

# GENERAL CONDITIONS

These General conditions shall form an integral part of the Supply Agreement or Customer Purchase Order executed among the parties and shall be effective for the duration as mentioned in the said agreement. The word "Agreement" wherever used hereinafter shall mean the agreement executed between the parties mentioned hereinabove or customer Purchase Order issued by the Buyer.

## 1. DEFINITIONS

Unless otherwise provided herein, the following terms or words shall mean:

- i. **"Delivery Point"** means the site where Packaged Gases is received by Buyer
- ii. **"F.O.R. Delivery"** means delivery of Packaged Gases at Buyers designated premises agreed upon.
- iii. **"Packaged Gases"** means those Gases defined in the terms of the Agreement with specifications and indicative quantities required.
- iv. **"Commencement Date"** means the date of Signature of the Agreement by the Seller.
- v. **"Initial Term"** is the period starting from the date of signature of this contract.
- vi. **"Service"** means all kind of specific task required by Buyer, accepted and confirmed by the Seller in the relevant paragraph in the Terms of the Agreement.

## 2. SUPPLY AND PURCHASE SPECIFICATIONS

- 2.1 **Ordering**  
Buyer shall order Packaged Gases during the normal working hours of Monday to Friday, from 9.00 hrs to 18.00 hrs. Buyer shall give Seller reasonable advance notice when ordering Packaged Gases. All orders made by telephone shall be confirmed by fax or e-mail within the same day. Seller reserves the right to change the days and the quantities of Packaged Gases to be delivered, provided it has informed Buyer thereof. Seller shall deliver Packaged Gases between 48-72 hours from time of orders subject to Buyer's compliance to Commercial Terms in case of standard products else as per the availability of product, which shall be communicated to the Buyer.
- 2.2 In case Buyer fails to inform Seller on time and Buyer request an urgent delivery be made, Seller will make its best efforts to fulfill Buyer's request but no guarantee is given on actual delivery time and Buyer will have to pay 15% surcharge on the invoice value as additional costs associated with such urgent delivery.
- 2.3 In order to have a regular smooth delivery Buyer agrees to provide Seller with non-binding monthly delivery schedule in advance for preplanning of schedules. The Parties will meet in the event of any significant change in the Buyer's Packaged Gases needs. Depending on the extent of significant change, Seller shall inform the Buyer of the lead time needed to meet the additional Packaged Gases needs of the Buyer.
- 2.4 Packaged Gases shall be delivered to the Buyer and empty Cylinders/Pallets shall be taken back at a unique delivery point, such as a storage area located in direct proximity of the vehicle to which Seller will have easy access using heavy goods vehicles.
- 2.5 Buyer agrees to exchange equal number of empty Cylinder/Pallets which Seller is delivering. In case, Buyer is unable to exchange equal number of Cylinder/Pallets; Seller shall charge delivery fee to recover such empty Cylinder/Pallet as defined in the agreement or Seller's proposal.
- 2.6 Buyer shall be responsible to provide an adequate and safe storage area for the Packaged Gases supplied by Seller. Buyer shall get permits from the concerned authorities to store all Packaged Gases on its premises. Seller will have no obligation to supply in case Storage area is not adequate as per Industry standards or if Buyer has not received the necessary permits.
- 2.7 Buyer shall allow Seller's delivery vehicles of all sizes to make deliveries 24 hours a day, 7 days a week. Total Loading & unloading time at the Buyer's premises shall not be more than 3 hours. In case

Seller's vehicle takes more than 3 hours to leave from Buyer's premises; Seller will charge Vehicle holding charges @ of Rs1, 000 per hour for additional time Vehicle takes to leave from Buyer's premises.

- 2.8 Seller shall have the right for operational conveniences to deliver Packaged Gases more frequently than requested by Buyer.
- 2.9 For each delivery, Seller will provide a delivery note to Buyer who shall sign its acceptance of the quantity of Packaged Gases delivered and taken back. Such information shall be checked upon delivery. It shall be used to invoice Packaged Gases, the holding charges and the delivery charges.
- 2.10 **Measurement of Quantity Delivered**  
The quantity of Packaged Gases delivered shall be determined by any method regularly used by the Seller for this type of delivery.
- 2.11 **Transfer of Ownership**  
Title to the gas in cylinders shall be transferred to the Buyer as soon as the cylinder containing the gas is delivered to the Buyer.

## 3. SAFETY

- 3.1 Seller will provide Buyer with the Safety Data Sheet for each Packaged Gases, which forms an integral part of the present Agreement.
- 3.2 Seller will provide Buyer with the Internal Safety Rules and Safety recommendations based on Project Risk Identification (PRI) conducted by Seller, which shall be compiled and maintained by the Seller.
- 3.3 Seller and Buyer will jointly establish a "Prevention Plan" for all work performed by Seller at Buyer's site and a "Safety Protocol" related to all deliveries performed by Seller at Buyer's site.
- 3.4 Seller warrants that it has all necessary permits and licenses to deliver the Packaged Gases mentioned in the Agreement.

## 4. OWNERSHIP OF CYLINDERS

- 4.1 The Seller shall ensure supply of Packaged Gases in its acquired Cylinders;
- 4.2 The Cylinders shall always belong to the Seller and shall not be used / filled by any other party without prior written permission from the Seller. After termination of this agreement, or any subsequent term, all the Cylinders will be returned to the Seller without any extra cost. Buyer shall not have any lien or charge over the cylinders supplied by the Seller.
- 4.3 The Buyer shall be responsible for custody and protection of the cylinders during holding of such cylinders in stock at the buyers' site. The Buyer will authorize Seller's personnel to check the number and the conditions of cylinders holding Packaged Gases at the Buyer's premises.
- 4.4 The Seller shall be responsible for taking back the cylinders upon notification of the Buyer.

## 5. LIABILITY, INSURANCE, INDEMNITY & DEMURRAGES.

- 5.1 **Liability**
  - (a) Seller's liability is strictly limited to the scope of this Agreement. Seller shall not be liable for any loss or damage caused to Buyer and/or any third party resulting from any event, which is beyond Seller's control and/or due to any fault or negligence of Buyer and/or of a third party. In the event the Seller has to pay any amount in respect of claims or demands as aforesaid or incur any costs, the amount so paid shall be charged to and paid by Buyer within 30 days of demand by Seller.
  - (b) Subject to Clause 5.1 (a), in the event Buyer can prove that it has suffered any loss or damage due to Seller, Seller shall be only liable for direct damages up to the maximum sum of three months of sales or Fifty thousand (50,000) INR per event, whichever amount is lower, and fifteen months of sales or two (2) lakh INR, whichever amount is lower, for the entire duration of the Agreement. Buyer shall be responsible for any and all claims of its employees, officers, agents etc.,

- including but not limited to death, disability, injury, damage to property etc.
- (c) Seller and Buyer acknowledge that there are hazards associated with the use of Packaged Gases and each agrees that its personnel concerned with Packaged Gases are aware of the hazards and each party assumes all responsibility for the warning of its employees and independent contractors of all hazards to persons and property in any way connected with Packaged Gases. The Buyer also assumes all responsibility for the results of using Packaged Gases in combination with other articles or substances and in any manufacturing process. Each party shall be responsible for the acts/omissions and/or consequences of such acts/ omissions of their respective employees.
- d) Regardless of the circumstances, neither party shall be liable to the other for any incidental, special, exemplary, consequential, contingent, direct and indirect damages, including but not restricted to loss of profit, loss of production, business interruption, and interruption of services or punitive damages arising from the sale of or use of Packaged Gases under this Agreement. Buyer waives any such claims and shall obtain from its insurers an equivalent waiver of the right of recourse. This clause shall also apply in case of Termination of this Agreement.
- e) Subject to limitation of liability herein, the parties shall be liable to each other for any loss or damage suffered as a result of the breach by the other party of any one or more of its obligations under this Agreement. The parties recognize that, with respect to breaches of this Agreement (and acts or omissions, which constitute breaches), their relationship with each other is contractual and that neither party shall have any claim against the other in tort with respect to such breaches (acts or omissions). This clause is not intended to exclude a party's right of contribution or indemnity against the other to the extent such right would be available by contract or in law or equity.

## 5.2 Insurance

Buyer undertakes to take an insurance covering any financial consequence of its civil liability which may arise under this Agreement, including but not limited to civil liability with respect to its employees, third parties and anything located at its premises (including the Storage Area). Each party will take appropriate insurance coverage for its property. Any injury of any kind caused to each party's employees shall be borne by their employer.

## 5.3 Indemnification

Buyer shall indemnify, defend, and hold harmless Seller (including its successors, affiliates and assigns) and its respective directors, officers, employees, agents, etc. (the "Indemnified Persons") against any and all loss, expenses, costs, third party claims, damages, liabilities or fees (including legal fees and expenses) that the Indemnified Persons may suffer arising out of:

- (a) breach by Buyer of any of the terms contained herein;
- (b) failure by Buyer to perform any of its obligations hereunder;
- (c) any material inaccuracy in any representation, warranty or covenant of Buyer set forth in this Agreement;
- (d) damage or loss to property, personal injury or death of any person whomsoever (other than the employees of Seller) that is not caused by and is not attributable to any act or omissions of Seller and/or its employees, directors, officers, agents, etc., except to the extent such damage or loss is caused by the gross negligence or willful misconduct of, or breach of this Agreement by, Seller or any of its respective officers, directors, employees, servants or agents; or
- (e) claims or sanctions or penalties imposed by any governmental instrumentality for any failure by Buyer or any of its respective officers, directors, employees, servants or agents to comply with any applicable laws or for any contravention of such laws by Buyer.

## 5.4 Demurrages

- i. Buyer to communicate in writing if he finds any of the assets (Cylinder, Valve, Pallet etc.) supplied by the Seller to be

- ii. damaged/defective within 24 hours from the receipt of material.
- iii. After receipt of the assets at Seller's plant, Seller shall conduct inspection of the assets and intimate Buyer within 2 working days for any damages/breakdown/intervention to the Buyer.
- iii. In case of breakdowns/damage of assets of the Seller caused by the Buyer, its agents, contractors or third Parties at the Location, for the first incident; Rs. 10,000 or the costs (including labor costs) of maintenance and repair, replacement, to be performed by the Seller, whichever is higher, will be invoiced by the Seller to the Buyer for conditions below and Buyer shall clear the same immediately from the receipt of invoice including without limitation:
  - (a) Any mistake, deliberate or not, made by the Buyer, its agents, contractors or third Parties at the Location;
  - (b) Any intervention on the assets of the Seller made by the Buyer, its agents, contractors or third Parties at the Location, without Seller's prior approval.
- iv. In case of subsequent repetition of similar breakdown/damages Buyer will be warned by the Seller & invoiced Rs. 50,000 or 3 times the actual cost, whichever is higher,
- v. However, if the similar incidents are repeated, Buyer will have the Right to stop supplies or terminate the contract without any contractual obligation on the Seller.

## 6. WARRANTIES

Seller warrants that Packaged Gases delivered to Buyer complies with the standards of the Gas Industries Association and Air Liquide standards and agreed specifications. If Packaged Gases does not conform to warranty, Buyer's sole remedy is to require Seller to remove such non-conforming Packaged Gases from the Storage systems and if need be, to decontaminate the Storage systems and to replace the nonconforming Packaged Gases at Seller's cost. Seller makes no warranty of any kind, express or implied, including without limitation, warranties or merchantability and fitness for a particular purpose.

## 7. FORCE MAJEURE

- 7.1 Should either party be prevented, delayed or restricted from performing its obligations under this Agreement for causes beyond its reasonable control (such causes to include, but not to be limited to, national or general strikes, riots, accidents, road traffic situations, fires, explosions, machinery breakdown, acts of God or the public enemy, floods, wars, winds, storms, sabotage, incendiaries and any acts, law or regulations by or of civil or military governmental authorities, major government change in monetary policy, whether valid or invalid, failure of equipment or apparatus, curtailment by Electricity connection or failure in obtaining sufficient electricity, or other type of energy), separately or collectively "event of Force Majeure" such party shall be relieved of its obligations to the extent and for so long as such obligations are affected by such causes, except monetary obligations.
- 7.2 Immediately following the date of commencement of any Event of Force Majeure, the Party desiring to invoke such Event of Force Majeure as an acceptable cause for delay in the performance of any obligation hereunder shall advise the other party in writing of such date and the nature and expected duration of such Event of Force Majeure. The parties shall make all reasonable efforts to prevent, mitigate and reduce these to a minimum.
- 7.3 The duration of this Agreement shall be extended by the length of time, if any, during which either party is unable to perform its obligations due to Force Majeure.

## 8. PRICING

- 8.1 The Buyer shall pay to the Seller for Packaged Gases and services in accordance with the prices set out in the Agreement. Such prices shall be subject to adjustment according to the price variation clause. In case of one of the index ceases to be published or if the methodology of determining Seller's cost becomes inconsistent with such indexes, Seller and Buyer will determine a new basis or

published index which will reflect price adjustment on an equitable basis.

- 8.2 The Cylinder holding charges shall be charged extra & will be billed at the end of each month for actual holding days of each Packaged Gases cylinder. Cylinder Holding days for this purpose shall be the difference between the actual date of return of a cylinder and the actual date of invoicing of the same, both days inclusive.
- 8.3 The Hazardous Material Fee or Statutory License Fees if applicable as per the statutory rules & regulation shall be charged extra for Packaged Gases cylinder delivered to Buyer.
- 8.4 The Delivery charges are not included in the price agreed between Buyer & Seller & will be charged extra.
- 8.5 The Monthly charge if applicable shall be charged extra at the beginning of each month.
- 8.6 All prices mentioned do not include any Excise Duty, Sales Taxes, VAT and other duties and taxes imposed / imposable by the Government which shall be added to the basic price in the invoice and paid by Buyer according to prevailing tax regulations and tariffs in application at the time of delivery.

## 9. PAYMENT TERMS

- 9.1 Starting from Commencement date, and for the duration of the present Agreement, invoicing shall be done for each supply, trip charges, rentals & other services if any as and when required and invoices shall be paid to Seller strictly as per the terms agreed in the agreement.
- 9.2 All payment of invoice to the Seller shall be full amount, net of bank charges or commissions, if agreed; and tax deducted at source, if any. All payments shall be made and payable on or before the due date by way of check or demand draft favoring the Seller and payable at Seller's location concerned.
- 9.3 All late payment will be calculated from the overdue amount and charged with a penalty rate of prevailing Bank Rate plus 3%.
- 9.4 In case of nonpayment of any invoice within the payment terms, Seller can choose to require advance payment prior to all new delivery of Packaged Gases.

## 10. DURATION

- 10.1 This supply agreement shall become effective immediately upon signature by Buyer and Seller and shall continue in full force and effect for the Initial Term. It will be automatically renewed for successive periods of three (3) years unless notice of cancellation has been sent by registered mail by either party at least six (6) months before the end of the initial period or any of the renewal periods.
- 10.2 In case of transfer and/or extension of Buyer's activities to a new location, the validity of the present Agreement will also be transferred and/or extended to this new location, subject to the subsequent amendments.

## 11. TERMINATION

- 11.1 This Agreement shall terminate without notice in the event either Party voluntarily or involuntarily becomes bankrupt or takes or suffers any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any part of its assets, or either party causes an application to be made to the Board of Industrial and Financial Reconstruction, unless the other party agrees in writing for going ahead with the agreement.
- 11.2 If either Party breaches or neglects a material obligation under this Agreement, then:
  - 11.2.1 The other Party (the 'notifying Party') shall have the right to give written notice of such breach to the Party that breaches or neglects the material obligation (the 'recipient Party').
  - 11.2.2 Upon receipt of such written notice, the recipient Party shall either:
    - (a) remedy such breach within thirty (30) days for payment defaults, or sixty (60) days for other defaults, or
    - (b) if such breach is not reasonably capable of remedy within such thirty (30) days period for payment defaults, or sixty (60) days

period for other defaults, the recipient Party shall submit to the notifying Party within thirty (30) days of receipt of such notice a written plan of action and time period for remedying such breach, and thereafter diligently pursue or cause to be pursued completion of such action plan.

(c) if such breach is not so remedied or if no action plan is so provided or the recipient Party fails to fulfill its obligations with respect thereto, the notifying Party shall have the right to terminate this Agreement at any time upon thirty (30) days notice, unless the specified material breach is in the interim remedied.

All notices shall clearly state the nature and extent of the specified material breach involved. Notices shall be delivered as provided in Article 12 hereof. Notices shall be automatically canceled prior to termination when the material breach specified therein is remedied.

For the purpose of this clause use of Packaged Gases by the Buyer for a use other than as mentioned in this agreement or for reselling shall be treated as material default.

## 12. ARBITRATION & JURISDICTION

- 12.1 In the case of any dispute or difference arising between Seller and Buyer as to the construction of the contract or the rights, duties or obligations of either party there under or any matter arising out of or concerning the same, which cannot be solved amicably, every such dispute or matter in difference shall be settled by Arbitration under the Arbitration and Conciliation act, 1996 or any enactment or modification thereafter by reference to a sole arbitrator, if the parties agree upon the same, failing which the dispute shall be referred to three arbitrators, each party to appoint one arbitrator and the two appointed arbitrators shall appoint the third arbitrator. The decision of the sole arbitrator or in the event of arbitration by the three arbitrators, shall be final and binding upon the parties.
- 12.2 The arbitration shall be conducted in the English language and seat of arbitration at Delhi. The Parties shall bear and pay their respective cost and expenses incurred in relation to arbitration.
- 12.3 Each Party, shall be entitled to seek necessary and appropriate interim injunctive relief pending the outcome of the Arbitration or any other temporary measures from the Courts of competent jurisdiction at Delhi, to enjoin the other Party from taking certain actions, which allegedly, infringe the rights of the Party bringing such claim, provided that any proceedings and decisions as to the merits of the dispute are exclusively governed and resolved by Arbitration in accordance with this clause.
- 12.4 This agreement will be governed by the laws of India and subject to aforesaid arbitration clause parties hereby submit to the exclusive jurisdiction of the courts of Delhi only.

## 13. ASSIGNMENT

Both Parties will not have the right to assign this Agreement to any other party without the prior written consent of the other, and such consent will not be unreasonably withheld. This Agreement will be binding upon the parties and their successors and assigns, including any corporation with which either party may merge or consolidate, or to which either party may transfer all or a material amount of its assets.

## 14. CONFIDENTIALITY

Both Seller and Buyer agree to keep secret and to withhold from third party any trade secret, technical or commercial information furnished or disclosed in writing or verbally supplied by Seller and/or Buyer.

## 15. CLOSING

This Agreement is made in two copies by the combination of the present document and the Agreement. Each copy has the same power and comes into effect upon signature by both Parties.