of the Binding Order or Supply Contract.

31.6 The parties acknowledge that nothing in the Supply Terms or any Binding Offer or Supply Contract constitutes a relationship of joint venture, employment or partnership between them.

31.7 Unless otherwise specified, each party will pay all its own costs associated with negotiating and entering into any Binding Offer or Supply Contract and complying with its obligations under such agreement.

31.8 The United Nations Convention on Contracts for the International Sale of Goods does not apply.

32 DEFINITIONS AND INTERPRETATION

32.1 The following defined terms are used in the Supply Terms:

Agent means an Air Liquide approved agent in the supply of Packaged Gases, Equipment and Services.

Air Liquide means *Air Liquide Australia Limited* (ABN 57 004 385 782) of Level 9, 380 St Kilda Road, Melbourne, Victoria 3004, Australia (**Air Liquide Australia**), *Air Liquide Healthcare Pty Ltd* (ABN 41 002 653 045) of 5/476 Gardeners Road, Alexandria, New South Wales 2015 (**Air Liquide Healthcare**) or *Air Liquide New Zealand Limited* (NZBN 942903 2036121) of 19 Maurice Road, Penrose, Auckland 1061, New Zealand (**Air Liquide New Zealand**), whichever is stated to be the Supplier in the relevant quotation, Offer or Supply Contract.

AU PPSA means the *Personal Property Securities Act 2009* (Cth).

Australian Consumer Law means the Australian Consumer Law contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Binding Order means an Order placed, either under a

Supply Contract or otherwise, by the Customer which is legally binding under **clauses 2.1 or 2.2**.

Business Day means any day excluding Saturday, Sunday, Commonwealth public holidays or a public holiday in the state or territory (in the case of Australia) or region (in the case of New Zealand), as well as any other day notified by Air Liquide in writing from time to time for this purpose. For the purpose of receiving notices, the relevant Business Day is that where a party receiving a notice is located and for any other purpose under the Supply Terms, the relevant Business Day is that in the place where the party required to perform an obligation has its registered office. An Order received by Air Liquide after 3pm (or other nominated time) in the state or territory in which is the Order is received is taken to be received on the next Business Day.

Confidential Information means confidential information, including:

- (a) pricing terms offered by Air Liquide;
- (b) the commercial terms of an Offer or Supply Contract or other agreement;
- (c) financial and business information of a party;
- (d) technical information, procedures and processes, methods and plans;
- (e) information provided by the party to the other party which is designated in writing as confidential; and
- (f) any other information which is by its nature confidential,

except where that information is:

- (i) made public other than by the receiving party breaching its obligations of confidence to the disclosing party;
- (ii) known to the receiving party free of any obligation to keep it confidential; or
- (iii) independently developed by the receiving party without use, directly or indirectly, of Confidential Information received from the disclosing party.

Consumer has the same meaning as in the Australian Consumer Law.

Consumer Rights means the Customer's rights under the Australian Consumer Law if the Customer is a Consumer.

Containers means:

- (a) gas cylinders including valves, guards, pressure gauges, regulators and gas controlling and conserving devices;
- (b) crates, packs and pallets in which the gas cylinders are stored; and
- (c) low loss boxes in which dry ice is stored, supplied by Air Liquide to the Customer from time to time.

Customer means the person acquiring Packaged Gases, Equipment and/or Services from Air Liquide.

Daily Rental Customer means a customer who (in respect of the relevant Containers) pays Rental Fees calculated daily in respect of a daily Rental Period.

Default Event means:

- (a) failure to make any payment due by the due date;
- (b) breach of any term of the Supply Terms or any Binding Order or Supply Contract into which the

- Supply Terms are incorporated; or
- (c) the Customer is subject to or commits an Insolvency Event; or
 - (d) a Sanctions Event.

Delivery Note means the document (in hard or electronic form) produced by Air Liquide which records transactions or activities (including deliveries and collections) in relation to the Packaged Gases or Air Liquide's Equipment. Delivery Note includes a delivery docket, cylinder transaction slip ("CTS") or other similar document.

Dispute means any controversy, claim, demand, difference or dispute of whatever nature between the parties arising under, out of or in connection with the Supply Terms or any Binding Order or Supply Contract into which the Supply Terms are incorporated (including any question regarding its existence, validity or termination as a whole or in part or of the interpretation thereof) or any rights, benefits or interests arising under, out of or in connection with such agreement.

Dollars or **\$** means Australian or New Zealand dollars, being the currency prevailing in the place where the relevant Air Liquide supplying entity has its registered office.

Equipment means Containers and other equipment which Air Liquide supplies the Customer in connection with or supplementary to the supply of Gases, except where such Equipment is covered by a separate agreement which does not incorporate these Supply Terms. Equipment may include dewars, portable liquid vessels (PLVs) and bulk liquid vessels. In the case of Air Liquide Healthcare, Equipment includes sleep apnea treatment products including CPAP Equipment and associated equipment and accessories and portable oxygen concentrators.

Equipment Holdings means the quantity and type of Equipment held by the Customer from time to time.

Equipment Holdings Statement means a document (in hard or electronic form) produced by Air Liquide (whether contained in a rental or facility fee invoice or other document) of the Customer's Equipment Holdings from time to time.

Fees means Air Liquide's prices and fees for Packaged Gases, Equipment and Services, as revised by Air Liquide from time to time in accordance with the Supply Terms or as otherwise agreed in writing.

Force Majeure Event means an event or circumstance (or combination of events and circumstances) beyond the reasonable control of the party affected, including, fire, storm, flood, earthquake, epidemic, acts of God, explosion, accident, act of public enemy, war, rebellion, insurrection, sabotage, quarantine restriction, labour dispute, labour shortage, transportation embargo or failure or delay in transportation, shortage of or inability to obtain raw materials or feedstock for Air Liquide's production plant (including gas sourced from Air Liquide's external supplier during a planned or unplanned shutdown by the supplier of the supplier's plant) or electrical power, utilities or equipment, plant or equipment breakdown, breach of contract or acts on the part of any third party, acts (including Laws, failure to provide or revocation of any

approvals, permits or other authorisations) of or by any government, public authority or agency, whether national, municipal or otherwise.

Gas or **Gases** means any gas or dry ice products (whether in liquid, solid or gaseous form) supplied by Air Liquide to the Customer from time to time, and includes industrial gases and medical gases.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth) if supply involves goods or services in Australia or the Goods and Services Tax Act 1985 (NZ) if supply involves goods or services in New Zealand.

Insolvency Event means:

- (a) a resolution is passed or proposed or a petition is presented or an application filed for the winding up of a party or a receiver or receiver and manager is appointed in respect of its property or any part of its property;
- (b) if a party is a person, the party becomes bankrupt;
- (c) if a party is a company, the party is deregistered;
- (d) the party makes or proposes to make an arrangement with its creditors;
- (e) an administrator is appointed over the party or its assets; or
- (f) execution is levied upon the party's assets and is not satisfied within ten (10) Business Days.

IP means:

- (a) patents, trademarks, services marks, design rights (whether registered or unregistered and including any applications for these rights);
- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright subsists and may in the future subsist;
- (c) trade or business names; and
- (d) know-how, confidential information and trade secrets,

and any other similar rights or obligations whether registrable or not in any country.

Law means the laws in effect in Australia or New Zealand, as determined under **clause 29.1** to be applicable, including state, territory or local government rules or regulations and includes, without limitation, the dangerous goods and occupational health and safety laws.

Loss means any loss, damage, liability, cost or expense.

Lost Equipment Fee means the full cost of purchasing a new replacement item of Equipment, plus 10% to cover Air Liquide's related administration costs, which the Customer acknowledges represents a genuine pre-estimate of Air Liquide's loss in terms of replacing the relevant Equipment.

NZ PPSA means the *Personal Property Securities Act 1999* (NZ).

Offer means an offer by Air Liquide to supply to the Customer any Gases, Equipment and/or Services which, upon acceptance, is capable of creating a legally binding commitment to supply.

Order means an order placed by the Customer with Air Liquide for Gases, Equipment and/or Services, and may be oral or in writing.

Packaged Gases means Air Liquide's Gases supplied in Containers or, where the context requires, either the Gases or the Containers.

PPSA means the NZ PPSA or AU PPSA (as applicable to the particular Supply Contract).

Related Company means, if the governing law applicable to these Supply Terms is:

- (a) that of a State or Territory in Australia, "related body corporate" as that term is defined in section 50 of the Corporations Act 2001 (Cth); or
- (b) that of New Zealand, "related company" as that term is defined in subsection 3 of the Companies Act 1993 (NZ).

Rental Fees means the fee applicable to the rental of Equipment in each Rental Period.

Rental Period means an initial specified rental period commencing from the date of first delivery to the Customer, and thereafter (unless Air Liquide otherwise agrees in writing) each further consecutive rental period of the same duration for which the rental term is renewed in accordance with the Supply Terms. Unless otherwise agreed in writing, the default initial rental period is daily.

Representatives means directors, officers, employees, agents, representatives, contractors or subcontractors of the relevant person. For the purpose of **clause 25**, Representatives of Air Liquide includes related bodies corporate, its financiers, insurers, or advisers and their personnel.

Sanctions Event means where performance under a Binding Order or any Supply Contract gives rise or would give rise to a breach or a risk of breach by a party of applicable trade control laws including as a result of a party being or becoming designated as a sanctioned party or connected with a sanctioned territory.

Safety Warning means the warning set out on the last page of the Supply Terms.

SDS means a safety data sheet for a Gas which can be downloaded from <https://industry.airliquide.com.au/>

Security Interest means:

- (a) any arrangement that in substance secures the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power, or title retention arrangement;
- (b) a 'security interest' as defined in the PPSA; or
- (c) any document that grants or creates anything referred to in either paragraphs (a) or (b) of this definition and any other thing which gives a creditor priority over any other creditor with respect to any asset or an interest in any asset.

Services means any services supplied by Air Liquide to the Customer from time to time in connection with the supply of Packaged Gases, including the delivery, rental, collection and installation of Packaged Gases and supply of any Equipment.

Supply Contract means an agreement which Air Liquide enters into with the Customer from time to time in respect of the supply of Packaged Gases, Equipment and/or Services and which may contemplate one or more Orders

or supplies.

Wilful Misconduct means an act or failure to act by a relevant party or its Representatives that was intended to cause, or was in reckless disregard of or wanton indifference to, harmful consequences.

32.2 In the Supply Terms:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing gender include any gender;
- (c) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate or any government agency;
- (d) references to clauses are references to clauses of the Supply Terms;
- (e) a reference to a party means Air Liquide or the Customer, as the context requires, and in either case includes its executors, administrators, successors and permitted assigns;
- (f) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (g) a reference to a document or agreement, including the Supply Terms, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (h) other grammatical forms of defined words or expressions have corresponding meanings;
- (i) a reference to a day (except a Business Day) is to the period of time commencing at midnight and ending 24 hours later;
- (j) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (k) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5:00 pm on that day (unless another time is nominated by these Supply Terms), it is taken to have occurred or been done on the next day; and
- (l) if anything under the Supply Terms or Supply Contract is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day;
- (m) if the Customer is two or more persons, then the Customer's liability is joint and several; and
- (n) wherever "including", "includes" or any other form of that word is used, it will be construed as if it were followed by "(without limitation)".

32.3 In the event of any inconsistency between the Supply Terms and any other documents provided by Air Liquide to the Customer, the provisions of the Supply Terms prevail to the extent of the inconsistency, except where this is expressly stated by Air Liquide not to be the case.

SAFETY WARNING

Users of AIR LIQUIDE gas products and cylinders are reminded that gases constitute “dangerous goods” and/or “hazardous chemicals” under dangerous goods and occupational health and safety laws and care should be taken with respect to cylinder handling, transportation, storage and use. Please read carefully the following important points:

1. Cylinders contain gas at high pressure. Never use without a regulator to reduce pressure.
2. Connect only to apparatus designed for the gas type in question.
3. Never heat cylinders.
4. Keep oils and greases away. Do not allow any foreign matter to enter a cylinder or cylinder valve.
5. Open the valve slowly and close after use. Avoid leakage.
6. Avoid undue shocks. Never drop a cylinder.
7. Storage of gases (whether in solid, liquid or gaseous form) must always comply with relevant dangerous goods and occupational health and safety laws.
8. Do not:
 - (a) attempt to repair or tamper with any cylinder or parts thereon or permit another party to do so; or
 - (b) refill or have cylinders refilled by or through any persons other than Air Liquide or its authorised agents or distributors.
9. If you intend to transport compressed gas cylinders in cars or vans:
 - (a) Gas cylinders should NEVER be transported in enclosed spaces such as the boot of a car. It is EXTREMELY DANGEROUS and could cause an EXPLOSION, FIRE or ASPHYXIATION.
 - (b) In some circumstances, transporting gas cylinders containing oxygen or flammable or toxic gases in an enclosed vehicle or compartment of a vehicle is prohibited by the law.
 - (c) Liquified gas and dissolved acetylene gas cylinders should be transported in a FIXED UPRIGHT POSITION with windows OPEN FOR VENTILATION.
 - (d) For other gas cylinders, if they are transported horizontally, they MUST BE RESTRAINED so they cannot move, with windows OPEN FOR VENTILATION.
 - (e) The safest and recommended method of transporting gas cylinders is by using the transport services provided by Air Liquide or its representative, where available.
10. Safety Data Sheets and load restraint and transportation guidelines are available from Air Liquide on request and from <https://industry.airliquide.com.au/>



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 **Air Liquide**

Principal offices and branches

AIR LIQUIDE AUSTRALIA LIMITED

INDUSTRIAL GASES AND RELATED EQUIPMENT

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