

BOC - GENERAL TERMS AND CONDITIONS OF SUPPLY

1. APPLICATION

- a) These terms and conditions apply to all supplies of goods and services by BOC to the Customer.
- b) For the purpose of these terms and conditions "goods" means any goods including (Gas, Bulk Gas Facilities, Gas Systems, Exchange Cylinders, Equipment, Consumables and Rental Cylinders) supplied by BOC being, in respect of each order from the Customer accepted by BOC, those goods described in the invoice issued by BOC, to the Customer in respect of the relevant order.
- c) Subject to BOC's right to vary the price, no variation or waiver of these terms and conditions and no terms and conditions put forward by the Customer or printed, or referenced, on the Customer's purchase order to BOC or any other Customer document, for the supply of goods or services will have any effect unless expressly agreed in writing by both parties.
- d) These terms and conditions supersede all previous negotiations and conditions, whether oral or written.
- e) Headings are for convenience only and do not affect interpretation.
- f) If any provision is found to be illegal, invalid or unenforceable, that provision may, at BOC's option, be read down to the extent necessary and reasonable in all the circumstances to give it a valid operation of partial character. If any provision cannot be so read down, that provision will be void and severable and the remaining provisions will not in any way be affected or impaired.
- g) All warranties, releases, exclusions of liability and indemnities will remain valid and binding following termination.
- h) In interpreting any agreement between BOC and the Customer no rules of construction shall apply to the disadvantage of BOC on the basis that BOC put forward the agreement, or any part thereof.
- i) If the Customer has received these General Terms and Conditions of Supply, any consequent placing of an order by the Customer will be deemed to amount to acceptance of this Agreement and its General Terms and Conditions of Supply.

2. INVOICING AND PAYMENT

- a) In addition to charges for gas BOC will charge a service charge, charged per period, or part thereof, for each gas container or piece of equipment held by the Customer as shown in BOC's records.
- b) The Customer must pay all charges by the 20th of the month following the date of the relevant invoice by BOC.
- c) If payment is agreed to be made by direct debit, payment must be made in full by the Customer's bankers on presentation to them by BOC of the amount due for payment. This will occur on or after the 20th day of the month following the month of invoicing. If you choose this payment method, then notwithstanding clause 2(b) you will have until that day to pay all invoices.
- d) The Customer must notify BOC immediately of any error on an invoice.
- e) BOC's preferred method of payment is by direct debit. Where the customer does not pay by direct debit and

their purchases do not exceed a minimum threshold level BOC may charge an administration fee for the extra cost of processing and administration.

- f) Except where goods delivered are not in accordance with the Customer's order, or BOC's selling specification, or are defective, the return of goods for credit is at the absolute discretion of BOC. Where credits are granted they may be subject to charges for handling or testing. Special gas mixtures cannot be returned for credit and if any order is cancelled by you a cancellation fee may apply. Medical gases cannot be returned for credit.
- g) If any payment is overdue BOC may stop the delivery of goods or provision of services to the Customer and payment will become immediately due for all goods and services supplied under any contract with the Customer.
- h) If any amounts are overdue the Customer must pay, if required by BOC, charges and interest in accordance with BOC's then current rates.
- i) The Customer shall reimburse to BOC all costs incurred by BOC in collecting any payment which is overdue by the Customer (including all legal or other enforcement costs).
- j) In addition to any other consideration payable the Customer will pay to BOC all Goods and Services Tax and any other tax or charge imposed by the Government (or any statutory or regulatory authority) payable by BOC resulting from the supply of any goods or services to the Customer.
- k) If at any time BOC's costs change due to government action or to a change in the law BOC reserves the right to adjust prices to take account of such change in its costs.
- l) If BOC suffers a significant and unexpected cost increase it may for a reasonable time period apply a surcharge. For example, significant and unexpected increases in the cost of fuel, power, feedstock or distribution.
- m) Payment of a service charge invoice will be conclusive (subject to 2(n) below) as to the Customer's holding of BOC equipment and gas containers as shown on that invoice.
- n) If any transaction or notification by the Customer indicates a BOC equipment and gas container holding greater than recorded, BOC may amend its records and charge the Customer service charge accordingly.
- o) BOC will have the right to enter the Customer's premises to audit, inspect and maintain BOC equipment and gas containers upon reasonable notice.

3. GAS SUPPLY

- a) So that BOC may comply with its obligations under regulation 26 of the Gas Regulations 1993 and ensure that (where necessary) gas fittings are certified prior to supplying gas to a gas installation of the Customer, the Customer undertakes to inform BOC of any:
 - (i) newly constructed gas installations;
 - (ii) extensions, additions, and replacements to existing gas installations;
 - (iii) alterations to gas installations that result in repositioning of pipework or changes to the operation of the installations; and
 - (iv) repairs to gas installations, gas appliances, or fittings following accidents are notifiable under section 17 of the Gas Act 1992.

In each case prior to BOC (either directly or through an accredited Agent of BOC acting on BOC's behalf) supplying gas to any such installations.

4. LIABILITY AND EXCLUSIONS

a) To the extent that they may be applicable, sections 6 to 10 inclusive of the Contractual Remedies Act 1979 are hereby expressly excluded from these General Terms and Conditions of Supply and in the event of any liability of whatsoever nature being established against BOC the Customer's remedies shall be limited to the remedies provided for in these General Terms and Conditions of Supply PROVIDED HOWEVER that where these General Terms and Conditions of Supply do not provide for a remedy for the matters referred to in sections 6 to 10 (inclusive) of the Contractual Remedies Act 1979 the Customer's sole and exclusive remedy for misrepresentation or repudiation or breach of contract or for any of the other matters to which sections 6 to 10 inclusive relate shall be damages and such damages shall be limited in accordance with clause 4(b) below.

b) BOC's liability for all kinds of loss or damage suffered by the Customer in the context of a supply of goods and services (or an agreement to make such a supply) from BOC to the Customer, irrespective of whether such liability arises in or is claimed on the basis of BOC's breach of contract, breach of a term, warranty, or condition implied by statute, negligence or other tort, or breach of any statutory or equitable duty, and whether the act or omission of BOC is wilful or otherwise, is excluded and/or limited (as the case may be) as set out below:

- (i) BOC's liability for personal injury or death is excluded except to the extent that such injury or death is caused by BOC's negligence, in which case BOC accepts unlimited liability;
- (ii) BOC's liability for damage to or loss of property is excluded except to the extent that such loss of damage was directly caused by a breach of contract or BOC's negligence in connection with the performance of a contract, in which case BOC accepts liability to a maximum of \$1 million per event or series of causally connected events in a 12 month period;
- (iii) BOC's liability for loss incurred as a direct result of a defect in or failure of the goods and/or services themselves supplied (or agreed to be supplied) by BOC to the Customer shall be excluded and to the extent permitted by law, the Sales of Goods Act 1908 and all other guarantees, warranties, terms, conditions and representations, either express or implied, including without limitation implied warranties of merchantability and fitness for purpose are expressly excluded. Any claim that the Customer makes under this section (iii) must be made within 30 days of receipt of the goods.

(iv) BOC's liability for indirect loss, economic loss, consequential loss, loss of profit and loss of business opportunity is excluded.

- c) If the Customer is not a consumer as defined in the Consumer Guarantees Act 1993, or the Customer acquires, or holds itself out as acquiring, any good or services for the purpose of a business, nothing in the Consumer Guarantees Act 1993 will apply to the supply of those goods or those services.
- d) In the case of any other Customer (to which the provisions of clause 4c do not apply), the provisions of these General Terms and Conditions of Supply will apply to the extent that those provisions do not limit or exclude any provision of the Consumer Guarantees Act 1993 and will take effect subject to the provisions of that Act.
- e) The Customer indemnifies BOC against any loss, damage or claims arising from BOC's presence on the Customer's site except to the extent caused by the negligence of BOC.
- f) If BOC's performance of any contract obligation by its normal means is prevented or delayed due to any cause beyond BOC's reasonable control that contract obligation will be suspended during the period BOC is affected by such cause.

5. THE CUSTOMER WILL:

The Customer will:

- a) provide free of charge adequate and safe access to the Customer's premises, information and facilities (including labour for loading and unloading of goods, and utilities supply) for BOC to carry out its duties and rights under any agreement with the Customer;
- b) ensure that all works and materials for which the Customer is responsible comply with industry standards and all legal and statutory requirements and with any specifications provided by BOC;
- c) obtain all necessary consents and comply with all legal obligations in connection with installation or use of any goods supplied or BOC equipment and gas containers provided to the Customer, or work done on the Customer's site;
- d) insure BOC equipment and gas containers to their full replacement cost against loss, theft, damage and destruction;
- e) not obliterate, remove or deface identification marks or notices on BOC equipment and gas containers;
- f) return all BOC equipment and gas containers in a clean and serviceable condition;
- g) pay the cost of restoring BOC equipment and gas containers to a clean and serviceable condition, and pay the new replacement cost if any BOC equipment or gas container is lost, stolen or damaged beyond repair;
- h) not mortgage, pledge, sell, lend or part with possession or create a security interest under the PPSA of BOC equipment and gas containers;
- i) not disclose any of the technology contained in BOC equipment or made available to the Customer, nor infringe BOC's rights in such technology.
- j) notify BOC in writing if the Customer intends to sell its business, with such notice being provided not less than twenty-one (21) days before any such sale takes place.
- k) notify BOC in writing as soon as reasonably practicable after the Customer becomes aware of any defect in goods or services supplied by BOC, any alleged breach of contract on the part of BOC, any negligence or other

tort on the part of BOC or any breach of statutory duty by BOC. The Customer acknowledges and agrees that prompt notification may enable BOC to mitigate the loss or damage suffered by the Customer as a result of the alleged act or omission or to assist the Customer in doing so. Prompt notification may also enable BOC to identify defective goods and services and prevent other customers from suffering loss or injury.

- l) Execute documents and do such further acts as may be required by BOC to register the security interest granted to BOC under these terms under the Personal Property Securities Act 1999 or for any other purpose whatsoever.

6. DELIVERY/COLLECTION

- a) Delivery of gas to bulk gas facilities shall be made at the time the gas passes into the permanent hose connection at the filling point of the bulk gas facilities. Delivery of rental cylinders which are transported by BOC to the Customer's premises shall be deemed to take place at the moment the rental cylinders pass over the side of the vehicle upon which they were transported to the Customer's premises. In all other cases regarding rental cylinders, delivery shall take place at such time as the Customer takes receipt of the rental cylinders.
- b) The Customer acknowledges that collection of gas containers from a BOC site or agent will be at its own risk and that it is responsible for handling and transporting the load safely, training the driver on the hazards of the goods and compliance with all relevant legislation.
- c) BOC's weights, records and measurements will be accepted as prima facie evidence of the quantities of goods delivered to the Customer. Subject to condition 2(n) BOC's delivery/collection note will be conclusive evidence as to the goods delivered.
- d) Failure by BOC to deliver or perform by any time specified will not entitle the Customer to terminate any agreement or make any claim against BOC.
- e) If full delivery cannot be made due to the Customer's act or omission BOC may charge for abortive journeys or part deliveries.
- f) BOC may suspend deliveries of gas if the gas storage or handling equipment or process equipment is considered by BOC not to be safe.
- g) BOC will supply gas into Customer owned gas containers and storage vessels considered suitable by BOC ONLY by special arrangement with the Customer. Such supply is subject to gas container and storage vessel examination and testing when necessary in accordance with BOC procedures and applicable statutory requirements at the Customer's cost.
- h) BOC will have the right to charge a fee for the collection of empty gas cylinders.

7. BOC EQUIPMENT

- a) Except as allowed under 7(b) the Customer will not refill or allow the refilling of BOC gas containers or let them be used otherwise than for storage, transport or use of gas placed in them by BOC.
- b) If BOC is unable to supply bulk/liquid gas, the Customer may use a BOC storage vessel for handling equivalent gas obtained from another source, provided that the Customer notifies BOC in advance. BOC will

have no liability whatever in relation to any such supply and the Customer will indemnify BOC against all claims, costs, expenses or liabilities resulting from such supply.

- c) BOC equipment will comply with any technical specifications provided by BOC. BOC does not warrant that the equipment is suitable for your intended use or process. If BOC warrants any particular performance levels any claim for failure to meet those levels in any period is limited to a proportional reduction in the service charge for that period.
- d) BOC will maintain BOC owned equipment and gas containers in accordance with BOC procedures and current safety requirements. If this requires interruption of supply this will, whenever possible, be by arrangement with the Customer.
- e) Service charges are payable from delivery, or from the date of completion where BOC installation is provided.
- f) BOC may maintain its equipment by a program of regular maintenance undertaken during normal business hours. If regular maintenance is carried out outside of normal business hours at the request of the Customer then the Customer will incur an additional standard charge for this service.
- g) BOC may maintain a non-regular maintenance function to support its equipment from time to time. Any non-regular maintenance will see the Customer incur an additional standard charge for this service except to the extent that BOC caused the need for the non-regular maintenance.
- h) The Customer will comply with any manual (or other instructions) provided, and will not otherwise adjust, repair or interfere with BOC equipment. If the Customer does not comply with this clause then BOC may charge the Customer for additional service parts and/or maintenance and repair charges as appropriate, and BOC will not be liable for any loss suffered by the Customer as a result of any such repair or interference.
- i) Any vessel for storing or evaporating gas, any freezing tunnels and any dispensing equipment for the distribution of gas which are installed by BOC on the Customer's premises are and will remain a chattel throughout the entire period during which such facilities remain on the premises.

8. EXCHANGE CYLINDERS

In accepting the delivery of any Exchange Cylinder (which is defined as all cylinders remaining in circulation under the exchange system governed in accordance with Clause 8), the Customer accepts the following conditions:

- a) On payment of the appropriate charge the Customer is entitled to the use of an Exchange Cylinder on loan for a term expiring on the earlier of the date specified in clause 8g or the date which is twenty five years from the date on which the Exchange Cylinder was first delivered to the Customer.
- b) The Customer shall have the right during normal business hours to return to BOC any empty Exchange Cylinder and to receive in return a full Exchange Cylinder of the same size and type paying only for the value of the gas contained in the full cylinder at the current selling price at the date of return. BOC shall endeavour to ensure continuity of gas supplies, but does not accept any liability for non-delivery due to any event or circumstances beyond its reasonable control.
- c) Exchange Cylinders shall at all times remain the property of BOC. The rights of the Customer in any Exchange Cylinder cannot be assigned or transferred to

a third party without the prior consent of BOC. The Exchange Cylinders must not be filled except by BOC.

- d) During the term during which the Customer is entitled to the benefit of the Exchange Cylinder System BOC shall at its own expense repair, maintain and service the Exchange Cylinders provided however that the Customer be responsible for the cost of any repairs necessary as a result of the Customer's negligence or default. The Customer shall insure the Exchange Cylinders against all risks for their replacement value.
- e) If the Customer no longer requires the loan of any Exchange Cylinder the Customer shall return the Exchange Cylinder in its possession to BOC and shall not be entitled to a refund of any money.
- f) If the Customer breaches any of these terms and conditions, BOC shall have the right to enter into the Customer's premises to repossess all Exchange Cylinders in the Customer's possession without giving any prior notice to the Customer and without liability for any damage which may be caused. The rights in this clause are, in relation to "consumer goods" as that term is defined in the Credit (Repossession Act) 1997, subject to that Act.
- g) The right to exchange full for empty Exchange Cylinders and the Exchange Cylinder System will terminate on 30 September 2008. All Exchange Cylinders must be returned to BOC by that date.

9. TITLE AND RISK

- a) BOC retains ownership of all goods supplied by BOC to the Customer until the Customer has paid for them and has paid all other outstanding amounts due and payable to BOC.
- b) BOC equipment, Exchange Cylinders and gas containers remain at all times the absolute property of BOC and are supplied for the Customer's sole use.
- c) The Customer will have no rights over any other property of BOC or its contractors brought onto the Customer's site.
- d) The risk in goods sold or supplied passes to the Customer upon delivery or collection.
- e) For the purposes of this provision the "PPSA" means the Personal Property Securities Act 1999. Until ownership of the goods passes, under the PPSA the Customer must not:
 - (i) give to BOC a written demand, or allow any other person to give to BOC a written demand, requiring BOC to register a financing change statement; or
 - (ii) lodge a change demand or allow any other person to lodge a change demand;in each case in relation to a financing statement registered by BOC under the PPSA; or
 - (iii) enter into or accept, or allow any other person to enter into or accept, a financing change statement in relation to a financing statement registered by reference to it under the PPSA; or
 - (iv) consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of the goods (whether in an accession or otherwise) which ranks in priority to BOC's rights as first ranking security holder; or

- (v) sell, lease, dispose of, create a security interest in, mortgage or part with possession of the goods or any interest in them (or purport or attempt to purport to do such thing) or permit any lien over the goods or assign BOC's rights under these terms and conditions.

f) The Customer waives its rights under the PPSA to:

- (i) receive a copy of any verification statement;
- (ii) receive a copy of any financing change statement;
- (iii) receive any notice that BOC intends to sell its goods or retain the goods on enforcement of the security interest (as defined in the PPSA) granted to BOC under these terms;
- (iv) object to a BOC proposal to retain the goods in satisfaction of any obligation owed by the Customer to BOC;
- (v) receive a statement of account on sale of the goods;
- (vi) redeem the goods; and
- (vii) where any goods becomes an accession, as defined in the PPSA, not apply to the court for an order concerning the removal of the accession, receive notice of removal of the accession and not have any goods damaged when BOC removes the accession.

- g) You agree that you receive value as at the date of first delivery of the goods and agree that we have not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to BOC under these terms and conditions.

10. BREACH AND TERMINATION

- a) If the Customer (being an individual) commits any act of bankruptcy or (being a partnership) any of the partners commits any act of bankruptcy, or (being a company), has a receiver, administrator (or similar) appointed or goes into liquidation, or if the Customer commits any breach of any provision of any agreement with BOC then BOC may by written notice to the Customer either:
 - terminate the agreement breached or any part, or
 - suspend performance of all or any of its obligations, and at any time during such suspension terminate the agreement breached or any part.
- b) Termination will be without prejudice to any accrued rights of either party.
- c) On suspension or termination BOC may recover possession of any goods belonging to it (and, where relevant, possession and title to any of the Customer's gas in BOC equipment or gas containers at no charge to BOC), and the Customer irrevocably authorises BOC to enter its premises for this purpose. The rights in this clause are, in relation to "consumer goods" as that term is defined in the Credit (Repossession Act) 1997, subject to that Act.
- d) On termination under any circumstances the Customer must pay BOC's charges for the costs of removal of BOC equipment and gas containers.
- e) On termination by BOC under condition 10(a) or by the Customer without giving the required notice the Customer must pay by way of liquidated damages a sum equal to service charges for 6 months.

11. PRIVACY ACT

- a) BOC is authorised by each of the Customer, and the proprietors, partners or directors of the Customer (Applicant") to:
- (i) collect retain and use information about the Customer and Applicant from such sources (including credit reference agencies and other credit service providers) as BOC may require for the purposes of administering the Customer's account, assessing the Applicant's creditworthiness, enforcing any rights or marketing any goods and services provided by BOC and to use the information in any dealings with the Customer or Applicant and authorises any person to provide to BOC such information about the Customer or Applicant as BOC may require in response to its queries and for any of the purposes set out above; and
 - (ii) disclose any information about the Customer or Applicant to credit reference agencies, or credit and service providers, or enforcement agencies.
- b) The Customer may on request see and correct any information held by BOC on that Customer.
- c) The Customer confirms that the above Privacy Act clause has been read and understood.

12. E-COMMERCE

If you purchase goods and services from BOC through any BOC website or other ecommerce process, then (without limiting the foregoing) the following terms and conditions also apply:

- a) You will ensure that you safeguard your username, password and any other account details and agree that you will be responsible for all activities that occur through the use of your username, password and other account details, including but not limited to being bound by purchases made by any person using your password.
- b) Unless you advise us otherwise, on each occasion when you place an order you are instructing BOC to process that order (including payment for that order) in accordance with the details which you have registered with BOC most recently.
- c) All orders must be accompanied by payment using credit cards or charge cards accepted by BOC, or by using your BOC account. Acceptance by BOC of your order is subject to authorisation of the transaction by your credit or charge card's issuer/manager (if you use a credit card or charge card to place your order) and your account being in terms. If for any reason your credit or charge card is not accepted or authorised as required then BOC will notify you, at which time you may be able to make alternative arrangements for payment.
- d) BOC and its suppliers have endeavoured to ensure that the BOC Website, and access points to the BOC Website or e-commerce process are secure; however, BOC accepts no liability for any misuse of information transmitted to or from these sites and/or access points by a party who is not a BOC employee.
- e) You consent to the use of cookies by BOC through its website, and other e-commerce processes.

- f) If you are granted access to BOC documents, process, information, calculators or materials ("Information") you are granted a non-exclusive, non-transferable, limited license to access, download and use such Information for your internal business purposes only. You may not, without BOC's express prior written permission:
- (i) modify the Information or use them for any commercial purpose or any public display, sale or rental;
 - (ii) remove any of BOC's copyright or other proprietary notices from the Information;
 - (iii) sell or transfer the Information to any other party. We may terminate this license at any time if you violate any of the terms hereof and, upon any such termination, you agree to immediately destroy any Information in your possession or control. Also you agree to indemnify, defend and hold us harmless from any claims, damages, losses, costs and expenses, including legal fees which we, BOC employees, agents or representatives may incur as a result of your use or dissemination of any Information in violation of any term or condition of your agreement with BOC.
- g) Use of any Information is at your own risk and BOC is not responsible for any adverse consequences arising out of such use. The Information has not been prepared by taking into account the particular objectives, situation or needs of any individual customers. BOC reserves the right to change the Information at any time.
- h) All Information within any BOC site is the property of and is owned solely by BOC and/or its affiliates, suppliers, advertisers, or agents or sponsors. Except for a single copy made for personal use only, you may not reprint, republish, resell or redistribute this Information in any form or manner without the express written permission of the owner(s) of the Information which may be protected from copying by national and international copyright laws and treaties. BOC does not warrant or represent that your use of Information displayed on, or obtained through, any BOC site will not infringe the rights, including intellectual property rights, of third parties. Any dealings with any advertiser appearing on any BOC site are solely between you and the advertiser. BOC is not responsible or liable for any part of any such dealings or promotions.
- i) BOC and the BOC logo are trademarks and/or service marks of BOC. All other trademarks are trademarks or registered trademarks of their respective owners. Nothing in your agreement with BOC grants you any right to use any trademark, service mark, logo, and/or trade name of BOC or its affiliates, suppliers, advertisers, or agents or sponsors.