



## Standard Terms and Conditions for supply of gas and gas equipment.

These Standard Terms and Conditions set out the terms on which Pacific Gas Pty Ltd (“Pacific Gas”) have agreed to provide the Supply to the Customer.

### 1. INTERPRETATION

#### 1.1 Definitions

In these Standard Terms:

“**Agreement**” means the agreement comprising the Schedule, the Rates and these Standard Terms.

“**Business Day**” means a day that is not a Saturday, Sunday or public holiday in Melbourne Victoria.

“**Consequential Loss**” means any loss or anticipated loss of profit, loss or anticipated loss of revenue, business interruption, loss of use of any equipment, loss of any contract or other business opportunity and any other indirect loss of a similar nature.

“**Customer**” means the party to whom PACIFIC GAS provides the Supply under this Agreement or any person who is or who appears on reasonable grounds to be an agent, employee, Subcontractor or a representative of any one or more of the foregoing.

“**Customer Gas Equipment**” means any Cylinders and/or Manifold Packs not the property of Pacific Gas which is filled by Pacific Gas for the Customer.

“**Cylinder**” means a pressurised gas container.

“**Gas**” means any industrial, medical or special gases provided by Pacific Gas to the Customer.

“**Gas Equipment**” means any Cylinders and/or Manifold Packs supplied Pacific Gas under this agreement.

“**Force Majeure Event**” means” means a circumstance beyond the reasonable direct or indirect control and without the fault or negligence of the party claiming force majeure including one or more act of god, earthquake, storm, cyclone, flood, accident, epidemic, fire or explosion, strikes, riots, civil commotions, lockouts, stoppages, restraints of labour of whatsoever nature or kind (whether actual or threatened), any other industrial or environmental action, landowner action, war, civil war, hostilities, acts of terrorists, breakdown of or accident or failure of any crane or plant or machinery or equipment or software/hardware or other facility from any cause whatsoever, inherent vice or quality of goods, or any action or act whatsoever caused beyond the control of the party.

“**Gross Negligence**” means any act or failure to act (whether sole, joint or concurrent) which seriously and substantially deviates from a diligent course of action or which is in reckless disregard of or indifference to the harmful consequences.

“**GST**” means the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“**Manifold Pack**” means a group of Cylinders permanently contained in a transport frame.

“**Period**” means the equipment rental period set out in item 3.2.

“**Premises**” means those areas where Pacific Gas provides the Supply pursuant to the Agreement.

“**Property**” means any property of the Customer including goods, motor vehicles, plant, machinery, equipment, buildings or other items.

**"Purchase Order"** means an order by the Customer to Pacific Gas for:

- (a) the supply of Gas(es);
- (b) the supply of Gas Equipment;
- (c) supply, transport and storage facilities; and/or
- (d) any other incidental products or services.

**"Rates"** means the fees, rates, charges and/or tariffs payable by the Customer to Pacific Gas for the provision of the Supply as set out in:

- (a) any schedule of rates provided from time to time by Pacific Gas to the Customer; and/or
- (b) the Schedule,

as varied from time to time in accordance with clause 3.3.

**"Redelivery"** means placement on the Pacific Gas cylinder dock at the Premises ready for inspection for serviceability and valve closure.

**"Representative"** means the Pacific Gas representative or the Customer representative (as the case may be) appointed by the parties under clause 6.1.

**"Schedule"** means the Schedule for supply of gas and gas equipment signed by the Customer and Pacific Gas, including any Special Conditions contained in such Schedule.

**"Special Conditions"** means the special terms or conditions (if any) included in the Schedule and applicable to the Supply.

**"Standard Terms"** means these standard terms and conditions for Supply.

**"Subcontractor"** means any person, its servants or agents, who pursuant to a contract or arrangement with any other person provides or agrees to provide the Supply or any part of the Supply.

**"Supply"** means the supply of Gas or Gas Equipment by Pacific Gas in any way whatsoever connected with or arising out of the Purchase Order and/or under this Agreement.

**"Uplift"** means transition from the Pacific Gas cylinder dock and placement onto the Customer's own, or contracted, transport (whether shipping or transport container or a vehicle deck).

**"Wilful Misconduct"** means an intentional disregard of good and prudent standards of performance or of any of the terms of this Agreement.

## **1.2 General provisions**

- 1.2.1 The Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Agreement and has no further effect.
- 1.2.2 All rights, immunities, indemnities and limitations of liability in the Agreement will continue to have their full force and effect in all circumstances and notwithstanding any breach of the Agreement by Pacific Gas or any other person entitled to the benefit of such provisions.
- 1.2.3 If any provision or any part of any provision of the Agreement is unenforceable such unenforceability will not affect any other provision or any other part of such provision.
- 1.2.4 Any right that a person may have under the Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- 1.2.5 Any Special Conditions will prevail in the event of any inconsistency with the terms of the Agreement.

### **1.3 Rules for Interpreting this Document**

1.3.1 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

1.3.2 A reference to:

- a) legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- b) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- c) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
- d) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- e) anything (including a right, obligation or concept) includes each part of it.

1.3.3 A singular word includes the plural, and vice versa.

1.3.4 A reference to dollars, AUD or \$ is to an amount in Australian currency.

## **2. SUPPLY, GAS AND GAS EQUIPMENT**

### **2.1 Supply**

2.1.1 The Customer may request that Pacific Gas provide the Supply by delivering a Purchase Order to Pacific Gas either orally or in writing (including by fax, letter or email).

2.1.2 Subject to availability and clause 7.1, Pacific Gas must accept a Purchase Order where the Customer is not in breach under this Agreement.

2.1.3 Upon acceptance of a Purchase Order Pacific Gas shall promptly and diligently provide the Supply to the reasonable satisfaction of the Customer and in accordance with the Agreement.

### **2.2 Gas**

2.2.1 Any residual Gas in the Gas Equipment reverts to Pacific Gas on Redelivery, and no allowance for value will be made against the Customer's account for such Gas.

2.2.2 Pacific Gas gives no warranty as to the fitness for purpose of the Gas. Any statutory warranty as to the fitness for purpose of the Gas is expressly excluded to the extent to which it can be excluded.

### **2.3 Valves**

2.3.1 The Customer must ensure that Gas Equipment has all valves closed prior to being disconnected.

2.3.2 The Customer must return Gas Equipment to Pacific Gas with all valves closed.

### **2.4 Customer Gas Equipment**

The Customer will be responsible for the safety and security of the Customer Gas Equipment and will comply with all statutory and other regulations in relation to the maintenance and use of the Customer Gas Equipment and at the time of refilling the Customer Gas Equipment must have a valid pressure test certificate and be of serviceable condition.

## **3. PAYMENT**

### **3.1 Rates**

3.1.1 The Customer must pay Pacific Gas for the Supply in accordance with the Schedule of Rates.

### **3.2 Terms of Payment**

- 3.2.1 The Customer must pay cash for the Gas prior to Pacific Gas delivering Gas to the Customer. Provided however that Pacific Gas may agree credit terms with the Customer. Any such credit terms must be agreed in writing and be signed by both parties.
- 3.2.2 All payments must be made to the bank account details set out on the invoice and must quote the reference number on the invoice. Interest will be payable on any sum which remains due and unpaid after the due date for payment. Interest will be charged at the relevant Reserve Bank of Australia facility rate plus 8%. Interest will apply to any disputed invoices that remain unpaid once the dispute has been settled.
- 3.2.3 The Customer shall be liable for all costs, expenses or fees reasonably incurred by Pacific Gas in recovering overdue amounts.
- 3.2.4 The Customer acknowledges that the Rates are exclusive of GST and that if GST or any other tax in substitution of or in addition to it is or becomes payable, such will be payable by the Customer and if paid by Pacific Gas on behalf of the Customer it shall become a debt immediately due and payable to Pacific Gas by the Customer.

### **3.3 Review of Rates**

Pacific Gas may vary the Rates either:

- (a) at any time, with the agreement of the Customer; or
- (b) every 6 months, provided that revised Rates will be notified in writing to the Customer and such revised Rates shall come into effect at the end of the month where such notice is given.

## **4. CUSTOMER'S WARRANTIES, OBLIGATIONS AND INDEMNITIES**

### **4.1 General Warranties and Obligations**

- 4.1.1 A failure by the Customer to fulfill its obligations under the Agreement will constitute a material breach.
- 4.1.2 The Customer warrants that:
  - (a) it is a corporate entity, validly existing under the laws of its place of incorporation;
  - (b) it has the power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement;
  - (c) it has taken all necessary action to authorise its entry into and performance of this agreement and to carry out the transactions contemplated by this agreement; and
  - (d) its obligations under this Agreement are valid and binding and enforceable against it in accordance with their terms.
- 4.1.3 The Customer and its servants, agents and Subcontractors will at all times comply with all applicable laws and any policies or procedures of Pacific Gas in relation to the provision of the Supply or the Premises including but not limited to regulations and statutes relating to sound environmental practice and the handling of dangerous, hazardous or noxious goods and substances.
- 4.1.4 The Customer will provide Pacific Gas with immediate access to any commercial documentation which Pacific Gas is obliged to produce at the request of any government or government department or governmental, semi-governmental or judicial person, or a person (whether autonomous or not) who is charged with the administration of a law.
- 4.1.5 If at any time the Customer becomes aware that it is in breach, or is likely to be in breach, of any duty or obligation in the Agreement, the Customer agrees to immediately notify Pacific Gas and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.

#### **4.2 Customer's Insurance**

The Customer will obtain and maintain public liability insurance to a minimum value of AUD 20 million for each and every occurrence.

#### **4.3 Customer's Personnel**

4.3.1 The Customer shall ensure that its personnel comply with any rules or directions of Pacific Gas or others in respect of the Premises, the Gas or the Gas Equipment.

4.3.2 The Customer shall be liable for, and shall indemnify Pacific Gas in respect of:

- (a) any damage to the Premises caused by its personnel;
- (b) any loss or damage to the property of any person caused or contributed to by its personnel; and/or
- (c) personal injury to, or the death of, any person caused or contributed to by its personnel.

#### **4.4 Customer Environmental Warranties**

The Customer warrants that in respect of the Premises and/or the Gas and/or the Gas Equipment that it will not do or omit to do anything or to use materials, substances or processes which breach or are likely to breach any duty or obligation under any relevant resource management or pollution legislation or the terms of any resource consents held by Pacific Gas or which is likely to result in the issue of an abatement order, enforcement proceedings or similar under the legislation.

#### **4.5 Joint and Several Liability**

Where the Customer is liable pursuant to the Agreement and more than one person or entity comprises the "Customer", then liability will be joint and several.

### **5. PACIFIC GAS'S RIGHTS & LIABILITIES**

#### **5.1 Pacific Gas's Rights**

5.1.1 Pacific Gas may, if in the sole opinion of Pacific Gas it is necessary and reasonable to do so, refuse to provide all or any part of the Services.

5.1.2 Pacific Gas may subcontract the Services (in whole or in part) on any terms.

5.1.3 Every exemption, limitation, condition, right, defence and immunity available to Pacific Gas will be available to protect a Subcontractor or any person who may be vicariously liable for the acts or omissions of Pacific Gas or a Subcontractor.

#### **5.2 Where Pacific Gas is Liable**

Subject to the limitations in clause 4 and this clause 5, Pacific Gas will be liable for:

- (a) physical loss or damage (but not for indirect, special or Consequential Loss or damage) to the Property; and
- (b) personal injury or death of the Customer's personnel,

where caused by the negligence of Pacific Gas, its employees or agents.

#### **5.3 Cap on Pacific Gas's Liability**

Pacific Gas's liability under clause 5.2 in respect of the sum claimed or the aggregate of sums claimed under any cause of action or entitlement shall not exceed, in respect of any one event or interconnected series of events, the maximum aggregate sum of AUD 20 million.

#### **5.4 Where Pacific Gas is not liable**

5.4.1 Other than under clauses 5.2 and 5.3, both the Property, use of the Premises, Gas and Gas Equipment is, at all times and in all circumstances, at the sole risk of the Customer and Pacific Gas will be under no liability whatsoever for any loss, damage or Consequential Loss sustained by the Customer or for any liability of the

Customer to third parties, howsoever caused including where Pacific Gas has been negligent, and such exclusion shall have the full effect permissible by law.

5.4.2 Pacific Gas will not be liable in any circumstances whatsoever for any:

- (a) loss, damage, expense, accident or injury to any property or person caused wholly or principally by the failure of the Customer to comply with any of these Standard Terms;
- (b) delay or other costs of transportation of any kind howsoever caused including as a result of the negligence of Pacific Gas, its employees or agents;
- (c) any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising out of a failure or negligence by any person, whether or not an agent, employee, or Subcontractor of PACIFIC GAS to properly and adequately secure any Property or Gas Equipment on any vehicle or other form of transport; and/or
- (d) costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising from any negligent failure to inspect Property or Gas Equipment, any failure to note or to report damage thereto (whether apparent or not), or any negligent failure to take steps to protect Property or Gas Equipment.

5.4.3 Other than under clauses 5.2 and 5.3, Pacific Gas will not be liable in any circumstances whatsoever for any:

- (a) loss of or damage to any Property, Gas or Gas Equipment;
- (b) death of or bodily injury to a person;
- (c) deterioration, contamination or evaporation of any Property, Gas or Gas Equipment;
- (d) delay in delivering or failure to deliver any Gas or Gas Equipment;
- (e) delay arising out of the breakdown of any plant, equipment or infrastructure; and/or
- (f) delay or failure to provide the Services.

## 5.5 Customer's indemnity to Pacific Gas

Irrespective of the negligence, breach of contract or wilful default of Pacific Gas or others, the Customer agrees to fully indemnify Pacific Gas, its employees and agents in all circumstances arising out of the provision of the Services and in respect of the Gas and Gas Equipment the subject of the Services in respect of any loss, cost, expense, demand, damage, claim, liability or compensation:

- (a) arising out of any claim or allegation made against Pacific Gas (other than by the Customer);
- (b) arising out of any claim for death of or bodily injury to a person made against Pacific Gas (other than by the Customer);
- (c) arising out of or caused by the negligence, breach of contract, breach of statutory duty, Gross Negligence or Wilful Misconduct of the Customer, its employees, agents or Subcontractors;
- (d) to the extent that the liability of Pacific Gas has been excluded under these Standard Terms; and/or
- (e) to the extent that the liability of Pacific Gas exceeds the limit on liability under clause 5.3.

## 5.6 Notification of Incidents

Any alleged loss, damage, death or personal injury must be notified to Pacific Gas at the time of the alleged incident. Written notice of the alleged incident must be given to Pacific Gas in accordance with clause 7.4 within 30 days of the alleged incident. If no such notice is given within this period any claim will be deemed waived and absolutely barred.

## **5.7 Non- Excludable Rights**

5.7.1 The parties acknowledge that:

- (a) under applicable laws, certain conditions and warranties may be implied in any contract and rights and remedies may be conferred on consumers which cannot be excluded, restricted or modified by agreement (the "Non-Excludable Rights"); and
- (b) notwithstanding any clause of this Agreement, the Non-Excludable Rights are not excluded, restricted or modified by these conditions except to the extent permitted by law.

5.7.2 The liability of Pacific Gas to the Customer for a breach of any Non-Excludable Right is limited, at Pacific Gas 's option to:

- (a) supplying the Services again; or
- (b) the payment of the cost of having the Services supplied again.

## **6. RELATIONSHIP MANAGEMENT**

### **6.1 Appointment of Representatives**

The parties may appoint representatives for the purposes of the Agreement and either party may change its Representative provided it notifies the other party of the new appointment.

### **6.2 Representative's Role**

The parties must ensure that their Representative is available at all reasonable times for consultation on the Supply or any other issues relating to the Agreement.

### **6.3 Dispute Resolution Procedure**

6.3.1 If a dispute arises in relation to the Agreement, the parties will endeavour to settle the dispute in good faith within 14 days of written notification of the dispute.

6.3.2 Failure to resolve Dispute

If the Parties have not:

- a) resolved the Dispute; or
- b) agreed to an alternative method of resolving the Dispute,

within 21 days after the notice of Dispute, either party may commence court proceeding in relation to the Dispute.

## **7. MISCELLANEOUS PROVISIONS**

### **7.1 Force Majeure**

7.1.1 A party (the "Affected Party") will not be responsible for any complete or partial failure to perform or delay in performing or incorrect performance of its obligations under the Agreement, save for the payment of money, if and to the extent that the delay or failure is caused by Force Majeure.

7.1.2 The Affected Party must use reasonable endeavours to resume fulfilling its obligations as promptly as possible and give prompt notice to the other party of the cessation of the Force Majeure.

7.1.3 The Affected Party must promptly give notice to the other party of the occurrence of the Force Majeure providing details of the Force Majeure and its anticipated likely duration and effect.

### **7.2 Confidentiality**

Each party must keep the terms of the Agreement confidential and must not cause or permit any persons to disclose the terms of the Agreement without the consent of the other party except:

- (a) where necessary for the exercise of any right or compliance with any obligation under the Agreement;

- (b) as required by law or the rule of a stock exchange; or
- (c) to lawyers, accountants and auditors of that party for the purpose of those persons providing services in that capacity to the party that engaged them.

### **7.3 Notices**

7.3.1 A notice, consent or other communication by a party under the Agreement must be in writing and in English and delivered by hand, certified mail or facsimile to the party's Representative at the address of the Representative or to such other addresses or facsimile numbers as a party may notify to the other from time to time in writing.

7.3.2 Notices sent by:

- (a) personal delivery shall be deemed to have been served at the time at which the notice was received;
- (b) certified mail shall be deemed to have been served on the date indicated on the return receipt; and
- (c) facsimile shall be deemed to have been served at the time the written confirmation of the successful transmission is received by the sender

provided that if a communication is given after 5.00 pm in the place of receipt or on a day which is not a Business Day in the place of receipt, it is taken as having been given at 9.00 am on the next day which is a Business Day.

### **7.4 Amendment and Assignment**

7.4.1 The Agreement can only be amended, supplemented, replaced or novated by another document signed by both parties.

7.4.2 The Customer's rights, interests, entitlements and obligations under the Agreement are not capable of being assigned or transferred without the prior written consent of Pacific Gas.

### **7.5 Expenses**

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering the Agreement.

### **7.6 Giving Effect to the Agreement**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to the Agreement.

### **7.7 Waiver of Rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

### **7.8 Consents**

The parties may agree or consent, not agree or consent, or agree or consent subject to conditions, in their absolute discretion unless the Agreement expressly contemplates otherwise.



## **7.9 Jurisdiction**

The Agreement will be governed and construed in accordance with the laws of Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Australia.

## **7.10 Relationship**

Nothing in the Agreement creates a relationship of employer and employee, principal and agent or partnership between the parties.

## **7.11 GST**

7.11.1 In this clause, a word or expression defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the meaning given to it in that Act.

7.11.2 If a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

7.11.3 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 7.12.2.

7.11.4 A party does not have to make a payment for a taxable supply made under or in connection with this agreement until it receives a tax invoice for the supply to which the payment relates.