



**MOREGAS PTY LTD**

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Moregas Pty Ltd Trading as Moregas ACN: 626 497 443 ABN: 63 626 497 443

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Reference:	<b>MG-I-SD-604</b>
Revision B	23.05.19

## Moregas Terms and Conditions

This booklet contains our standard terms and conditions for Moregas Goods and Services.

Please ensure you have read and understood these terms and conditions.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1. DEFINITIONS

In this Agreement unless inconsistent with the context or subject matter:

“**Australian Consumer Law**” has the same definition as Schedule 2 of the Competition and Consumer Act 2010 (Cth).

“**Control**” has the meaning given in section 50AA of the Corporations Act 2001 Cth;

“**Customer**” as defined within the SPA;

“**Cylinder**” means all vessels supplied and sold to the Customer for the purposes of storing various forms of gases and liquids;

“**Domestic User**” means:

- a) a person acquiring Goods of a kind ordinarily acquired for personal, domestic or household use or consumption;
- b) a person acquiring Goods at a price not exceeding \$40,000; or
- c) a person acquiring Goods of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- d) but excludes a person acquiring the Goods, or holding himself or herself out as acquiring the Goods for the purpose of:
  - i. re-supply; or
  - ii. using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.

“**Force Majeure Event**” means any cause beyond the reasonable control of Moregas including an act of God, war, fires, explosions, breakdown of machinery, transport or equipment, non-delivery or shortage of supplies, strike, lockout or other industrial disturbance;

“**Force Majeure Price**” is the price agreed by the Parties during the existence of a Force Majeure Event;

“**Gas**” means all forms of gas sold by Moregas;

“**Goods**” means materials and equipment sold and supplied to the Customer (including Gas and Cylinders);

“**Goods and Services**” means Goods and/or Services;

“**Cylinder Lease Purchase**” means any Goods sold to the Customer on extended credit terms as outlined by Schedule 1 of the SPA;

“**Moregas**” means Moregas Pty Ltd;

“**Moregas Goods**” means any Goods that Customer has not yet paid for in full (this includes Goods under Cylinder Lease Purchase arrangements with amounts still outstanding);

“**Moregas List Prices**” means the online list prices published as varied by Moregas from time to time and made publicly available ([www.moregas.net.au](http://www.moregas.net.au))

“**Moregas Terms and Conditions**” means this document;

“**Parties**” means both the Customer and Moregas;

“**Party**” means the Customer or Moregas;

“**PPSA**” means the Personal Property Securities Act 2009 (Cth);

“**Premises**” means the Customer’s premises as stated in Schedule 1 of the SPA or premises designated by the Customer for the delivery or storage of Goods;

“**Price**” means the price for Goods and Services determined in accordance with clause 3;

“**Related Body Corporate**” has the meaning given to that term in section 50 of the Corporations Act 2001 (Cth);

“**Services**” refers to all services provided by Moregas to the Customer and includes the delivery, installation and maintenance of Goods;

“**SPA**” means the signed Supply and Purchase Agreement for Gas Cylinders and Gas in Cylinders or liquids;

“**Term**” means the period defined within the SPA;

“**Title**” means the right to ownership of Goods;

### 1.2. INTERPRETATION

Unless the context otherwise requires:

- a) part headings, clause headings and under linings or both shall not affect the construction of this Agreement and references to parts, clauses and paragraphs are to be construed as references to the same in this Agreement; and
- b) words and expressions importing the singular number shall include the plural number and vice versa;
- c) words and expressions importing natural persons shall include any company, corporation, or other body corporate, partnership, joint venture, association, trust, unincorporated association or any government or semi-government authority, agency or instrumentality of whatsoever nature or kind and howsoever named or called and vice versa; and
- d) a reference to a party includes a reference to that party’s executors, administrators, successors and permitted assigns.

## 2. OFFER AND ACCEPTANCE FOR THE SUPPLY OF GOODS AND SERVICES

Unless expressly stated within the SPA:

- a) the Moregas Terms and Conditions shall apply to any order for Goods and Services by the Customer and accepted by Moregas, to the exclusion of any inconsistent terms and conditions stated, or incorporated, in the Customer's SPA;
- b) upon acceptance by the Customer of the Goods and Services on delivery, the Customer shall be deemed to have accepted the Moregas Terms and Conditions, to the exclusion of any other terms and conditions;
- c) the Moregas Terms and Conditions cannot be amended or varied unless expressly agreed in writing by Moregas;
- d) Moregas reserves the right to accept in whole or in part, any order by the Customer or to decline any such order. Any order or part order not accepted by Moregas is deemed void;
- e) verbal orders may be rejected if not expressly communicated in writing. Verbal orders must be confirmed in writing by the Customer within seven (7) days of the verbal order;
- f) the Customer agrees to purchase from Moregas all associated gases and/or cryogenic liquids comprised within all Cylinders ordered by the Customer and accepted by Moregas; and
- g) unless the Customer has a statutory right of rescission, orders accepted by Moregas shall not be cancelled either wholly or in part, nor may the Customer suspend deliveries thereunder without the consent in writing of Moregas.

## 3. PRICES FOR GOODS AND SERVICES

Moregas agrees to supply and the Customer agrees to pay the Price for the Goods and Services, and acknowledges that:

- a) if Prices are set out in the Contract;
  - (i) the Price will be as specified in the Contract; or
  - (ii) in all other cases, the Moregas List Prices for those Goods and Services current as at the date of the placement of order.
- b) except to the extent expressly noted in the Contract, Moregas reserves the right to vary the Prices for Goods and Services by written notice to the Customer. Such variation will:
  - (i) in respect of Goods or Services not yet ordered, apply with immediate effect to all subsequent orders; and
  - (ii) not apply to Goods or Services already provided but not yet invoiced.
- c) the Prices are determined by Moregas in its discretion, and may take into account production costs, purchase costs, importation costs, exchange rates, freight, storage, handling and tax and duty costs, market conditions, the Customer's estimated annual consumption of the relevant item, insurance and other costs incurred by Moregas in supplying the Customer with Goods and Services;
- d) the Price is exclusive of GST and other taxes or levies, except as otherwise stated in writing by Moregas;
- e) where the Price is stated in writing by Moregas to be inclusive of statutory charges and tax, any variation in statutory charges or tax between the date the Price is quoted and the date of delivery of the Goods and Services, which alters Moregas' liability for such statutory charges or taxes, shall be to the Customer's account and the Price shall be deemed to be varied accordingly; and
- f) no variation to the Price as allowed for in this clause 3 will entitle the Customer to terminate the Contract.
- g) a reference to pricing or Dollars, AUD or \$ is to an amount in Australia Currency.

## 4. PAYMENT PROVISIONS

### 4.1. FORM OF PAYMENT

Payment due under the Moregas Terms and Conditions shall be made by the Customer within fourteen (14) days of the date of Moregas' relevant invoice by way of electronic funds transfer, credit card, bank cheque, cash or money order. Payment shall not be treated as having been made until monies have been cleared. If these methods are not used, or if any payment is dishonoured or defaulted on, Moregas may charge reasonable administration fees for any extra processing or debt collection costs.

### 4.2. FAILURE TO PAY

If the Customer fails to comply with Moregas terms of payment in clause 4.1, Moregas may, without prejudice to any other remedy:

- a) until payment is made:
  - i. suspend supply of further Goods and Services to the Customer without notice to the Customer; and
  - ii. charge interest on all monies owing to Moregas at a premium of five percent above the then current Bank Bill Swap Reference Rate as quoted in the Australian Financial Review at the date the amount is due and payable or an equivalent rate determined by Moregas (acting reasonably) if this rate ceases to be published, is updated, suspended or discontinued; and
- b) review the existing payment terms without notice to the Customer.

### 4.3. ADDITIONAL INFORMATION AND CREDIT SUPPORT

Moregas may request, and, if requested, the Customer must deliver to Moregas:

- a) an unconditional irrevocable undertaking by a bank carrying on business in Australia, on terms acceptable to Moregas acting reasonably, to pay to Moregas on demand a reasonable pre-estimate of the Price;
- b) a guarantee by the directors and/or shareholders of the Customer;

- c) any other appropriate security, to secure the payment of the Price; or
- d) any additional information as required to allow a 14 day payment facility referred to in clause 4.1 to exist.

Moregas has recourse to any security referred to in clause 4.3 where the Customer fails to comply in any respect with its obligations under the Contract and after Moregas has notified the Customer in writing of its intention to have recourse to the security and the Customer does not remedy its failure to comply with the Contract within 5 days from the date of that notice.

## **5. INSURANCE**

### **5.1. PUBLIC LIABILITY INSURANCE**

The Customer must, at its own expense, take out and maintain current public liability insurance to a minimum of AUD 20 million for each and every occurrence covering legal liability to third parties in respect of property damage or loss or personal injury or death arising from the use of Moregas Goods and storage of Moregas Goods for such amount as Moregas considers reasonably appropriate from time to time. Such insurance must:

- a) name Moregas, its employees, contractors and agents as co-insured persons;
- b) include a cross-liability clause enabling one insured person to claim against the insurer even if the party making the claim against that insured person is also insured under the policy;
- c) operate so that all insuring agreements and indorsements, with the exception of limits of liability, operate in the same manner as if there were a separate policy of insurance covering each party comprising the insured;
- d) include a waiver by the Customer's insurers of all express or implied rights of subrogation against Moregas, its officers, employees, agents and representatives and against any of the parties comprising the insured;
- e) provides that acts, omissions, non-disclosures or misrepresentations by an insured shall not affect or prejudice the insurance in regard to any other insured; and
- f) requires the insurer to obtain a written consent to any change in the provisions referred to in clause 5.1.

### **5.2. PROVIDE PROOF OF INSURANCE**

The Customer must provide Moregas with copies of each of the policies of insurance required to be taken out and maintained by it in compliance with SPA and must further provide Moregas with a certificate of currency for each of the insurance policies whenever Moregas requests. To avoid doubt, Moregas not requesting or obtaining a copy of any insurance policy or evidence of the currency of any insurance policy shall not amount to a waiver by Moregas of the Customer's obligations pursuant to the SPA to take out and maintain the insurance policies.

### **5.3. ASSIST WITH CLAIMS**

The Customer must cooperate with and provide reasonable assistance to Moregas if Moregas claims under any of the insurance policies taken out by the Customer.

### **5.4. NOT TO VOID INSURANCE**

The Customer shall not at any time during the Term do or permit to be done any act, matter or thing which may vitiate or render void or voidable any insurance in respect of the Premises of the Moregas Goods.

### **5.5. CUSTOMER'S PERSONNEL**

- a) The Customer shall ensure that its personnel comply with any rules or directions of Moregas or others in respect of the Premises, the Gas or the Cylinders.
- b) The Customer shall be liable for, and shall indemnify Moregas in respect of:
  - i. any damage to the Premises caused by its personnel;
  - ii. any loss or damage to the property of any person caused or contributed to by its personnel; and/or
  - iii. personal injury to, or the death of, any person caused or contributed to by its personnel.

## **6. GST**

### **6.1. GST PAYMENT AMOUNT**

If a supply of the Goods and/or Services under these Moregas Terms and Conditions is subject to GST and the Price is not expressed to be GST inclusive, the Customer must pay to Moregas at the same time as the Price for the Goods and Services an additional amount equal to the amount of the Price payable multiplied by the applicable GST rate.

### **6.2. GST ADJUSTMENTS**

Where an adjustment event occurs in relation to a supply made by Moregas under or in connection with the Contract, Moregas will issue an adjustment note to the Customer in respect of that supply within 14 days after becoming aware of the relevant adjustment. Where Moregas becomes entitled to receive the amount of a variation from the Customer, the amount must be paid by the Customer within 14 days of Moregas providing the Customer with a valid adjustment note.

### **6.3. INPUT CREDITS ON REIMBURSEMENTS**

If a Party is required under the Contract to reimburse or pay to another Party an amount calculated by reference to a Price paid or incurred by that Party, then for the purpose of calculating the amount of the Price paid or incurred will be reduced by the amount of any input tax credits to which the recipient of the payment is entitled in respect of that Price.

### **6.4. TERMS DEFINED**

Unless clearly indicated to the contrary, terms which are defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause 6.

## 7. SUPPLY OF GAS AND GAS CYLINDERS

### 7.1. Supply

- a) The Customer may request that Moregas provide the Supply by delivering a Purchase Order to Moregas either orally or in writing (including by fax, letter or email).
- b) Subject to availability and clause 7.1, Moregas must accept a Purchase Order where the Customer is not in breach under this Agreement.
- c) Upon acceptance of a Purchase Order Moregas shall promptly and diligently provide the Supply to the reasonable satisfaction of the Customer and in accordance with the Agreement.

### 7.2. Gas

- a) Any residual Gas in the Gas Cylinders reverts to Moregas on Redelivery, and no allowance for value will be made against the Customer's account for such Gas.
- b) Moregas 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.

### 7.3. Valves

- a) The Customer must ensure that Gas Cylinders have all valves closed prior to being disconnected.
- b) The Customer must return Gas Cylinders to Moregas with all valves closed.

### 7.4. Customer Gas Cylinders

When you purchase a Gas Cylinder from Moregas, it will be quality checked and tested in accordance with the applicable Australian Standards. Moregas cylinders purchased by the customer may or may not be new cylinders, however all Moregas cylinders issued will be within their test date and checked by a Registered Australian Test Station. Refills are done on an exchange basis where Moregas swap your empty cylinder and provide you with a full one in return.

The Customer will be responsible for the safety and security of their Cylinder and will comply with all statutory and other regulations in relation to the maintenance and use of their Cylinder. At the time of refilling the Cylinder must be of serviceable condition.

## 8. CONDITIONS REGARDING DELIVERY OF GOODS AND RENDERING OF SERVICES

The Customer acknowledges and accepts that:

- a) Moregas will, at the Customer's request, deliver or arrange delivery of all Goods to the Customer and the Customer shall be responsible for all applicable delivery charges for Goods delivered to the Premises;
- b) dates for delivery of Goods or for the rendering of Services are estimates only and Moregas shall not be liable to the Customer for any delays in delivery;
- c) if the Customer (or its representative) is not present or not available at the Premises during delivery, Moregas remains entitled to deliver the relevant Goods at the Premises, and risk in such Goods will pass in accordance with clause 10. Where, in order to deliver or collect Goods or render the Services, Moregas or its carrier enters the Premises, the Customer shall provide full and safe access to Moregas or its carrier and shall be liable for and indemnify Moregas against all losses, damage to property and injury to, or death of, persons, occurring directly or indirectly as a result of the failure by the Customer to provide full and safe access;
- d) the Customer is responsible for providing adequate labour and/or materials and handling equipment for the loading and unloading of Goods at its Premises.
- e) if at the Customer's request or through the Customer's failure to give appropriate forwarding instructions, Goods are not dispatched from Moregas' premises within 14 days of Moregas' notification that the Goods are ready for dispatch, Moregas will be entitled to invoice and receive payment for the Goods as though the Customer had taken delivery of the Goods.
- f) where in the circumstances envisaged in clause 6(e) Moregas sees fit, or the Customer requests, that the Goods be stored, then all the charges for such storage shall be payable by the Customer;
- g) unless otherwise established by written evidence to the contrary, Moregas' records and documentation (including, but not limited to Moregas' delivery logs or dockets, and Moregas' electronic cylinder tracking database records) will be conclusive evidence of the:
  - i. date of delivery of any Goods or Services; and
  - ii. quantity and description of any Goods or Services delivered, (together, **Delivery Records**), irrespective of whether any Delivery Record is provided to the Customer at the time of delivery.

## 9. CONDITIONS REGARDING RETURN OF GOODS

The Customer acknowledges and accepts that:

- a) any return of Goods (other than in situations where the Seller is required to accept a return of goods under the Australian Consumer Law) must be approved by Moregas;
- b) unless any right is non-excludable under applicable legislation, Goods will not be accepted by Moregas as suitable for credit unless the Customer:
  - i. supplies the invoice number and date;
  - ii. returns the Goods in their original unmarked and undamaged condition and with all the documentation such as instruction sheets; and
  - iii. pays all transportation costs, and any reasonable handling fee imposed by Moregas, applicable for the return of the Goods.

- c) in the event that Moregas agree to collect the Goods from the Customer, it shall be the Customer's responsibility to make sure that the Goods are available for collection at an easily accessible and safe location and that they are ready for loading on arrival of Moregas to collect them;
- d) where Goods are returned by the Customer to Moregas, it shall be the Customer's responsibility to ensure that they are returned in a safe condition (complying with all relevant legislation) as regards to the risk to persons handling them and to persons in the vicinity and as regards to the risk of damage to the Goods themselves;
- e) Moregas disclaims liability for any damage to or loss of Goods returned which occurs whilst in transit to or from Moregas other than where Moregas delivers the Goods or collects them for return. Goods not accepted as suitable for return may be returned to the Customer together with a charge for outward freight where applicable;
- f) where replacement of any Goods or part thereof without charge for replacement Goods, the Goods replaced or part thereof replaced become the property of Moregas; and
- g) the Customer warrants that it is not party to any binding exclusive supply arrangement with another supplier for the Goods or Services to be supplied to the Customer by Moregas pursuant to the Moregas Terms and Conditions or any SPA.

## **10. RISK, TITLE AND PPSA**

The Customer and Moregas acknowledge and accept that:

- a) risk shall pass to the Customer on delivery or collection of the Goods;
- b) Title to the Goods is only transferred to the Customer when the Customer has paid all sums owing to Moregas in respect of those Goods;
- c) until all payments for the Goods have been made the Customer holds the Goods as bailee for Moregas and shall safely and securely store the Goods separately from other Goods on the premises of the Customer or in some other way render them capable of separate identification;
- d) both Parties consent to the other perfecting any security interest under the Moregas Terms and Conditions which arises by operation of the PPSA in any property by registration under the PPSA and agrees to do anything reasonably requested by the other Party to enable it to do so;
- e) the Parties contract out of each provision of the PPSA which, under section 115(1) of that Act, they are permitted to contract out of, other than:
  - i. sections 117 and 118 (relationship with land laws); and
  - ii. sections 134(1) and 135 (retention of collateral and notice of retention).
- f) each Party waives its right to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive; and
- g) each Party waives its rights to receive anything from any other Party under section 275 of the PPSA and agrees not to make any request of any other Party under that section.

## **11. SAFETY DATA SHEETS AND SPECIFICATIONS**

The Customer acknowledges and accepts that:

- a) terms of the SPA and all technical information supplied by Moregas to the Customer must be treated by the Customer as confidential and the Customer must not divulge such information to third persons without Moregas' written consent. The Customer must not infringe any copyright in any technical information supplied by Moregas;
- b) all technical information (including catalogues, illustrations, drawings, specifications, and the particulars of weight and dimensions) supplied by Moregas to the Customer is approximate only and, to the extent permitted by law, Moregas gives no warranty and makes no representation in respect to the correctness, compliance, adequacy or otherwise of that technical information. To the extent permitted by law, the Customer agrees that it uses that technical information at its own risk;
- c) to the extent permitted by law, the Customer indemnifies Moregas against all proceedings, claims, actions, costs loss and damage whatsoever and howsoever caused arising directly or indirectly from any breach of clause 11 or from the Customer's use of technical information supplied by Moregas; and
- d) to the extent permitted by law, Moregas provides no warranty and makes no representation as to the correctness, compliance, adequacy or otherwise of any information in relation to the use, storage and handling of the Goods that is provided to the Customer by Moregas employees or agents. The Customer agrees that it is responsible for obtaining for its personnel all necessary training in the safe and lawful use, storage and handling of the Goods.

## **12. FORCE MAJEURE**

### **12.1. FORCE MAJEURE EVENT**

The Customer acknowledges and accepts that:

- a) Moregas shall be excused from its obligations under the Contract to the extent that its ability to perform is prevented, restricted or affected by a Force Majeure Event; and
- b) subsequent to a Force Majeure Event, Moregas may in its absolute discretion give prompt notice of the Force Majeure Event to the Customer. On delivery of that notice Moregas is excused from its obligation to the extent of the relevant prevention, restriction or effect.

### **12.2. FORCE MAJEURE PRICE**

Despite any obligation on Moregas either at law or under the Contract, the Customer agrees that Moregas will be deemed to be prevented from performing its obligations under the Contract where there is a Force Majeure Event if it is only able to perform by incurring increased or additional costs. Despite this, Moregas may agree to supply Goods and Services to the Customer from an alternative source subject to Moregas and the Customer agreeing a Force Majeure Price payable for those Goods and Services.

### **12.3. ALTERNATIVE SUPPLY SOURCE**

Reference:	<b>MG-I-SD-604</b>
Revision B	23.05.19

If Moregas is granted relief under clause 12.1 by reason of a Force Majeure Event, the Customer may, after notifying Moregas in writing, acquire refills from an alternative source up to the time when Moregas is able to resume refilling of the Goods.

#### **12.4. LICENCE TO ENTER PREMISES**

The Customer grants to Moregas and its authorised representatives a licence to enter upon and egress from the Premises and any other premises of the Customer required to gain access to the Premises, for the purpose of delivering, installing, inspecting, repairing, altering and removing the Cylinder/s.

### **13. LIABILITY**

#### **13.1. LIMITED LIABILITY**

The Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law guarantee certain conditions, warranties and undertakings, and give you other legal rights, in relation to the quality and fitness for purpose of consumer goods sold in Australia. These guarantees cannot be modified nor excluded by any contract. Nothing in these terms and conditions purports to modify or exclude the conditions, warranties, guarantees and undertakings, and other legal rights, under the Australian Consumer Law and other laws which cannot be modified or excluded. Except as expressly set out in the Moregas Terms and Conditions and the Australian Consumer Law, Moregas makes no warranties or other representations under the Moregas Terms and Conditions. Moregas' liability in respect of these warranties, representations, undertakings and guarantees is limited to the fullest extent permitted by law.

#### **13.2. PURCHASES BY DOMESTIC USERS**

Without limiting clause 13.1, where Moregas sells Goods to the Customer, and the Customer purchases them as a Domestic User, then the Australian Consumer Law provides certain guarantees in relation to the goods. The rights of the Customer buying goods as a Domestic User include:

- a) Moregas' goods come with guarantees that cannot be excluded under the Australian Consumer Law;
- b) a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage; and
- c) to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

#### **13.3. OBLIGATIONS OF MOREGAS**

To the extent permitted by statute, the liability, if any, of Moregas arising from the breach of any implied conditions or warranties, or failure to comply with a statutory guarantee under the Australian Consumer Law, in relation to the supply of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, shall at Moregas' option be limited to:

- a) in the case of Goods:
  - i. the replacement of the faulty Goods or the supply of equivalent goods;
  - ii. the repair of the Goods;
  - iii. the reimbursement of the cost of the repair of the Goods; and
  - iv. the payment of the cost for the repair of the Goods; and
- b) in the case of Services:
  - i. the re-supply of the Services; or
  - ii. the reimbursement of the cost of having the Services supplied again.

#### **13.4. LIMITATION OF LIABILITY**

Notwithstanding any other provision of these terms and conditions or any Contract:

- a) subject always to paragraph (b), Moregas' maximum aggregate liability in respect of Goods or Services supplied in a given calendar year in connection with:
  - i. the Moregas Terms and Conditions; or
  - ii. the SPA,

in each case whether in contract, in tort (including but not limited to negligence), in equity, under any warranties or indemnities, by operation of statute or otherwise, will, to the extent permitted by law, be limited to the aggregate of all Prices paid by the Customer to Moregas in respect of the same calendar year; and

- b) Moregas is not liable under or in connection with these terms and conditions or a Contract, whether such liability arises in contract, breach of warranty, indemnity, tort (including without limitation negligence), strict liability or otherwise, for any kind of loss of opportunity, loss of revenue, loss of production, loss of profit or anticipated profit, loss of contract, loss of goodwill or loss arising from business interruption, or indirect or consequential loss or damage incurred or suffered by a party, or any other person, even if those damages or losses may reasonably be supposed to have been in the contemplation of the parties at the time they entered into the SPA.

#### **13.5. NOTIFICATIONS OF INCIDENTS**

- a) Any alleged loss, damage, death or personal injury must be notified to Moregas at the time of the alleged incident. Written notice of the alleged incident must be given to Moregas 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.

### **14. TERMINATION AND REMEDIES FOR BREACH**

#### **14.1. TERMINATION EVENTS AND REMEDY**

If:

- a) any payment by the Customer is outstanding for more than five (5) days after the due date;
- b) the Customer breaches any of these Moregas Terms and Conditions;
- c) the Customer is or becomes Insolvent;
- d) the Customer is subject to a change (whether by way of sale, grant of trust, contractual arrangement, court order, or otherwise) in a party or parties that Controls the Customer,

without prejudice to any other rights or remedies Moregas has under these terms and conditions, at law, in equity or by statute:

- e) Moregas may immediately terminate the Contract by notice in writing to the Customer;
- f) in respect of events in paragraphs (a) and (c), the Customer shall, should Moregas so require, deliver up the Goods to Moregas failing which Moregas is irrevocably authorised to lawfully enter at any time by its servants or agents the place where the Goods are situated and to repossess the Goods, and to remove the Goods from any vessel, vehicle or other place whether or not they have at any such time become fixed to any vessel, vehicle, thing or place and for this purpose Moregas is hereby appointed the Customer's agent. The Customer agrees to indemnify Moregas and keep Moregas indemnified against all costs reasonably incurred by Moregas in removing the Goods and against all claims against Moregas arising from such removal; and
- g) in respect of Moregas Goods, Moregas may give notice to the Customer in writing that all Moregas Goods held by the Customer (if any) are required to be returned to Moregas or that the Customer pays to Moregas the value of the Moregas Goods not returned. If the Customer does not return the Moregas Goods or make the payment within five (5) days of receipt of the notice, Moregas may:
  - i. enter any premises where Moregas Goods are expected to be and take possession and retain them (and in the case of Cylinders together with any gas remaining therein). In these circumstances, Moregas shall not reimburse the Customer for any unused gas; and
  - ii. invoice the Customer, by way of liquidated damages, for demurrage at the Moregas List Prices for the Moregas Goods of that type from the date of Moregas' notice under clause 14.1(g) to the date upon which Moregas receives full payment pursuant to notice under clause 14.1(g) or repossesses the Moregas Goods pursuant to clause 14.1(g)(i) as the case may be.

#### **14.2. TERMINATION FOR CONVIENIENCE**

Moregas may terminate any Contract on 30 days' written notice to the Customer. Where the Customer has pre-paid any portion of the Price for any Goods, Moregas will refund a portion of that payment on a pro-rata basis by reference to the unexpired portion of the pre-paid Goods.

#### **14.3. EFFECT OF TERMINATION**

Upon the termination of the Contract for any reason, Moregas may remove any Moregas Goods from the Premises and the Customer shall pay to Moregas a removal charge. This removal charge will be determined by Moregas by reference to its costs incurred in undertaking that removal, by reference to the current market costs at the time of termination of the Contract.

#### **14.4. SURVIVAL**

Clauses 6, 10, 11, 13, 14.1, 15.2, 15.3, 15.5, 15.7, 15.12, 15.13 and 15.14 will survive termination or expiration of any SPA under the Moregas Terms and Conditions.

### **15. MISCELLANEOUS**

#### **15.1. CYLINDERS FROM ALTERNATIVE SOURCES**

Where the Customer requests Moregas to refill cylinders not supplied by Moregas, Moregas may at the Customer's expense inspect and test such cylinders prior to each refill in order to determine compliance of the cylinders with all relevant standards of the Standards Association of Australia and statutes, regulations or orders. Moregas may refuse to refill a cylinder if in Moregas opinion it does not comply with any such standards, statutes, regulations or orders.

#### **15.2. GOVERNING LAW AND JURISDICTION**

The Moregas Terms and Conditions and any Contract shall be governed by and construed in accordance with the laws of the state that the transaction is conducted i.e. if the transaction is in Queensland (QLD) it will be under Queensland Law, if the transaction is in Western Australia (WA) it will be under Western Australian Law.

#### **15.3. LIENS**

Additional to any lien to which Moregas may be entitled, Moregas shall, in the event Insolvency of the Customer, be thereupon entitled to a general lien on all property whatsoever owned by the Customer and in Moregas' possession at the time, such lien to cover the unpaid Price of any Goods and Services supplied by Moregas to the Customer.

#### **15.4. LICENCES AND PERMITS**

The Customer must ensure that, in respect of all Goods and Services supplied by Moregas to the Customer, all licenses and permits needed by the Customer under relevant statute, ordinance or related rule or regulations are obtained.

#### **15.5. NOTICES**

Any notice required to be given hereunder shall be in writing and delivered or sent by email or pre-paid post to the address of the recipient as set out in this SPA or to such other address as the recipient from time to time may notify to the other party. Service of any such notice shall be deemed to be effected:

- a) in the case of delivery, upon receipt;
- b) in the case of a letter, on the second business day after posting; and
- c) in the case of email to an authorized representative of the other Party, when the email comes to the attention of the recipient

party or a person acting on its behalf, but in any event no later than 2 calendar days after the delivery, receipt or transmission of that email;

#### **15.6. ASSIGNMENT**

The Customer shall not assign any of the rights or obligations under the Contract without the prior written consent of Moregas (not to be unreasonably withheld).

#### **15.7. NON-WAIVER**

Failure by a Party to insist upon strict performance by the other Party of any Moregas Terms and Conditions contained herein shall not be taken to be a waiver thereof or of any rights of such Party in relation thereto and in any event shall not be taken to be a waiver of the same terms and conditions on any subsequent occasion.

#### **15.8. ENTIRE AGREEMENT**

The Moregas Terms and Conditions and any documents attached or expressly incorporated into the Moregas Terms and Conditions constitute the entire agreement between the Parties and all other matters (including any terms included with the Customer's SPA) are expressly excluded.

#### **15.9. NO RELIANCE**

The Customer acknowledges that it has not been induced to accept these Moregas Terms and Conditions and enter into the Contract by any representation made by or on behalf of Moregas. The Customer has not relied on Moregas' skill and judgement and the Customer has satisfied itself that the Goods are suitable for the Customer's purposes.

#### **15.10. VARIATION TO THE TERMS AND CONDITIONS**

Moregas may from time to time vary the Moregas Terms and Conditions at its sole discretion without notification, provided that any variation to the Moregas Terms and Conditions will not apply to:

- a) orders or transactions that remain outstanding prior to the date of such variation; or
- b) any contract for a specified term that incorporates a version of the Moregas Terms and Conditions released prior to the variation.

#### **15.11. SEVERABILITY**

In the event of any of the clauses or sub-clauses of the Moregas Terms and Conditions being held to be invalid, illegal or ineffective by any court or tribunal for any reason whatsoever, the Moregas Terms and Conditions shall be construed and shall continue to be binding upon the parties as if such clause or sub-clause had been deleted from the Moregas Terms and Conditions altogether.

#### **15.12. GENERAL INDEMNITIES**

The indemnities in the Moregas Terms and Conditions are continuing obligations, independent from the other obligations of the Parties and continue after the SPA ends. It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity under the Moregas Terms and Conditions.

#### **15.13. CONFIDENTIALITY**

- a) The terms of the SPA and Moregas' information made available to the Customer at any time together with any information that concerns the business, intellectual property, operations, finances, plans or Customers of Moregas (or its Related Body Corporate) disclosed to or acquired by the Customer (including any information that is derived from such information), but does not include information which:
  - i. is or becomes public knowledge other than by a breach of the SPA;
  - ii. is in the possession of the Customer without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Customer; or
  - iii. has been independently developed by the Customer or acquired from a source which was not subject to a duty of confidentiality to the Moregas;
- b) The Customer must not advertise or issue any information, publication, document or article (including photographs or film) for publication or media releases or other publicity relating to the Services, the SPA or Moregas' Confidential Information without the prior written approval of Moregas.
- c) The Customer must not, and must ensure that its personnel do not, without the prior written approval of Moregas:
  - i. use Confidential Information other than as necessary for the purposes of fulfilling its obligations under this Contract; or
  - ii. disclose the Confidential Information, other than to its personnel who need the information to enable the Customer to perform this Contract, to the Customer's legal advisors, accountants or auditors.

#### **15.14. TIME OF THE ESSENCE**

In respect of any provision of the SPA requiring the Customer to do any matter or thing or pay any money within a stipulated time, time shall be of the essence.

#### **15.15. MOREGAS' RIGHT TO ASSIGN**

Moregas may (subject always to the rights under the SPA of the Customer) sell or assign either absolutely or by way of security its rights under the SPA and relating to the Moregas Goods.

#### **15.16. RELATIONSHIP OF PARTIES**

The Customer shall not hold itself out as being an agent of Moregas for any purpose and to avoid doubt, must not on behalf of Moregas make any representation, warranty, covenant or condition in relation to the Goods and Services or their uses, to any party.