

## **Air Liquide Australia Limited**

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## **Air Liquide Healthcare Pty Ltd**

ABN 41 002 653 045

## **Air Liquide New Zealand Limited**

NZBN 9429032036121

# **Packaged Gases Supply Terms and Conditions**



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## Packaged Gases Supply Terms and Conditions

### 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.
- 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.
- 1.6 PLEASE ENSURE THAT YOU REVIEW AND UNDERSTAND THESE SUPPLY TERMS INCLUDING THE LIABILITY PROVISIONS BEFORE PLACING A PURCHASE ORDER WITH AIR LIQUIDE AND, IF APPROPRIATE, SEEK INDEPENDENT ADVICE. You should note that, subject to Non-Excludable Obligations, clause 20.10 states that Air Liquide is not liable for particular types of loss including indirect and consequential loss and that Air Liquide's total liability (except where clause 20.8 applies) is limited to Fees paid as otherwise described in clause 20.6.

### 2. Binding Orders

- 2.1 This clause 2 applies to Orders except to the extent otherwise agreed in a fixed-term Supply Contract.
- 2.2 Upon receipt of an Order, Air Liquide may:
  - (a) reject the Order;
  - (b) accept the Order; or
  - (c) make an Offer to fulfil the Order (or part of the Order) on other terms, including proposing delivery on another date, by instalments, and on the basis of these Supply Terms.
- 2.3 An Order will be a Binding Order when:
  - (a) Air Liquide confirms in writing its acceptance of the Order under clause 2.2(b); or
  - (b) the Customer accepts delivery or performance of the goods or services which are the subject of the Offer, in which case its acceptance is on the basis of the terms of the Offer.
- 2.4 Prior to an Order becoming a Binding Order:
  - (a) the Customer may withdraw or amend the Order; and
  - (b) Air Liquide may withdraw or amend its Offer (including by altering the applicable Fees or Scheduled Delivery Date or by amending or replacing these Supply Terms).
- 2.5 Subject to clause 2.6, a Binding Order cannot be cancelled or varied by either party without the other party's written consent.
- 2.6 Air Liquide reserves the right to amend the applicable price or Scheduled Delivery Date or to amend or replace the Supply Terms applicable to Binding Order by giving the Customer no less than thirty (30) days' prior written notice of such change prior to the Scheduled Delivery Date for the relevant delivery or performance. In this event, upon receipt of written notice of the change, the Customer may withdraw its Order prior to acceptance of the delivery. If the Customer accepts delivery or performance of the goods or services, it does so on the basis of the Binding Offer as amended.

### 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 or for resupply to another person in an altered form or condition; and
  - (c) in the case of LPG, on the condition that it is not purchased for transportation use.
- 3.2 Except where it otherwise agrees in writing, Air Liquide supplies the Equipment on the condition that, if sold to the Customer, it is not offered for commercial resale.

### 4. Scheduling of delivery and claims

- 4.1 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 the nominated premises of Air Liquide or its Agent. Unless otherwise agreed, the relevant collection point is that stated in Air Liquide's Offer or other scheduling document issued by Air Liquide. Air Liquide does not permit collection of Packaged Gases directly from its cylinder filling facilities.
- 4.2 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 schedule delivery to the nominated delivery point by the closest practicable date (which may be earlier or later than the requested date).
- 4.3 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.
- 4.4 Subject otherwise to these Supply Terms, delivery shall not exceed a reasonable period after an Order becomes a Binding Order (except where the Customer requests a later delivery date).
- 4.5 If Air Liquide notifies the Customer:
  - (a) of a change to the previously advised Scheduled Delivery Date (which is greater than three (3) Business Days); or
  - (b) that Air Liquide is only able to deliver the Order in instalments,then (except where otherwise agreed in writing), the Customer may cancel its Binding Order by providing written notice prior to 3pm on the Business Day prior to the updated Scheduled Delivery Date. If the Customer does not do so, it will be taken to have accepted the change in Scheduled Delivery Date or the delivery in instalments.
- 4.6 Subject otherwise to these Supply Terms, if delivery of an Order 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 under clause 15.2 in respect of any 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.
- 4.7 Risk in the Packaged Gases and Equipment will pass to the Customer on delivery until it is returned to Air Liquide or its Agent.
- 4.8 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.
- 4.9 Without limitation to any Non-Excludable Obligation, the Customer shall notify Air Liquide in writing, as soon as practicable after delivery, of any claim arising in respect of the supply of any Packaged Gases (including any shortage of supply or delivery of Containers in damaged condition or failure to comply with specification), providing reasonable particulars of the claim including (but not limited to) the description of the Packaged Gases, the date of delivery, the grounds of the claim and the amount of the claim. Where possible, the Customer shall allow Air Liquide, upon reasonable notice, to inspect the Goods at the earliest available opportunity.

### 5. Transportation by Air Liquide or its Transport Contractor

- 5.1 Each of Air Liquide and the Customer acknowledge that every party in the transport supply chain, including consignor, consignee, prime contractors, schedulers, loaders and unloaders have responsibilities under Chain of Responsibility Laws. Each of the parties undertakes, to the extent of its dealings in connection with a Supply Contract, to comply, and to take steps to ensure that any person employed or engaged by it complies, with Chain of Responsibility Laws.
- 5.2 If Air Liquide agrees that it or its Transport Contractor will transport Packaged Gases or Equipment to, or collect Equipment at or from, the Customer's Premises:
  - (a) Air Liquide will (and take reasonable steps to ensure that its Transport Contractor will):

- (i) handle and transport, the Packaged Gases and Equipment, in a safe manner and in accordance with relevant Laws including road and safety Laws; and
  - (ii) meet any reasonable safety and induction requirements (subject to reasonable prior notice) relating to the Customer's site; and
  - (b) the Customer will ensure that:
    - (i) it does not engage in any practice or make any requirement or direction that has the effect of causing any actual or potential contravention of any Laws or requirements relating to Chain of Responsibility Laws;
    - (ii) there is safe and available access for Air Liquide or its Transport Contractor to the delivery and/or collection point;
    - (iii) 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 Transport Contractor's vehicles;
    - (iv) notwithstanding **clause 5.2(b)(iii)**, the Customer only assists in such loading or unloading when, as directed by, and under the supervision of, Air Liquide or its Transport Contractor; and
    - (v) any Equipment and Gas or other products(s) for collection is prepared safely and securely for transport and ready for loading when Air Liquide or its Transport Contractor arrives to collect them.
- 6. Safe use, handling and transportation by the Customer**
- 6.1 Except to the extent Air Liquide or its Transport Contractor assumes responsibilities under **clause 5.2**, 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) Chain of Responsibility Laws and other relevant Laws including road and safety Laws and dangerous goods law;
    - (iii) ANZIGA load restraint and transportation guidelines which can be downloaded from <https://www.anziga.org/load-restraint-guidelines/>, the NTC's Load Restraint Guidelines and the Australian Dangerous Goods Code (latest edition); 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 Customer's Representatives in order to ensure compliance with the above requirements.
- 6.2 The Customer acknowledges and agrees that:
- (a) Packaged Gases may constitute "**dangerous goods**" or "**hazardous substances**" under dangerous goods and work 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.
- 6.3 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.
- 6.4 If Air Liquide at any time has reasonable grounds to consider that:
- (a) delivery of Packaged Gases or Equipment to the proposed delivery point; or
  - (b) the manner in which the Customer is transporting, handling, storing or using the Packaged Gases or Equipment,
- presents a Regulatory or Safety Concern, Air Liquide may by written notice to the Customer:
- (i) notify the Customer of the Regulatory or Safety Concern; and
  - (ii) immediately suspend deliveries; or
  - (iii) (where applicable) agree to continue deliveries on the basis that the Customer collects deliveries from the closest suitable premises of Air Liquide or Air Liquide's Agent,
- until Air Liquide is satisfied, acting reasonably, that this situation has been remedied. The Customer shall promptly take steps to remedy the Regulatory or Safety Concern, unless and to the extent this is the responsibility of Air Liquide under the Supply Contract, in which case Air Liquide shall promptly take steps to remedy the Regulatory or Safety Concern to the extent it is so responsible.
- 6.5 To the extent permissible by Law, but subject to **clause 28.1**, the Customer indemnifies Air Liquide against any Loss Air Liquide may incur in respect of death or bodily injury to any person or loss or damage to any property caused by or resulting from the Customer's failure to observe this **clause 6**, except to the extent caused or contributed by Legal Fault of Air Liquide.
- 7. Equipment rental**
- 7.1 Subject to **clause 12**, the Customer agrees Air Liquide retains title at all times to any Equipment it rents to the Customer (including Containers in which Air Liquide supplies the Gases).
- 7.2 Other than where expressly agreed in writing, and subject to **clauses 7.3, 7.5 and 7.8**, 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 Equipment from Air Liquide in exchange for the Equipment the Customer returns; or
  - (ii) provides Air Liquide:
    - (A) written notice that the Equipment is lost or missing and, after taking reasonable steps to locate it, that Equipment cannot be found; and
    - (B) on request from Air Liquide, evidence satisfactory to Air Liquide (acting reasonably) supporting the matters referred to in **clause 7.2(ii)(A)** (which may be in the form of a statutory declaration).
- 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 Subject to **clause 7.5**, the Customer must return Equipment by the end of a Rental Period if the Customer does not want the Rental Period to renew in respect of any Equipment.
- 7.5 Where clause 7.2(b)(ii)(B) applies (and any requirement of Air Liquide (acting reasonably) under clause 7.2(b)(ii)(B) is satisfied):
- (a) the Rental Period will not renew in respect of such lost or missing Equipment;
  - (b) the Customer will not be entitled to any refund in respect of Rental Fees paid or payable in respect of the current Rental Period; and
  - (c) subject to invoicing by Air Liquide, the Customer is liable to pay the Lost Equipment Fee in respect of each item of lost or missing Equipment (but shall be liable to do so no earlier than the expiration of the Rental Period with respect to which Rental Fees have been paid or payable).
- 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 under **clause 15.2** for any period for which it has paid or been invoiced for Rental Fees after it returns the Equipment, 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 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.
- 7.8 Except to the extent Air Liquide otherwise agrees in writing, Air Liquide may notify the Customer in writing that the Rental Period will not renew for a further Rental Period.
- 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 equivalent 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 (or those of its nominated Agent) for the purpose of exchange but does not warrant availability at all times. **Clause 4** otherwise applies.

## 9. Responsibilities in respect of rented Equipment

- 9.1 While renting Air Liquide's Equipment, the Customer will:
- (a) only use Containers as containers for Gases supplied by Air Liquide;
  - (b) follow any safe usage instructions which Air Liquide may issue in connection with use of the Equipment;
  - (c) except as otherwise agreed, only use other Equipment (other than Containers) in connection with Gases supplied by Air Liquide;
  - (d) keep the Equipment clean and in good condition;
  - (e) not part possession with, sell, offer for sale, or grant any Security Interest over the Equipment;
  - (f) not allow any property to become an accession to the Equipment or allow the Equipment to become an accession to any property;
  - (g) not repair, modify, tamper with or allow or cause the Equipment to become contaminated;
  - (h) not deliver or send the Containers for refilling to any place other than Air Liquide's premises or those of Air Liquide's nominated Agent;
  - (i) not move the Equipment other than Containers from the Customer's Premises;
  - (j) not decant or otherwise remove Gas from any Container to any other container or decant any gas into Air Liquide Containers; and
  - (k) not remove, deface or alter any of Air Liquide's identification marks on the Equipment.
- 9.2 Subject to the Non-Excludable Obligations, the Customer bears all risk in relation to the Equipment from its delivery to the Customer until its return to Air Liquide, its Agent or Transport Contractor 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 and subject to **clause 28.1**); 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 Transport Contractor takes physical possession of the Equipment.
- 10.2 Unless Air Liquide has otherwise agreed in writing to collect the Equipment, subject to the Non-Excludable Obligations, 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 reasonable costs Air Liquide incurs for cleaning and repairing the Equipment.
- 10.4 If the Customer fails to return any rented Equipment within three (3) Business Days after Air Liquide duly requires its return (in writing), 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 the Non-Excludable Obligations, return that Equipment to Air Liquide (or Air Liquide's nominated Agent) or (where Air Liquide agrees in writing) make such Equipment available for collection by Air Liquide or its Transport Contractor, 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 under **clause 15.2** 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 27.4**, and the Non-Excludable Obligations, 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 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. Unless otherwise requested, the Equipment Holdings Statement may be constituted by Air Liquide's invoice.
- 11.2 The Customer agrees to carefully review each Equipment Holdings Statement it receives and must promptly advise Air Liquide in writing of any error or inaccuracy in relation to the types or quantities of holdings recorded in that document.
- 11.3 Subject to **clause 7.5(c)**, 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, acting reasonably, that such Equipment is unable to be located.
- 11.4 Upon return of Equipment rented by the Customer from Air Liquide or the Customer informing Air Liquide that the Equipment is lost or missing (and providing reasonable evidence that this is the case, as contemplated by **clause 7.5**), Air Liquide's records will be adjusted accordingly.
- 11.5 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.
- 11.6 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 the Non-Excludable Obligations, the Customer bears all risk in relation to Equipment purchased by the Customer from the time of its delivery (in accordance with **clause 4.1**).
- 12.3 Where the Equipment Air Liquide sells to the Customer is not manufactured by Air Liquide nor sold under a name, brand or mark under which Air Liquide carries on business, then subject to the Non-Excludable Obligations and except to the extent of any specification or other requirement expressly agreed in writing:
- (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 intended to be indicative only and do not form part of the Supply Contract or form part of the description applied to the Equipment; and
  - (b) 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 stated or determined in accordance with the Supply Contract.
- 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 2020) 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 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 number of items of Equipment rented to the Customer during the relevant Rental Period.
- 13.4 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 or becomes chargeable on any supply Air Liquide makes to the Customer, then the Customer shall pay to Air Liquide, in addition to and at the same time and in the same manner as payment is required to be made in respect of the GST exclusive consideration payable for the relevant supply, a sum equal to the GST so chargeable.
- 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 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, Air Liquide will issue a tax invoice in respect of the Fees for:
- the Gases sold as Packaged Gases or in respect of any sale of Equipment, at the time of or after delivery to the Customer;
  - the Services, at the time or after performance for the Customer; and
  - the rental of Equipment, in advance of a Rental Period.
- 14.2 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). **Clause 16** details the basis upon which Air Liquide agrees to provide credit. Unless the Customer has a credit account open with Air Liquide, Air Liquide may:
- agree to supply on the condition that payment of invoice is made at the time of delivery or performance; or
  - refuse to supply the Customer if Air Liquide does not have a suitable payment facility in place at the point of delivery or performance in order for payment to be made in accordance with **clause 14.2(a)**.
- 14.3 A party is not entitled to recover from the other party any amounts due to it in connection with the supply or acquisition of the Packaged Gases, Equipment and/or Services by way of set-off unless agreed in writing by the other party.
- 15. Refunds and Credits**
- 15.1 Subject to the Non-Excludable Obligations and **clauses 4.6, 7.6, 10.5 and 27.4**, no adjustment will be made to Rental Fees for early return of Equipment during any Rental Period.
- 15.2 Subject to the Non-Excludable Obligations, where a Customer is entitled to a refund or credit of Rental Fees under the Supply Terms, this will be calculated on the basis of daily Rental Fees charged during the relevant period (if the Customer is a Daily Rental Customer) or otherwise at a daily rental fee calculated pro rata based on Rental Fee applicable during the relevant period.
- 15.3 Refunds or credits 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).
- 15.4 The Customer acknowledges that, in order to facilitate Air Liquide to investigate claims efficiently and without undue delay, claims for a refund including following the issue of a written notice by the Customer to Air Liquide under **clause 11.2**, should be made in writing to Air Liquide no later than twelve (12) months of the date of issue of the relevant invoice and should reference, or be accompanied by, full details of the claim.
- 16. Credit account**
- 16.1 Upon receipt of an application by the Customer for commercial credit, Air Liquide may in its discretion open a commercial credit account for the Customer for the purpose of orders and supplies made to the Customer under a fixed-term Supply Contract or otherwise in respect of Binding Orders concluded from time to time. Air Liquide does not offer credit which is predominantly for domestic, personal or household purposes. The credit limit established by such account is determined by reference to the Customer's credit rating as well as the Fees specified, and volumes contemplated, in this Agreement, as well as under any other Agreement entered into by Air Liquide with the Customer from time to time.
- 16.2 Unless the Customer has a fixed-term Supply Contract with Air Liquide, Air Liquide may withdraw credit at any time, in its discretion. However, except where **clause 27.1** applies, suspension or discontinuation of offering of credit by Air Liquide will not bring forward the due date for payment in respect of any transaction which was conducted prior to such suspension or discontinuation.
- 16.3 Where Air Liquide has agreed to open a commercial credit account for the Customer for the purpose of orders and supplies made to the Customer under a fixed-term Supply Contract, Air Liquide may, in addition to its rights under **clause 17**, or where it otherwise has reasonable grounds to suspect a material deterioration in the credit risk associated with the Customer, or where volumes supplied under this Agreement exceed maximum forecast volumes which formed the basis of the approved credit limit, at any time:
- review the level of credit, in connection with which review Air Liquide may request the Customer to provide it with additional financial information which is relevant to the assessment of the Customer's credit risk; and
  - as a condition of providing ongoing credit to the Customer, require that the Customer provide a further guarantee or other security as Air Liquide sees fit (which may include a personal guarantee and indemnity from relevant persons associated with the Customer).
- 16.4 In addition to any other rights under this Agreement, if the Customer commits or is the subject of an Insolvency Event, Air Liquide has the right to suspend or terminate the Customer's credit account and to require that payment of Air Liquide's invoices occurs no later than the time of delivery.
- 17. Late payment**
- 17.1 If the Customer fails to pay any invoice by its due date (which amount has not been disputed by the Customer in good faith) (**Late Payment Amount**), 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 22**), Air Liquide may charge interest on the Late Payment Amount:
- 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
  - 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.
- 17.2 If the Customer fails to remedy the Late Payment Amount within five (5) Business Days of Air Liquide providing notice to the Customer of such failure to pay, or repeats a failure to pay an invoiced amount when due during any six-month period (which amount has not been disputed by the Customer in good faith), then (without limiting Air Liquide's other rights, including under **clause 22.1** or **clause 22.2**) Air Liquide may:
- revoke the Customer's authority under **clause 18.1** to use in the ordinary course of the Customer's business the Gases and/or Equipment in the Customer's which are the subject of the Late Payment Amount until Air Liquide has received payment in full; and/or
  - withhold or refuse further supplies under this Agreement until any Late Payment Amount, including any interest charges, has been paid;
  - suspend or terminate the Customer's credit account and require that payment of Air Liquide's invoices occurs no later than the time of delivery;
  - take action to recover the unpaid monies and charge the Customer for Air Liquide's reasonable administration and debt recovery costs; and
  - 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 Air Liquide's credit reporting policy (refer **clause 30**).
- 18. Title**
- 18.1 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 those Gases in cleared funds. In the meantime, subject to **clauses 17.2(a)** and **27**, the Customer may use the Gases in the ordinary course of the Customer's business.
- 18.2 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 **clauses 17.2(a)** and **27**, the Customer may use such Equipment in the ordinary course of the Customer's business.
- 18.3 As between Air Liquide and the Customer, the Equipment will always be regarded as a chattel and not a fixture.
- 19. PPSA**
- 19.1 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:
- do all things reasonably necessary for the purposes of:
    - ensuring that any Security Interest created under, or provided for by, the Supply Terms or Supply Contract:
      - attaches to the collateral that is intended to be covered by that Security Interest;
      - is enforceable, perfected, maintained and otherwise effective; and
      - has the priority contemplated by the Supply Terms and Supply Contract;
    - enabling Air Liquide to prepare and register a financing statement or financing change statement; and
    - 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
  - 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.
- 19.2 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.

- 19.3 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.
- 19.4 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.
- 19.5 The Customer agrees that:
- 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;
  - 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
  - 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).
- 19.6 The Customer waives the Customer's rights to receive:
- 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);
  - 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;
  - a statement of account under section 132(4) of the AU PPSA or section 116 of the NZ PPSA (as applicable); and
  - 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).
- 19.7 The Customer waives its rights under sections 121, 125, 126, 127, 129 and 131 of the NZ PPSA.
- 20. Liability**
- 20.1 In this **clause 20**, 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.
- 20.2 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 (**Non-Excludable Obligations**). Nothing in these Supply Terms, or any Binding Offer or Supply Contract incorporating these Supply Terms, is intended to unlawfully restrict, modify or limit the Non-Excludable Obligations.
- 20.3 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)*:
- 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
  - 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.
- 20.4 Subject to **clauses 20.2** and **20.3**, the Customer agrees that all terms, conditions, warranties, guarantees and obligations which would be implied or granted by Law in relation to Air Liquide's supply to the Customer of goods and services are excluded from the Supply Contract, 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.
- 20.5 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 Non-Excludable Obligations is limited (at Air Liquide's election), where it is fair and reasonable to do so, to Air Liquide:
- in respect of goods Air Liquide has supplied:
    - replacing the goods or supplying equivalent goods;
    - repairing the goods;
    - paying the cost of replacing the goods or of acquiring equivalent goods; or
    - paying the cost of having the goods repaired;
  - in respect of services supplied:
    - resupplying the services; or
    - paying the cost of having the services supplied again.
- 20.6 Neither party will be liable to the other, whether in contract, tort (including negligence) or otherwise in connection with a Supply Contract for Loss to the extent that the other party's Legal Fault (or that of its Representatives) contributed to the Loss.
- 20.7 Where the Customer makes a claim under or in connection with a Supply Contract, subject to **clause 20.8**, the liability of Air Liquide in respect of such claim is limited such that the total liability of Air Liquide for all events and occurrences arising out of or in connection with the Supply Contract, whether in contract (including indemnity), tort (including negligence), under statute or otherwise at Law shall not exceed the total Fees paid by the Customer:
- (where supplies are made under a fixed-term Supply Contract), under the Supply Contract; or
  - (where the Customer has not entered into a fixed-term Supply Contract with Air Liquide), under all Binding Orders under these Supply Terms,
- in respect of Packaged Gases, Equipment and Services during the twelve (12) month period prior to the date on which the relevant event or circumstance giving rise to the claim arises.
- 20.8 The limitation in liability in **clause 20.7** does not apply to limit:
- a claim by the Customer for the replacement or resupply of goods or services supplied which do not comply with the Supply Contract;
  - a claim resulting from fraudulent or criminal acts;
  - a claim in circumstances covered by **clause 20.5**, or where it would otherwise not be permissible at law to limit liability; or
  - a claim in circumstances where clause 20.9 applies.
- 20.9 In respect of any Loss suffered or incurred by a party under or in connection with the Supply Contract which is or arises from property damage or personal injury caused or contributed to by an act or omission of a party for which it would have liability at law, the party's aggregate liability shall not exceed per event or series of related events \$10 million (Australian or New Zealand currency, as applicable to the particular Supply Contract).
- 20.10 Except to the extent prohibited by Law, neither party will be liable to the other party for any indirect, special or consequential loss or damage, including loss of revenue, time, goodwill, data, anticipated savings, opportunity, loss of production and loss of profit suffered or incurred by the other party out of or in connection with the Supply Contract, including in connection with the transportation, storage or use of Packaged Gases supplied by Air Liquide, whether such claim arises in contract (including indemnity), tort (including negligence), under statute or otherwise at Law. For the avoidance of doubt, this shall not limit or exclude:
- a claim by Air Liquide for any fees which are due and payable to Air Liquide in respect of the supply of Packaged Gases, Equipment and Services;
  - any costs otherwise expressly stated to be reimbursable under the Supply Contract; or
  - any right of Air Liquide to claim loss of revenue or loss of profit which it may otherwise have derived in respect of supplies to the Customer under the Supply Contract.
- 21. Force Majeure Event**
- 21.1 The parties agree that the obligations of a party under the 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**") are prevented or impeded by such Force Majeure Event.
- 21.2 The affected party will give the other party notice as soon as practicable after determining (acting reasonably) that an event is, or circumstances are, a Force Majeure Event which will affect its ability to observe and perform its obligations under the Supply Contract.
- 21.3 If a Force Majeure Event limits Air Liquide's ability to supply any Packaged Gas to its customers (the "**affected Packaged Gas**"), then Air Liquide may make partial delivery and/or supply to the Customer in such proportions that are reasonable under the circumstances and/or offer to supply the Customer the affected Packaged Gas on such terms and at such price as it determines, including from a plant or source other than (if applicable) the nominated Air Liquide production plant, cylinder filling facility or other source. Air Liquide will take into account what it anticipates to be the period of disruption, the extent and variability of volume restrictions, the availability of the affected Packaged Gas from other suitable plants or sources, the cost and delivery times for obtaining the affected Packaged Gas from such alternatives, as well as the considerations which otherwise inform its normal pricing model.

## **22. Suspending or ceasing supply or termination by Air Liquide**

- 22.1 In addition to Air Liquide's rights under **clause 6.4**, Air Liquide may immediately (and without limiting Air Liquide's other rights) suspend Air Liquide's deliveries or performance under the Supply Contract (to the extent it considers reasonably necessary) if:
- (a) the Customer fails to remedy an overdue payment (which amount is not in genuine dispute) within the grace period stated in Air Liquide's written notice to the Customer of such failure to pay (which will be at least 5 Business Days); or
  - (b) there is an event or circumstances pursuant to which Air Liquide would be entitled to terminate a Supply Contract under **clause 22.2**, and such right of suspension continues until Air Liquide is satisfied, acting reasonably, that the relevant event or circumstance has been remedied (if remediable) or until Air Liquide elects to exercise its rights under **clause 22.2**.
- 22.2 Air Liquide may terminate the Supply Contract 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:
- (a) the Customer:
    - (i) fails to remedy:
      - (A) an overdue payment (which amount is not in genuine dispute) within the grace period stated in Air Liquide's second written notice to the Customer of such failure to pay (which will be at least 5 Business Days); or
      - (B) a material breach of the Supply Contract which is capable of remedy, within twenty (20) Business Days of Air Liquide providing written notice to the Customer; or
    - (ii) commits a material breach of the Supply Contract which is not capable of remedy; or
    - (iii) after receiving a notice under **clause 22.2(a)(i)(A)**, repeats a material breach within six-months from the Supplier providing the earlier notice, provided that the earlier notice notifies the Customer that repetition of the breach may result in Air Liquide terminating the Supply Contract; or
    - (iv) is the subject of, or commits an Insolvency Event; or
  - (b) ongoing supply or performance under the Supply Contract would be a Sanctions Event; or
  - (c) **clause 6.4** applies, and Air Liquide is not satisfied, acting reasonably, that the event or circumstance giving rise to the Regulatory or Safety Concern has been remedied or removed within twenty (20) Business Days of Air Liquide providing written to the Customer of the Regulatory or Safety Concern, unless the Regulatory or Safety Concern has been caused by a failure by Air Liquide to meet its obligations under the Supply Contract.

## **23. Termination by the Customer**

- 23.1 The Customer may terminate the Supply Contract immediately by written notice to Air Liquide if:
- (a) Air Liquide:
    - (i) fails to remedy any material breach in respect of a term of the Supply Contract which is capable of remedy, within twenty (20) Business Days of the Customer providing written notice to Air Liquide; or
    - (ii) commits a material breach of the Supply Contract which is not capable of remedy;
    - (iii) repeats the same material breach in any six-month period after having received written notice from the Customer that repetition of the breach will or may result in Air Liquide terminating this Agreement;
    - (iv) commits or is subject to an Insolvency Event; or
  - (b) **clause 6.4** applies, and the Customer is not satisfied, acting reasonably, that the event or circumstance giving rise to the Regulatory or Safety Concern has been remedied or removed within twenty (20) Business Days of the Customer providing written to Air Liquide of the Regulatory or Safety Concern, unless the Regulatory or Safety Concern has been caused by a failure by the Customer to meet its obligations under the Supply Contract.

## **24. Termination by Air Liquide or the Customer**

- 24.1 If a Force Majeure Event continues under the Supply Contract for a period of greater than sixty (60) Business Days, then either party may terminate the Supply Contract, terminate this Agreement or (if this Agreement involves more than one Product or Supply Location, partially in relation to the Product at the Supply Location which is impacted by the relevant Force Majeure Event), provided that the Force Majeure Event is ongoing at the time of provision of the termination notice.

## **25. Partial Termination**

- 25.1 Where the Supply Contract permits a party to terminate the Agreement partially, then this shall be construed to permit a party to terminate the provision or acquisition of supplies wholly or:
- (a) (if there is more than one Customer's Premises covered by the Supply Contract), at the Customer's Premises relevant to the event or circumstance triggering the termination; and/or
  - (b) (if there is more than one Packaged Gas covered by the Supply Contract), in respect of the supply of the Packaged Gas (together with ancillary Equipment and Services) relevant to the event or circumstance triggering the termination.

## **26. Notice of suspension or termination**

- 26.1 A notice provided by a party under clauses 22, 23 or 24 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 22.2(a)(iii)**, repetition of the breach) will, or is likely to, result in the non-defaulting party terminating the Supply Contract; or
  - (b) the breach, event or circumstance constituting the event upon which a party is relying to suspend performance or terminate the Supply Contract, before the party is entitled to exercise its rights to suspend or terminate on such basis.

## **27. Consequences of expiration or termination of the Supply Contract**

- 27.1 Expiration or termination of this Agreement will not affect or prejudice any rights or liabilities of the parties which have accrued prior to such termination.
- 27.2 A party's rights to terminate the Supply Contract, either wholly or partially, are without prejudice to any other rights or remedies to which it is entitled under the Supply Contract or at Law.
- 27.3 Where Air Liquide issues notice of termination of the Supply Contract under **clause 22.2**, then with effect from termination (and subject to there being a duly issued tax invoice), all Fees in connection with Packaged Gases, Equipment and Services supplied will become immediately due and payable by the Customer upon termination.
- 27.4 If not returned earlier to prevent renewal of the Rental Period under **clause 7.2** or not determined to be lost and missing Equipment under **clause 7.2**, upon expiration or termination of the Supply Contract, all rented Equipment must (subject to **clause 27.6**) be promptly returned by the Customer upon expiration or termination of the Supply Contract. Except where otherwise agreed by Air Liquide:
- (a) where Air Liquide has agreed under the Supply Contract to make deliveries to the Customer's Premises, such return shall be made by way of making the Equipment available for collection by Air Liquide or its Transport Contractor.
  - (b) where the Customer has taken delivery of Packaged Gases or Equipment at the premises of Air Liquide's Agent, the Equipment shall be returned to Air Liquide's Agent.
- 27.5 Upon expiration or termination of the Supply Contract, the Customer may not claim a refund of the pro rata price in respect of any unused Gas in the returned Equipment, except if termination occurs under **clause 23**, in which case the Customer may claim under **clause 15** 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.
- 27.6 Upon expiration or termination of the Supply Contract (except upon termination by Air Liquide under **clause 22.2**), where there is unused Gas paid for by the Customer in the Equipment, the Customer may request, prior to the date of expiration or termination, a further period not exceeding 30 days (**Holding Over Period**) to consume the Gas before returning the Equipment. If Air Liquide agrees to the Holding Over Period, the Customer acknowledges and agrees that Rental Fees shall continue to be charged on a daily rental basis, with daily Rental Fees calculated on the basis described in **clause 15.2**.
- 27.7 In the event a Customer fails to return Equipment as required by clause 27.4 or as otherwise agreed pursuant to clause 27.6, then without limiting other rights or remedies to which Air Liquide is entitled under a Supply Contract or at Law, Air Liquide may continue to charge the Customer Rental Fees on Equipment on a daily rental basis, with rental calculated on the basis described in clause 15.2.

## **28. Indemnities**

- 28.1 Any indemnity set out in the Supply Contract, and any clauses which expressly or impliedly have effect after termination, will continue to be enforceable notwithstanding termination of the Supply Contract (or any part thereof).
- 28.2 A party's liability to indemnify the other party shall be reduced proportionately to the extent that any Legal Fault of the party seeking to enforce the indemnity contributed to the liability, loss, damage, costs or expenses.



- 28.3 A party seeking to enforce an indemnity under this Agreement must take reasonable steps to mitigate any liability, loss, damage, costs or expenses (in respect of any matter covered by the indemnity).
- 29. Confidentiality and Air Liquide's IP**
- 29.1 A party receiving Confidential Information will ensure that it is:
- 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;
  - 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 the Supply Contract;
  - 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
  - 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.
- 29.2 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.
- 30. Privacy**
- 30.1 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://au.airliquide.com/privacy>.
- 30.2 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://au.airliquide.com/privacy>.
- 30.3 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.
- 31. Compliance with Laws**
- 31.1 Each party agrees to comply with the Laws applicable to the performance of the Supply Contract.
- 31.2 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 Group Code of Conduct, available at <https://www.airliquide.com/sustainable-development/ethics>, 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.
- 31.3 Each party represents it shall comply with all Laws with respect to Modern Slavery, and use reasonable endeavours to ensure that its Personnel comply with all such Laws, in connection with the performance of this Supply Contract. For information as to Air Liquide's Anti-Slavery Policy or to access the most recent modern slavery statement of Air Liquide Australia Limited (which covers Air Liquide Healthcare Pty Ltd and Air Liquide New Zealand Limited, refer to <https://au.airliquide.com/our-policies>.
- 31.4 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.
- 32. Assigning and sub-contracting**
- 32.1 The Customer acknowledges and agrees that Air Liquide may sub-contract the performance of any work under the Supply Contract, such as (without limitation) maintenance and transportation, including to any Related Company of Air Liquide. However, any subcontracting by Air Liquide does not diminish or otherwise affect Air Liquide's obligations to the Customer in respect of the Supply Contract.
- 32.2 Air Liquide may assign any of Air Liquide's rights under a Binding Order or Supply Contract to a Related Company without the Customer's consent. The Customer also consents to a novation of the Supply Contract to a Related Company of Air Liquide, if Air Liquide provides written notice of such novation to the Customer during the Term.
- 32.3 Subject to **clause 32.2**, neither party will assign or novate any of its rights or obligations under the Supply Contract without the prior written consent of the other party (not to be unreasonably withheld).
- 32.4 A request for consent to the assignment or novation of the 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.
- 32.5 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 32.3** if Air Liquide is not satisfied, acting reasonably, that:
- 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
  - the new party is sufficiently qualified to meet the other obligations of the Customer under the Supply Contract (including safe handling, use and storage of Packaged Gases); or
  - a material reduction in the requirements for the Packaged Gases at the Customer's Premises under the Supply Contract will not occur after the assignment or novation.
- 32.6 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 Supply Contract to the new party.
- 33. Governing Law and Disputes**
- 33.1 The Supply Terms, and any Supply Contract 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:
- where the Supply Contract is for supplies in Australia:
    - 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
    - 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
  - where the Supply Contract 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
  - where the Supply Contract 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).
- 33.2 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 33.2**. 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. The mediator will be agreed between the parties or, failing agreement within 28 days of the Dispute Notice, decided by the Chair for the time being of Resolution Institute (or any successor institute) in Australia/New Zealand or the Chair's designated representative. The mediation shall be conducted in the capital city of the relevant State or Territory in Australia or (in the case of New Zealand) in Auckland.
- 33.3 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 22, 23 or 24** (as applicable).

#### **34. Notices and electronic communications**

- 34.1 A party giving a notice under the Supply Contract will do so in writing and (subject to **clause 34.2**) such notice will be deemed to have been served when transmitted to the physical address or email address of the relevant party as notified in writing from time to time, except that if it is received on a day that is not a Business Day or after 5.00 pm on a Business Day it will be regarded as received at 9.00 am on the following Business Day.
- 34.2 Unless otherwise agreed by the parties, the Customer consents for invoices, statements and notifications to be sent by post or electronically to the address nominated in the Supply Contract (or if no address is stated in that, as recorded in its credit account application). The Customer should immediately inform Air Liquide of any change to its contact details.
- 34.3 In the case of an email notice issued under **clauses 23 or 33.2**, 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).
- 34.4 Except to the extent otherwise agreed in writing, any document contemplated by the Supply Terms may be issued electronically in accordance with this clause.

#### **35. Other matters**

- 35.1 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".
- 35.2 Subject to Non-Excludable Obligations, the Supply Contract constitutes the entire agreement between the parties as to its subject matter and supercedes all agreements in connection with that subject matter.
- 35.3 Each party acknowledges and represents and warrants to the other party that, except as expressly set out in the Supply Contract and subject to the Non-Excludable Obligations:
- (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 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 Supply Contract;
  - (c) its obligations under the Supply Contract are binding and enforceable; and
  - (d) the 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.
- 35.4 If the Customer is the trustee of a trust:
- (a) its application for credit (if applicable) and any entry into the Supply Contract is for a proper purpose of the trust;
  - (b) it has the power and authority under the trust deed to apply for a credit account (if applicable) and to trade with Air Liquide; and
  - (c) it has the right to be indemnified fully out of the trust property before the trusts' beneficiaries for all liabilities it incurs under or in connection with its credit account (if applicable) and any Supply Contract.
- 35.5 A term of the Supply Contract may not be waived except in writing signed by the party granting the waiver. The waiver by a party of a right or remedy under the Supply Contract does not operate as a waiver of another right or remedy of that party under the Supply Contract. Failure to exercise or delay in exercising a right or remedy under this the Supply Contract does not operate as a waiver or prevent further exercise of that or of any other right or remedy.
- 35.6 The parties agree and acknowledge that nothing in the Supply Terms or Supply Contract constitutes a relationship of joint venture, employment or partnership between them.
- 35.7 Unless otherwise specified, each party will pay all its own costs associated with negotiating and entering into any the Supply Contract and complying with its obligations under such agreement.
- 35.8 The United Nations Convention on Contracts for the International Sale of Goods does not apply.

#### **36. Definitions and interpretation**

- 36.1 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 12, 600 St Kilda Road, Melbourne, Victoria 3004, Australia (**Air Liquide Australia**), *Air Liquide Healthcare Pty Ltd* (ABN 41 002 653 045) of 4/270 Lahrs Road, Ormeau, Queensland 4208 (**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 which is legally binding as described in **clause 2.3**.

**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.

**Chain of Responsibility Laws** means Laws which impose duties on each party in the transport chain which is in a position to influence the behaviour, safety and regulatory compliance of transport operations such as (without limitation) driver fatigue, fatigue management, load mass and dimension, vehicle maintenance, loading requirements (including load restraint), speed management, towing and coupling requirements, vehicle permits, transport documentation for goods, container weight declarations, dangerous goods and any other matters relating to the safe operation of vehicles, including, without limitation, the Heavy Vehicle National Law and associated regulations.

**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.

**Customer's Premises** means the Customer's location or locations for which the Customer requires the Packaged Gases, Equipment or Services which Air Liquide supplies under the Supply Contract. The Customer's Premises may or may not be the point of delivery or performance of the Packaged Gases, Equipment or Services.

**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.

**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 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 to the Customer, 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, CPAP Equipment, other sleep apnea treatment equipment, portable oxygen concentrators and associated equipment, consumables and accessories.

**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, atmospheric disaster, acts of God, epidemic, pandemic, public health emergency, quarantine restriction, explosion, accident, act of public enemy, war, rebellion, insurrection, sabotage, terrorism, strike, labour dispute or labour shortage, security incidents (such as denial of service, malicious codes and any other form of cyber-attack), failure or delay in transportation, shortage of or failure to obtain from any third party sufficient power, feedstock, utilities, equipment, raw materials and/or similar or different contingency, (including feedstock gas sourced from Air Liquide's external supplier during a planned or unplanned shutdown by the supplier of the supplier's plant), breakdown of or accident to plant or equipment, 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 or any other event, whether similar or dissimilar to those identified herein, which is beyond the reasonable control of the party affected.

**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.

**Laws** means the laws in effect in Australia or New Zealand, as determined under **clause 33.1** to be applicable, including state, territory or local government rules or regulations and includes, without limitation, the dangerous goods and work health and safety laws, road safety and Chain of Responsibility Laws.

**Legal Fault** means negligence or other tort liability, breach of duty (statutory or otherwise at law), breach of warranty, breach of contract, strict liability or any failure to act in accordance with legal or contractual requirements.

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

**Lost Equipment Fee** means the full cost of purchasing a new replacement item of Equipment (or if an equivalent is not reasonably available, a reasonable substitute of equivalent functionality), plus 10% to cover Air Liquide's related administration costs. This is a genuine pre-estimate of Air Liquide's loss in terms of replacing the relevant Equipment.

**Modern Slavery** includes any conduct involving the use of any form of slavery, human trafficking, exploitation, forced labour practices or servitude to exploit children or other persons taking place in a supply chain; and any other slavery-like practices; and similar conduct of this nature constituting an offence under applicable laws.

**Non-Excludable Obligations** is defined in **clause 20.2**.

**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 (including in the case of Air Liquide, its Agents and Transport Contractors). For the purpose of **clause 29**, Representatives of Air Liquide includes related bodies corporate, its financiers, insurers, or advisers and their personnel.

**Regulatory or Safety Concern** means an event or circumstance occurs or prevails (including but not limited to an unsafe manner of transportation, handling, storage or use of the Packaged Gases or Equipment by the Customer or unsafe conditions of access to the Customer's Premises) and upon which basis Air Liquide has reasonable grounds to consider that ongoing supply to the Customer or at the Premises will involve a breach of Laws and/or present an unacceptable safety risk.

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

**Sanctions Event** means where performance of the 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.

**Scheduled Delivery Date** means the date advised by Air Liquide as the anticipated date for delivery of Packaged Gases.

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

**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 which incorporates the Supply Terms. A Supply Contract may be a fixed-term agreement pursuant to which Orders are placed and/or repeated supplies are made or may be in the form a standalone Binding Order.

**Transport Contractors** means personnel engaged by Air Liquide (and their subcontractors) from time to time in the transportation of Packaged Gases and Equipment.

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

36.2 In the Supply Terms:

- (a) headings are for convenience and do not affect interpretation;
- (b) this Agreement or any part of it may not be construed adversely to a party on the ground that it was responsible for the preparation or drafting of this Agreement or that part of it;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing gender include any gender;
- (e) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate or any government agency;
- (f) references to clauses are references to clauses of the Supply Terms;
- (g) 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;
- (h) 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;
- (i) a term or expression which is defined in the PPSA has the meaning given to that term or expression in, or in the context of, the PPSA;
- (j) 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;
- (k) other grammatical forms of defined words or expressions have corresponding meanings;
- (l) a reference to a day (except a Business Day) is to the period of time commencing at midnight and ending 24 hours later;
- (m) 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;
- (n) 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
- (o) 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;
- (p) if the Customer is two or more persons, then the Customer's liability is joint and several; and
- (q) wherever "including", "includes" or any other form of that word is used, it will be construed as if it were followed by "(without limitation)".

36.3 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.

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

36.5 If any law relating to unfair contract terms would otherwise make a provision of the Supply Terms or Supply Contract void, that provision is to be read down and construed as if it were varied, to the minimum extent necessary, so that the law does not make the provision void. This clause applies before any other reading down or severance provision in these Supply Terms.

## 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 work 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 equipment compatible with the gas contents.
3. Keep cylinders away from heat, sparks, open flames or hot surfaces. Do not smoke near cylinders. Never heat cylinders.
4. Keep away from oil and grease. Do not allow foreign matter to come into contact with the cylinder or cylinder valve.
5. Open the cylinder valve slowly and close fully after use. Report leakages immediately.
6. Avoid undue shocks. Never drop a cylinder.
7. Always store gases (whether in solid, liquid or gaseous form) in accordance with relevant dangerous goods and work health and safety laws and instructions contained in the product Safety Data Sheet.
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) Liquefied 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://au.airliquide.com/>.

**PRINCIPAL OFFICES AND BRANCHES**

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