

BOC GENERAL TERMS AND CONDITIONS OF SUPPLY NEW ZEALAND

1. Definitions, application and interpretation

(a) Definitions:

(i) **"Agreement"** means these BOC General Terms and Conditions of Supply and, where a Supply Agreement is entered into by You, the other parts of that document including any coversheet or covering letter, together with all attachments and any other documents referred to in the Agreement;

(ii) **"BOC", "We", "Us" and "Our"** means BOC Limited (NZ Company Number 7748) including, as the context requires, its officers, directors, employees and representatives from time to time;

(iii) **"Gas"** means any gas or gas mixture including liquefied, solidified, compressed or dissolved gas;

(iv) **"Gas Containers"** means cylinders and storage vessels of any description;

(v) **"Insolvency Event"** means: (a) a party ceases to carry on all or substantially all of its business, is unable to pay its debt when due, or is deemed unable to pay its debts under any law or becomes, or is deemed to be insolvent or bankrupt; or (b) a process of liquidation, statutory management, receivership, entry into a scheme of arrangement, compromise with creditors or amalgamation (other than for the purposes of a bona fide reconstruction or amalgamation without insolvency), administration, assignment for the benefit of creditors, or bankruptcy commences in respect of a party; or (c) any similar event occurs or the other party considers (acting reasonably) that any such event or similar event is likely to occur.

(vi) **"PPSA"** means the Personal Property Securities Act 1999;

(vii) **"Supply Agreement"** means a written agreement with You to supply You for a specified period of time;

(viii) **"You", "Your" and "Customer"** means the person or entity identified in this Agreement or in the applicable BOC trading account; and

(ix) **"Your Equipment"** means all property, plant and equipment owned or leased by You or Your affiliates, parent companies, subsidiaries, co-owners, co-lessees and joint venturers (but excludes property or equipment leased from Us) and includes surface facilities and other property on Your site.

(b) This Agreement applies to all supplies of goods and/or services by Us to You and supersedes all previous negotiations and representations, whether oral or written, any earlier agreement for the same goods and/or services, and any earlier sets of terms and conditions issued.

(c) No variation or waiver of this Agreement and no terms and conditions put forward by You or printed on Your purchase order or other document You give to Us for the supply of goods and/or services will have any effect unless expressly agreed in writing by both parties. Failure to exercise any right or remedy under this Agreement in a timely manner will not constitute acceptance of the matter which gave rise to the right or remedy, nor a waiver of such right or remedy.

(d) If any provision of this Agreement is invalid, illegal or unenforceable, it will be read down to the extent necessary and reasonable to ensure that it is not invalid, illegal or unenforceable. If it or part of it cannot be so read down, it or the relevant part of it will be void and severable and the remaining provisions will not in any way be affected or impaired.

(e) All warranties, releases, exclusions of liability and indemnities will remain valid and binding following termination.

(f) In interpreting this Agreement no rules of construction shall apply to Our disadvantage on the basis that We put forward the Agreement, or any part of it. Headings are for convenience only and do not affect interpretation. References to "including" shall be construed as "including without limitation". To the extent of any inconsistency between these General Terms and Conditions of Supply and any Special Conditions agreed in the Supply Agreement or otherwise in writing between the parties, the Special Conditions shall prevail.

(g) If the Customer comprises two or more persons or entities, each of You is jointly and severally liable for all obligations and liabilities under this Agreement.

(h) A reference to legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it.

2. Goods and services

(a) Goods sold by Us to You will comply with any technical specifications provided by Us or the manufacturer. We do not warrant or guarantee that the goods are suitable for Your intended use or process. You are solely responsible for determining the suitability, compatibility, and use of the goods. Notwithstanding any clause to the contrary in this Agreement, We do not provide any warranties, express or implied, of fitness for purpose in relation to the goods or services.

(b) Where goods supplied by Us, or materials or equipment used in providing services, have not been manufactured by Us, to the extent We are able to do so, We will pass through to You the benefit of any manufacturer's warranty where it is available, except in the event of user damage and disposable and perishable items. All other liability is excluded in accordance with this Agreement.

(c) If We supply Gases to You We will provide the Gas Containers and other equipment listed in this Agreement. We may from time to time at Our discretion change the mode of supply or model of equipment used to supply You the Gases, provided that the change does not increase the aggregate charges payable by You for the supply of those Gases (except where clause 3(m), 6(a) or 6(k) applies, or where a change is made with Your consent or at Your request).

3. Your obligations

You will:

(a) provide free of charge, adequate and safe access to Your premises, information and facilities (including labour for loading and unloading of goods, and utilities supply), and to Our equipment and Gas Containers on Your premises, for Us to carry out Our duties and rights under this Agreement, including the provision of services, any installation, replacement, delivery to, and the inspection, audit, removal and servicing of equipment and Gas Containers. You will be responsible for any additional costs incurred by Us in carrying out Our duties and rights under this Agreement, including the provision of services, any installation, replacement, delivery to, and the inspection, audit, removal and servicing of equipment and Gas Containers, where those costs relate to: inadequate or unsafe access to Your premises, information and facilities, or to Our equipment and Gas Containers on Your premises;

(b) ensure that all sites, works and materials for which You are responsible, and all Your Equipment which is relevant to this Agreement, comply with current industry standards and all legal and statutory requirements, including those relating to a safe workplace, and with any specifications provided by Us;

(c) obtain and maintain all necessary licences, permits, authorisations, approvals and consents, and comply with all legal obligations, in connection with Your possession and use of any goods supplied or Our equipment and Gas Containers provided to You, or work done on Your site, including installation or other services provided by Us;

(d) insure Our equipment and Gas Containers to their full replacement cost against loss, damage and destruction and maintain other insurance as required by law and sufficient to insure Your obligations under this Agreement. If requested by Us, You will provide proof of any such insurance within 7 days;

(e) not obliterate, remove or deface identification marks, tracking devices, labels, barcodes or notices on Our equipment and Gas Containers;

(f) return all Our equipment and Gas Containers in a clean and serviceable condition, or pay the cost of restoring them to a clean and serviceable condition, and pay the new replacement cost if any equipment or Gas Container of Ours is lost or damaged beyond repair.

No refund or allowance will be made for residual gas that may be in a returned Gas Container;

(g) not mortgage, pledge, sell, or lend, or create a security interest under the PPSA over, Our equipment or Gas Containers, and You will not remove them from Your premises shown in this Agreement, or otherwise part with possession of them, except to Us or to an agent or representative authorised by Us;

(h) not at any time disclose any of the know-how, technology, information, documents or other intellectual property supplied by Us to You or contained in Our equipment, Gas Containers, goods or services or otherwise made available to You, nor infringe Our rights in such materials, and You will use such for Your internal purposes only;

(i) notify Us in writing if You intend to sell Your business, with such notice being provided not less than twenty-one (21) days before any such sale takes place;

(j) notify Us in writing as soon as reasonably practicable after You become aware of any defect in goods or services supplied by Us, any alleged breach of contract on Our part, any negligence or other tort on Our part, or any breach of statutory duty by Us. You acknowledge and agree that prompt notification may enable Us to mitigate the loss or damage suffered by You as a result of the alleged act or omission or to assist You in doing so. Prompt notification may also enable Us to identify defective goods and services and prevent other customers from suffering loss or injury;

(k) warrant that You do not have a binding exclusive supply arrangement with another supplier for the goods (including Gas), services and locations covered by this Agreement;

(l) not use Our equipment or Gas Containers to decant product into other containers, and will not on-sell, distribute or otherwise transfer any product, unless this Agreement expressly states otherwise;

(m) pay all costs incurred by or on behalf of Us, directly or indirectly, in connection with a request from You to modify goods (including Gas) or services provided, or relocate a Gas Container or replace a Gas Container with a different size, type or capacity of container;

(n) only use Gases in accordance with Our Material Safety Data Sheets ("MSDS") and use the MSDS to warn Your personnel and others who may be exposed to the Gases of the hazards associated with those Gases. MSDS are available at no charge from Our website (www.boc.co.nz), Gas & Gear stores, authorised agents or by contacting Our Customer Service Centre; and

(o) inform Us of the following so that We may comply with Our obligations under any applicable gas, safety and measurement laws, regulations, standards or the like in force at the relevant time and ensure that (where necessary) Gas fittings are certified prior to supplying Gas to Your Gas installation:

- (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 that are notifiable under any applicable law, regulation or the like,

in each case prior to Us (either directly or through an accredited agent acting on Our behalf) supplying Gas to any such installations.

4. Ordering, delivery and collection

(a) Cylinder Gases, industrial and safety products – may be ordered in person at a BOC Gas & Gear store or authorised BOC agent, on-line or by contacting the BOC Customer Service Centre.

(b) Bulk and liquid Gases – We will schedule deliveries in appropriate quantities and frequency having regard to Your average consumption rate, working patterns as advised by You in writing, and the Gas Container capacity. We will not normally deliver loads of less than 50% of the Gas Container capacity. You must provide Us unimpeded access to the Gas Container without time or vehicle restriction – additional charges may apply if You are unable to do this. You must contact Us if You anticipate a significant change in Your Gas

consumption rate or if You require an additional or specific delivery – additional charges may apply.

(c) You acknowledge that collection of Gas Containers from, and delivery of Gas Containers to, Our site or agent will be at Your own risk and that You are responsible for handling and transporting the load safely, training the driver on the hazards of the goods and compliance with all relevant legislation. You indemnify Us against any claims arising in any way from the collection, transport and delivery of Gas Containers by You or Your agent.

(d) In the absence of proof to the contrary, Our weights, records and measurements will be conclusive evidence of the quantities of goods delivered to You. Gas container barcode information scanned at the point of delivery or return will be conclusive evidence of Gas Containers delivered to or returned by You. Subject to clause 6(m) and 7(l) Our delivery/collection note will be conclusive evidence as to the goods delivered.

(e) If full delivery cannot be made due to Your act or omission We may charge for abortive journeys or part deliveries.

(f) We may suspend:-

(i) deliveries of Gas if the Gas storage, handling or process equipment is considered by Us not to be safe.

(ii) performance of services and delivery of goods (including Gas) if your site is considered by Us not to be safe.

(g) We may supply Gas into Gas Containers owned by You and which We consider suitable, but ONLY by prior special arrangement with You. Such supply is subject to Gas Container examination and testing, when necessary, in accordance with Our procedures and applicable statutory requirements and at Your cost. We reserve the right to apply additional charges for filling services.

(h) We have the right to charge a fee for the collection of empty Gas Containers.

5. Title and risk

(a) All goods sold remain Our property until You have paid for them and have paid all other outstanding amounts due and payable to Us. The risk in goods sold or supplied passes to You upon delivery to You or Your agent or collection by You or Your agent.

(b) 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.

(c) Our equipment and Gas Containers remain at all times Our absolute property, even if affixed to real property owned or used by You, and are supplied for Your sole use. You have no rights over any property of ours or Our contractors brought onto Your site.

(d) If Our equipment or Gas Containers are installed at Your site and You are not the owner of that site, You will provide Us with the unconditional written agreement of the site owner confirming that Our equipment or Gas Containers will at all times remain Our property, irrespective of how they may be affixed, and that they may be repossessed by Us in accordance with this Agreement. You indemnify Us against any cost, loss or damage if You fail to provide Us with such site owner's agreement.

6. Charges, invoicing and payment

(a) If We have a Supply Agreement with You the charges applicable at the time of entering into this Agreement are shown in the table/s or schedule/s forming part of the Supply Agreement or, if none are specified, will be Our standard prices and charges for the relevant good or service. Charges are based on Your estimated annual volumes given in the table/s or schedule/s in the Supply Agreement. From time to time We will compare Your actual volumes purchased against Your estimated volumes on a pro rata basis. If You fail to purchase the estimated volumes We may vary these charges to reflect Our current standard prices for Your actual volumes and/or

vary the mode of supply or model of equipment used to supply You. If We do not have a Supply Agreement with You Our standard prices and charges from time to time will apply.

(b) If installation, hazop or other additional services are required, then additional charges may apply. We will normally tell You about such charges when You arrange that service. We may also offer to sell to You other goods and services (subject to availability), which may include maintenance, training, welding and safety equipment and consumables at Our standard price. You will need to sign an additional or amended agreement before We provide these additional goods (including Gas) or services.

(c) Gas charges consist of three elements:

(i) a charge for Gas (which may vary depending on which BOC plant supplies the Gas);

(ii) a delivery and/or handling charge (which may vary depending on which BOC plant supplies the Gas); and

(iii) a periodic service charge for the provision of services related to Our equipment and Gas Containers, charged per period, or part thereof, for each Gas Container or piece of equipment held by You as shown in Our records.

If You elect to pay cylinder service charges in advance on a quarterly or annual basis, You will receive a discount on the standard monthly cylinder service charge. If some or all of the cylinders are returned before the nominated fixed period expires and you do not take replacement cylinders, no pro rata credit is provided. The periodic service charges for Gas Containers and Our equipment allow Us to provide services related to Gas Containers and equipment including, but not limited to: maintenance, repair (including repair, re-conditioning and maintenance of any ancillary equipment attached to it); painting, labelling and testing as required by law; making Gas Containers available for customers (as agreed) and maintaining premises for this purpose; scrapping faulty or defective Gas Containers; research into gas delivery devices; and inspecting gas cylinders prior to filling.

(d) Unless stated otherwise in this Agreement:

(i) Gas and other product charges will be varied in proportion to changes in Our standard prices for the applicable product from time to time (changes include, but are not limited to, variations in market, economic and any other relevant circumstances);

(ii) Delivery, handling and service charges will vary in line with our standard charges from time to time; and

(iii) All charges will be reviewed from time to time (and at least annually) taking into account all of the circumstances related to supply to You.

(e) You agree that We may deliver invoices and notices to You by electronic means, such as email. If You do not use this method, We may charge You an administration fee for the extra cost of processing. You must notify Us immediately of any error on an invoice. You must pay all charges by the 20th of the month following the date of the relevant invoice, including any disputed amount. After payment, if an adjustment in Your favour is due, We will issue a credit note.

(f) Our preferred method of payment is by direct debit. If You do not use this method, We may charge You an administration fee for the extra cost of processing. If We incur any merchant or dishonour fees as a result of Your method of payment, You agree that We may recover those fees from You. At Our discretion We may recover those fees from You directly or by adding the amount to a subsequent bill.

(g) Notwithstanding clause 6(e), if You agree to pay by direct debit, on the 20th day of the month following the month of invoicing (or the first business day after the 20th if the 20th falls on a weekend or public holiday) We will debit Your nominated account for the full amount due.

(h) Except where goods (including Gas) and or services delivered are not in accordance with Your order or Our selling specification, or are defective, the return of goods for credit is at Our absolute discretion and will only be considered if the request is made within 14 days of You receiving the goods. If We grant credits 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. Further

information can be found on Our website (www.boc.co.nz) under "Returns, Warranties and Refunds".

(i) If any amounts are overdue:

(i) We may suspend supply of goods and/or services to You and payment will become immediately due for all goods and services supplied under any agreement with You;

(ii) You must pay charges and interest in accordance with the applicable Court interest rate at the time;

(iii) if We take debt recovery action against You, You must pay Us Our then applicable administrative fee, as advised by Us at the time, and pay Us for the costs incurred in recovering overdue amounts owing by You (including debt collection agency fees); and

(iv) as a condition of any subsequent supply, We may vary Your payment terms, including requiring You to provide security of payment in a form acceptable to Us (such as a bank undertaking, director or shareholder guarantee or pre-payment).

(j) Prices in this Agreement exclude GST unless stated otherwise. You will pay GST and any other government charges, duties or taxes in connection with supply of goods or services under this Agreement.

(k) Notwithstanding any other term of this Agreement, if at any time Our costs of supplying goods and/or services under this Agreement change due to any of the following, We reserve the right to adjust prices to take account of such change in Our costs, including by applying a surcharge:

(i) any cause beyond Our reasonable control (including government action (including imposition of a new tax or charge), a change in law, a change in tax, the introduction or existence of any emissions trading scheme or any other scheme relating to greenhouse gases or other environmental emissions, unforeseen events, a significant and unexpected increase in the cost of fuel, power, feedstock or distribution, and/or the inability to supply from Our usual supply source or plant;

(ii) inaccurate or inadequate provision of information by You; or

(iii) delay caused by You.

(l) Payment of a service charge invoice will be conclusive (subject to 6(m) and 7(l)) as to Your holding of Our equipment and Gas Containers as shown on that invoice.

(m) If any transaction or notification by You indicates a holding of Our equipment and Gas Containers greater than recorded, We may amend Our records and charge You service charges accordingly.

(n) If any amount is due to You from Us under or in connection with this Agreement or any other agreement between You and Us, we may (without prior notice or demand) set-off or deduct that amount from or against any amount that is due and owing by You to Us under this Agreement.

7. Liability and exclusions

(a) Nothing in any agreement between Us and You excludes, restricts or modifies any terms, conditions or warranties or Our liability for them which are imposed or implied by any statute, and which by statute cannot be excluded, restricted or modified. Limitations and exclusions are made only to the extent that We may legally do so.

(b) Our liability for any kind of loss or damage suffered by You in connection with this Agreement, whether in contract, negligence or other tort, misrepresentation, breach of any statutory or equitable duty, or otherwise, and whether Our act or omission is wilful or otherwise, is excluded and/or limited (as the case may be) as set out in clause 7 and We shall have no liability other than as specified in clause 7.

(c) Notwithstanding any other provision of this Agreement, including clause 7, Our liability:

(i) for any loss of or damage to revenue, profits, savings, use, contracts, production, goodwill, business opportunity or business and for any consequential or indirect loss or damage whatsoever, is excluded;

(ii) for any other loss or damage is limited in aggregate total over the term of this Agreement, to the lesser of the total amount paid for the goods (including Gas) or services under this Agreement, and \$1 million; and

(iii) is reduced proportionally to the extent You or any third party caused or contributed to the relevant loss or damage.

(d) We accept liability for physical damage to property to the extent that it was directly caused by Our breach of contract or Our negligence in connection with the performance of this Agreement, subject to a limit of the lesser of the total amount paid for the goods (including Gas) or services under this Agreement in the 12 months prior to the relevant event, and \$500,000 per event or series of connected or similar events (but subject to clause 7(c)). Any other losses flowing from physical damage to property shall be limited as set out in clause 7(e).

(e) We accept liability, to the extent that it is directly caused by Our breach of contract or Our negligence in connection with the performance of this Agreement, for losses, costs, expenses or damage (in addition to and independent of Our liability under clause 7(d), but subject to clauses 7(c) and 7(f)):

(i) caused by Us supplying any defective Gas, up to a limit of \$10,000 or, if greater, 25% of Our anticipated monthly revenue generated under this Agreement with You at that time, for any one incident; or

(ii) resulting from the provision of technical advice or training by Us in return for a specific fee, up to a limit of the amount of the fee received for such advice or training.

(f) Our sole liability for loss or damage incurred in respect of non-conformance of goods (including Gas) and/or services supplied (or agreed to be supplied) to any specifications, late or non-delivery, or breach of a warranty or guarantee which is implied or imposed by legislation, shall be limited to:

(i) in the case of goods, at Our option, the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and

(ii) in the case of services, at Our option, supplying the services again; or paying the cost of having the services supplied again.

(g) Any action by You against Us in relation to this Agreement must be commenced within one year after the cause of action has accrued. You agree that We have no liability to You in relation to an action commenced after this period.

(h) You indemnify Us and hold Us harmless against all loss, damage, proceedings, claims, costs and expenses howsoever caused arising directly or indirectly:

(i) out of Your possession, use or ownership (as applicable) of goods (including Gases) or Our Gas Containers;

(ii) from any unauthorised use of Our intellectual property; and

(iii) from Our presence on Your site, including Our equipment, materials and personnel, except to the extent caused by Our negligence.

(i) If performance of any contract obligation by its normal means is prevented or delayed due to any cause beyond Your or Our reasonable control (including Our ability to supply from Our usual supply source or plant), that contract obligation (other than a payment obligation) will be suspended during the period affected by such cause, and neither party shall be liable for any failure or delay in performance of any such obligation under this Agreement (other than liability in respect of a payment obligation).

(j) Failure by Us to deliver goods or perform services by any time specified will not entitle You to terminate any agreement or make any claim against Us.

(k) We will not be liable for any defect arising from fair wear and tear to the materials or equipment installed or used in relation to or in connection with the goods and/or services.

(l) We will not be liable for any shortage, loss, damaged goods or discrepancy unless You notify Us in writing within 5 business days of receipt of goods by You or, if You prove to Us that it was not reasonably possible to notify Us within that timeframe, You notify Us within 5 working days after You first became aware, or could reasonably be expected to have become aware, of the claim.

(m) If You are not a consumer, as defined in the Consumer Guarantees Act 1993 (CGA) or You acquire, or hold Yourself out as acquiring, any goods or services supplied under this Agreement in trade, You agree that, for the purposes of section 43 of the CGA and section 5D of the

Fair Trading Act 1986 (FTA), to the extent permitted by law, the parties are contracting out of the CGA and sections 9, 12A, 13 and 14(1) of the FTA in respect of the matters, representations or circumstances covered by this Agreement. If You are a consumer, nothing in this Agreement will affect or is intended to exclude or restrict any of Your statutory rights, including Your rights under the CGA and FTA.

8. Our containers and equipment

(a) Except as allowed under 8(b) Our Gas Containers can only be used in conjunction with Gas placed in them by Us. You will not refill or allow the refilling of Our Gas Containers or let them be used otherwise than for storage, transport or use of Gas placed in them by Us.

(b) If and for as long as We are unable to supply bulk/liquid Gas, You may use Our Gas Container for handling equivalent Gas obtained from another source, provided that You obtain Our prior written consent. We will have no liability whatsoever in relation to any such supply, and You will indemnify Us against all claims, costs, expenses or liabilities resulting from such supply.

(c) Our equipment will comply with any technical specifications provided by Us. We do 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) We will maintain Our equipment and Gas Containers in accordance with Our procedures and current safety requirements. If this requires interruption of supply this will, whenever possible, be by arrangement with You.

(e) Service charges are payable from delivery, or from the date of completion where We provide installation, whichever is earlier.

(f) We may maintain Our equipment by a program of regular maintenance undertaken during normal business hours. If regular maintenance is carried out outside of normal business hours at Your request then You will incur an additional charge at Our then current rates.

(g) For any repairs or maintenance required beyond that in 8(f) We will charge You an additional charge at Our then current rates, except to the extent that We caused the need for such repairs or maintenance.

(h) You will comply with any manual (or other instructions) provided, and will not otherwise adjust, repair or interfere with Our Gas Containers or equipment. If You do not comply with this clause then We will have no liability to You for the consequences and We may charge You for additional service parts and/or maintenance and repair charges as appropriate.

9. Breach and termination

(a) If an Insolvency Event occurs in relation to You, if You commit any breach of any provision of this Agreement, and/or if we have exercised Our right to suspend under clause 4(f), then We may by written notice with immediate effect either:

(i) terminate the whole or any part of this Agreement; or

(ii) suspend performance of all or any of Our obligations, and at any time during such suspension terminate the whole or any part of this Agreement. Service charges will continue to accrue and be payable by You during any period of suspension.

(b) Termination will be without prejudice to:

(i) any accrued rights of either party; and

(ii) any provisions of this Agreement which expressly or by implication are intended to survive termination of this Agreement.

(c) On suspension or termination under any circumstances, or where You have breached clause 3(k), We may recover possession of any goods, equipment, Gas Containers or materials belonging to Us (and, where relevant, possession and title to any of Your Gas in Our equipment or Gas Containers at no charge to Us), and You irrevocably authorise Us to enter Your premises for this purpose. You must pay Our charges for the costs of removal of Our equipment and Gas Containers. Any delay by Us in removing Our equipment or Gas

Containers will not waive Our rights nor give You any rights over Our property.

(d) If We have a Supply Agreement with You, on termination by Us under clause 9(a) or by You without giving the required notice, You must pay by way of liquidated damages a sum equal to the service charges that You would have paid if the Agreement had been validly terminated for convenience at the next available opportunity under the Supply Agreement. You acknowledge and agree that such sum relates to the protection of a genuine and legitimate commercial interest, is proportionate to that interest and is not a penalty.

10. PPSA

(a) We may allocate amounts received from You in any manner we determine, but in default will apply same first to payment of any unsecured amount owing to Us, next as to any reasonable enforcement expenses and then as to any secured balance owing to Us.

(b) You agree to reimburse Us for all costs and/or expenses incurred or payable by Us in relation to registering, maintaining or releasing any financing statement or financing change statement under this Agreement.

(c) You will not (except with Our written consent) allow to be, or be liable to become, perfected or attached in favour of any person, a security interest or transitional security interest in any of the monies from time to time payable to Us (if any) or otherwise, or in BOC property (including equipment and Gas containers) and whether to a provider of new value or otherwise.

(d) You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interests under this Agreement. You agree that You and We contract out of and nothing in the provisions of Sections 114(1)(A), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA shall apply to this Agreement.

(e) You and We acknowledge that You are the grantor and We are the holder of a Purchase Money Security Interest ("PMSI") by virtue of this Agreement and/ or the PPSA. You agree to do anything that We reasonably require to ensure that We have at all times a continuously perfected security interest over all of Our property, including Our equipment, Gas Containers and any proceeds of such property.

11. General

(a) If You purchase goods and/or services from Us through any BOC website or other e-commerce process, then (without limiting the foregoing) You agree to also be bound by the applicable terms and conditions set out or referred to in that site or relating to that process.

(b) Nothing in this Agreement will be interpreted or implied as constituting either Us or You as having the relationship of employee and employer or You as Our agent or Us as Your principal.

(c) We may assign or transfer this Agreement and/or any security under the PPSA to a related body corporate at any time by notice to You. A party must not otherwise assign or transfer the benefit or

obligations of this Agreement without the prior written consent of the other party, not to be unreasonably withheld.

(d) We will be entitled to the full and unrestricted right, including the right to apply for patent or other protection in Our own name, to exploit any invention, technical information or know-how arising from or developed in the course of carrying out this Agreement.

(e) BOC and the BOC logo are trademarks and/or service marks of BOC. You have no right under this Agreement to use any trademark, service mark, logo, and/or trade name of BOC or its affiliates, suppliers, advertisers, or agents or sponsors.

(f) This Agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

12. Confidentiality

(a) You acknowledge that all pricing information and any other commercially sensitive or confidential information relating to this Agreement is strictly confidential (**Confidential Information**).

(b) Except as stated in this Agreement or where required by PPSA, the parties to this Agreement are under an obligation to not and must not permit any of their officers, employees, agents, contractors or related bodies corporate to disclose any Confidential Information to any person, other than their professional advisers or as required by law, without the prior written consent of the party to whom the Confidential Information relates.

(c) This clause 12:

- (i) operates for the benefit of all parties; and
- (ii) continues despite the termination of this Agreement.

13. Privacy

(a) You authorise Us to collect, use and disclose personal information relating to You (and, if applicable, Your representatives) in accordance with Our Privacy Policy (a copy of which can be obtained from Our website, www.boc.co.nz, or by calling 0800 111 333).

(b) You agree that We may use the services of credit reporting and debt collection agencies on an on-going basis and may disclose personal information (including information about default and repayment history) to a credit reporter, who may hold that information on its systems and use it to provide its credit reporting services.

(c) If You provide Us with any personal information about a third party (including a representative) or authorise Us to collect that information, You confirm that You are authorised by the individual concerned to provide their personal information to Us or authorise the collection of information about them in accordance with our Privacy Policy . You also confirm that You have informed the individual of their rights to access and request correction of personal information.

(d) If You are an individual, You have rights of access to, and correction of, Your personal information held by BOC.