

GENERAL CONDITIONS OF SALE

Revised August 2011

For the purposes of these Conditions:

“Agreement” means the contract between BOC and the Customer for the supply of Gas, BOC Equipment, Goods and/or Services. Each order from the Customer for Gas, BOC Equipment, Goods or Services which is accepted by BOC shall constitute a separate Agreement which shall be governed by these Conditions;

“BOC” or **“we”** means BOC Limited (company number 00337663) whose registered office is at The Priestley Centre, 10 Priestley Road, The Surrey Research Park, Guildford, Surrey, GU2 7XY;

“BOC Equipment” means any Containers and/or other equipment provided by BOC (but not sold) to the Customer under the Agreement;

“Business Day” means a day other than a Saturday or Sunday or public holiday in England and Wales;

“Container” means any container, cylinder or other storage vessel provided by BOC (but not sold) to the Customer in which Gas is stored;

“Customer” or **“you”** means the individual, partnership or company entering into the Agreement with BOC;

“Customer Equipment” means the Customer containers and any other equipment owned by the Customer used in connection with the supply of Gas, Goods and/or Services under the Agreement;

“Gas” means any gas or gas mixture supplied by BOC to the Customer including liquefied, solidified, compressed or dissolved gas;

“Goods” means any goods or materials sold by BOC to the Customer, excluding Gas;

“Product Source” means BOC’s normal source of supply of Gas to the Customer;

“Safety Data Sheet” means a sheet prepared by BOC containing material safety and other data relating to the applicable Gas; and

“Services” means any services provided by BOC to the Customer (including, without limitation, the provision of training, technical advice and the inspection and maintenance of Customer Equipment).

BOC GENERAL CONDITIONS OF SALE

1. DELIVERY/COLLECTION AND INSTALLATION/ COMMISSIONING

- (a) Save as set out in Conditions 1(b), 1(c) and 7(m) below and the other terms of the Agreement, or as otherwise agreed, BOC will supply Gas, BOC Equipment, Goods and Services against orders placed by the Customer and which are accepted by BOC.
- (b) In relation to bulk Gas and Gas in trailers for scheduled deliveries, BOC will use reasonable endeavours to deliver Gas in appropriate quantities and frequency having regard to the Customer's average Gas consumption rate based on historical data held by BOC and the Container or Customer Equipment storage capacity or telemetry data if available to BOC.
- (c) The Customer acknowledges that collection of Containers from a BOC site or agent shall be at the Customer's own risk and that the Customer is responsible for handling and transporting the load safely, training the driver on the hazards of the Gas and Containers and compliance with all relevant legislation including (without limitation) the Carriage of Dangerous Goods by Road Regulations.
- (d) BOC reserves the right to introduce an electronic identification system for Containers. If such a system is introduced, any delivered, returned or collected Containers will be reconciled against the account of the Customer to which they were supplied.
- (e) Subject to Condition 7(j) BOC's delivery/ collection note shall be conclusive evidence of delivery and quantity of the Gas, BOC Equipment and Goods.
- (f) Failure by BOC to deliver or perform by any time specified by BOC shall not entitle the Customer to terminate the Agreement and time shall not be of the essence in respect of deliveries or performance. BOC's liability for a failure to deliver or perform shall be limited in accordance with Condition 7.
- (g) If delivery of any Gas, BOC Equipment or Goods cannot be made due to the act or omission of the Customer (or the act or omission of any employee, agent or contractor of the Customer), the items shall be deemed to have been delivered and BOC may charge for abortive journeys or part deliveries and for storage thereof until delivered.
- (h) If collection of any Gas, BOC Equipment or Goods cannot be made due to the act or omission of the Customer (or the act or omission of any employee, agent or contractor of the Customer) the items shall be deemed to have been collected and BOC may charge for abortive journeys or part collection.
- (i) BOC will supply Gas into Customer owned containers considered suitable by BOC by special

arrangement with the Customer. Such supply is subject to container examination and testing when necessary in accordance with BOC procedures and applicable statutory requirements at the Customer's cost.

- (j) BOC can provide a certificate of analysis for the Gas supplied on the Customer's prior written request upon reasonable notice. BOC will make an additional charge for this.
- (k) BOC may suspend deliveries of Gas if the Gas storage or handling equipment or process equipment to be used by the Customer is considered by BOC not to be safe.
- (l) There may be one-off charges associated with the installation or removal of BOC Equipment at or from the Customer's or its nominee's site and an additional charge may be payable when BOC Equipment is supplied by certain BOC agents.
- (m) BOC reserves the right to charge for emergency delivery of Gas, BOC Equipment and Goods when this is required due to circumstances outside BOC's control. BOC reserves the right to charge for any emergency call out of our technical staff where such call out is required due to circumstances outside of BOC's control or for a reason which is not BOC's fault.
- (n) Where appropriate installation and commissioning of BOC Equipment shall be carried out by or on behalf of BOC in accordance with BOC's engineering survey report. BOC may increase its charges for the installation and/or commissioning of BOC Equipment in order to cover the extra costs incurred by it as a result of additions or variations to BOC's engineering survey report, installation or commissioning requested by the Customer or for delays within the control of the Customer.
- (o) BOC reserves the right to vary the sizes of Containers supplied to the Customer from time to time if required for operational reasons.
- (p) BOC Safety Data Sheets are supplied with the first consignment of each Gas or as soon as practicable thereafter. If further copies of these are required or copies of BOC safety booklets, these can be obtained by contacting BOC via telephone, email, the applicable BOC website or writing, in each case to the address or on the number as notified by BOC to the Customer. Single copies of safety booklets will be supplied free of charge by BOC.

2. BOC EQUIPMENT

- (a) Except as provided in Condition 2(b), or as otherwise agreed in writing by BOC, the Customer shall not refill or allow the refilling of Containers or allow them to be used other than for storage, transport or use of Gas placed in them by BOC.
- (b) Subject to the remainder of this Condition, Containers shall only be used for handling Gas supplied by BOC. While BOC is unable to supply bulk Gas, the Customer may use bulk Containers

for handling equivalent Gas obtained from another source, provided that the Customer notifies BOC in advance. BOC shall have no liability whatever in relation to any such supply, and the Customer hereby indemnifies and keeps indemnified and holds harmless BOC at all times against all claims, demands, liability, loss, damages, costs (including legal costs on a full indemnity basis) and expenses incurred by BOC arising out of or in connection with such supply.

- (c) BOC Equipment will comply with any technical specifications provided by BOC and applicable legal and statutory requirements.
- (d) BOC will maintain BOC Equipment in accordance with BOC procedures and current safety requirements. If this requires interruption of supply this will, whenever possible, be by arrangement with the Customer. If the Customer causes undue delay to BOC's maintenance service, BOC may charge for all costs and expenses incurred.

3. CUSTOMER'S DUTIES AND RESPONSIBILITIES

The Customer shall:

- (a) provide free of charge adequate and safe access to the Customer's sites, information, documents and facilities (including labour for loading and unloading of Gas, BOC Equipment and Goods and the provision of electricity and materials for use during testing and commissioning) for BOC to carry out its duties and rights under the Agreement;
- (b) be responsible for the safe custody of BOC's and its sub-contractors' property left on the Customer's site for the purposes of installation, commissioning, maintenance and removal of BOC Equipment and for the performance of any other Services;
- (c) insure BOC Equipment to its full replacement cost against "all risks" and against all normal public liability risks. All insurance shall be on terms satisfactory to BOC;
- (d) ensure that all work and materials for which the Customer is responsible meet and comply with all legal and statutory requirements and with BOC's specifications;
- (e) obtain all necessary consents and comply with all legal obligations in connection with installation or use of any Gas, BOC Equipment, Goods and/or any Services performed at the Customer's or its nominee's site;
- (f) notify BOC if at any time it: (i) anticipates a significant change in its Gas consumption rate; or (ii) it becomes aware of any defect, malfunction or damage to BOC Equipment or Customer Equipment (including but not limited to any telemetry fitted); or (iii) reasonably believes, based on current usage and historical frequency of deliveries by BOC, that it will run out of any Gas;
- (g) keep and return all BOC Equipment in a clean and serviceable condition. If they are not, the Customer will report any loss or damage promptly

and pay a sum equal to (i) the cost of new BOC Equipment if the BOC Equipment is lost or damaged beyond repair, or (ii) the cost of restoring the BOC Equipment to a clean and serviceable condition;

- (h) not mortgage, pledge, sell or lend BOC Equipment to a third party;
- (i) subject to Condition 5, not part with possession of BOC Equipment to a third party;
- (j) not obliterate, remove or deface identification marks or notices on the BOC Equipment and/or alter or tamper with BOC Equipment without the prior written consent of BOC;
- (k) comply with any operating manual (or other instructions) provided, and not otherwise adjust, repair or interfere with BOC Equipment;
- (l) be responsible for the safety and condition of, and comply with applicable legal requirements in respect of, any Customer Equipment and other Customer owned equipment, goods or materials and attachments to BOC Equipment beyond the agreed take over point; and
- (m) be responsible for any risks to health or safety from Gas, BOC Equipment and Goods in the Customer's possession and/or control. The Customer's attention is drawn to the fact that statutory regulations and recognised codes of practice exist covering the use, handling, processing, storing and transporting of Gas, BOC Equipment and (where applicable) Goods. The Customer must ensure that persons who use, handle, process, store or transport Gas, BOC Equipment and Goods receive adequate training and safety literature from the Customer.

4. TITLE AND RISK

- (a) Property in any Goods and/or Gas shall only pass to the Customer on receipt by BOC in full of:
 - (i) the price (and VAT) for the relevant Goods and/or Gas; and
 - (ii) all other sums due from the Customer under the Agreement; and
 - (iii) all sums due from the Customer under any other contracts, agreements or arrangements between the Customer and BOC.
- (b) BOC Equipment remains, as between BOC and the Customer, the property of BOC and is supplied to the Customer for the Customer's sole use.
- (c) The Customer shall have no rights over any other property of BOC or its contractors brought onto the Customer's or its nominee's site.
- (d) Until such time as the property in any Goods or Gas has passed to the Customer under Condition 4(a) the Customer shall:
 - (i) hold such Goods and/or Gas as a fiduciary of BOC;
 - (ii) not pledge or allow any encumbrance, lien, charge or other interest to arise or be created over the Goods and/or the Gas; and
 - (iii) not dispose of or deal with the Goods and/or the Gas or any documents of title relating to them or any interest in them, except that the Customer may, without prejudice to

Condition 4(d)(i), and subject to the other terms of the Agreement, on its own account use the Goods and/or the Gas in the ordinary course of its business.

- (e) The risk of loss or damage to Gas, BOC Equipment and Goods shall pass to the Customer upon delivery to or collection by the Customer.

5. GAS RE-SALE

- (a) Subject to Conditions 3 and 5(e) Gas supplied by BOC may be re-sold provided that prior to any re-sale the Customer has demonstrated to BOC's reasonable satisfaction that it has the capability to re-sell safely.
- (b) The Customer hereby indemnifies and keeps indemnified and holds harmless BOC at all times against all claims, demands, liability, loss, damages, costs (including legal costs on a full indemnity basis) and expenses incurred by BOC to BOC's satisfaction arising out of or in connection with any alleged defects in Gas re-sold by the Customer, or any alleged defect in any Container (where Gas is re-sold in the Container) unless proved by the Customer beyond reasonable doubt to have been in existence when the Gas and/or Container was supplied by BOC.
- (c) The Customer shall be entirely responsible for providing proper instructions, warnings and other safety information in connection with any re-sale of the Gas.
- (d) For the avoidance of doubt, no re-sale of any Gas by the Customer shall relieve the Customer of any of its obligations under the Agreement, in particular, without limitation, payment of any charges and any liability in relation to BOC Equipment.
- (e) The Customer shall be responsible for documenting the use of the Gas and keeping appropriate records including the complete batch number per Container and to disclose these records immediately to BOC on request.
- (f) Balloon Gas, cellar Gas and medical Gas shall not be re-sold in Containers except with specific written agreement between BOC and the Customer.

6. PRICE AND PAYMENT

- (a) The price for Gas, BOC Equipment, Goods and Services shall be the price effective at the time of supply. Unless specifically quoted as a fixed price for a specific period or agreed otherwise in writing, all prices are subject to variation from time to time by BOC which shall notify or publish such variations to the Customer accordingly.
- (b) Unless otherwise agreed, rental charges for BOC Equipment are payable in advance from the earlier of (i) collection or delivery or (ii) the commencement date. If delivery, installation or commissioning of BOC Equipment cannot be carried out on the agreed date(s) due to the act or omission of the Customer (or the act or omission of any employee, agent or contractor of the Customer), BOC may charge the rental charge

or a proportion thereof during the period of delay.

- (c) When a Customer hires BOC Equipment which is additional to and of the same type as BOC Equipment already hired on a yearly payment frequency this BOC Equipment will either: (i) be charged to the Customer on a monthly payment frequency until the next yearly rental payment is due for the BOC Equipment already hired, when it will be transferred on to a yearly payment frequency; or alternatively: (ii) be charged immediately on a yearly payment frequency, a proportionate part of the full yearly payment being charged for the part of the period that remains, until the next yearly payment is due for the BOC Equipment already hired on yearly payment frequency.
- (d) Normal terms of payment are by direct debit to be taken on the nearest bank day to the twenty fifth day of the month following the month of invoice date. The Customer shall ensure that any payment of invoices by direct debit is made in full by the Customer's bankers on presentation to them by BOC of invoice information. For payment by any other means BOC reserves the right to charge any additional costs BOC incurs as a result of such payment.
- (e) In relation to payment for Gas, BOC Equipment, Goods or Services by debit card, credit card or charge card, the Customer will be charged when BOC systems confirm to BOC that the Gas, BOC Equipment, Goods or Services have been supplied. Where, with prior agreement of BOC, the Customer pays by debit card, credit card or charge card for the rental of BOC Equipment the Customer will be charged at the time the billing process is actioned internally by BOC. Where the Customer pays by debit card, credit card, or charge card in any other circumstances, BOC reserves the right to charge any additional costs BOC has incurred as a result of such payment by debit card, credit card or charge card.
- (f) BOC reserves the right to introduce electronic invoicing. If BOC introduces electronic invoicing BOC reserves the right to charge any additional costs BOC incurs in generating paper invoices or non-standard invoices for the Customer.
- (g) In the case of other methods of payment, full payment of invoices in cleared funds must be received by BOC by the twentieth day of the month following the month of invoice date.
- (h) BOC should be notified of any error on an invoice within fourteen days of date of the invoice.
- (i) The commitment on the part of BOC to supply the Customer under the Agreement is conditional on BOC remaining satisfied with the Customer's credit worthiness. If any payment is overdue or the Customer's credit worthiness changes or any event referred to in Condition 9(a) occurs BOC may stop the delivery or collection of Gas, BOC Equipment or Goods or provision of Services to the Customer and payment shall become immediately due for all goods and services

supplied under the Agreement to the Customer.

- (j) BOC may charge interest at the statutory rate and/or charges otherwise provided for pursuant to The Late Payment of Commercial Debts (Interest) Act 1998. Such charges or interest shall be payable on demand. Furthermore BOC reserves the right to claim compensation for debt recovery costs as set out in the same legislation where BOC is not paid according to agreed credit terms.
- (k) All prices and charges are expressed exclusive of VAT which shall be charged and paid as applicable.
- (l) We buy some Gases ("factored Gases") from other suppliers. We may alter the price of these factored Gases if our suppliers change the price that they charge us.
- (m) If at any time BOC's costs change due to government action or to a change in the law, BOC reserves the right to adjust prices to take account of such change in its costs.
- (n) Where BOC charges rent on BOC Equipment, payment of a rental invoice is deemed conclusive (subject to transactions prior to the date of invoice which have not been included in the invoice and to (o) below) as to the Customer's holding of BOC Equipment during the period to which the invoice relates.
- (o) If the Customer has a BOC Equipment holding that is greater than is recorded by BOC, BOC reserves the right to amend its records and charge the Customer rental accordingly.
- (p) BOC shall have the right upon reasonable notice to enter the Customer's sites to audit and inspect any BOC Equipment.
- (q) Where BOC Equipment is on a monthly payment frequency, rental is payable for each calendar month or part of a calendar month during which the BOC Equipment is hired. Where BOC Equipment is on a yearly or longer payment frequency, the period covered by the first rental payment for the BOC Equipment is calculated from the beginning of the calendar month in which the BOC Equipment is first hired to the Customer.
- (r) If the Customer returns BOC Equipment which is subject to an annual rental period without taking replacements before the rental period paid for expires, a pro rata refund will be made for any whole month(s) unexpired.

7. LIABILITY, WARRANTIES AND EXCLUSIONS

- (a) Save as set out in this Condition 7 and Condition 16 (if applicable), BOC shall have no liability, howsoever arising. Notwithstanding any other provision of the Agreement, but subject to Condition 7(b), BOC shall have no liability arising out of or in connection with the Agreement, the Gas, the BOC Equipment, the Goods or the Services, howsoever arising, for any:
 - (i) other loss or damage (whether direct or indirect); or
 - (ii) loss of or damage to revenue, profits, savings, use, contracts, goodwill or business (whether direct or indirect); or

(iii) consequential or indirect loss or damage. When used or referred to in this Condition 7 the term "howsoever arising" shall cover all causes and actions giving rise to liability whether in contract, tort (including negligence), restitution, for breach of statutory duty, misrepresentation or otherwise.

- (b) Nothing in the Agreement limits or excludes BOC's liability:
 - (i) for death or personal injury to the extent that it results from BOC's negligence;
 - (ii) for fraud or fraudulent misrepresentation; or
 - (iii) to the extent not permitted by law.
- (c) BOC accepts liability for physical damage to the Customer's property to the extent that it results from breach of contract or BOC's negligence in connection with the performance of the Agreement subject to a limit of £500,000 (five hundred thousand pounds) per claim or series of claims arising out of the same event or circumstances.
- (d) BOC accepts liability, to the extent that it results from breach of contract or BOC's negligence in connection with the performance of the Agreement, for losses, costs, expenses or damage:
 - (i) caused by BOC supplying any defective Gas, BOC Equipment or Goods up to a limit of £5,000 or, if greater, 25% of BOC's anticipated monthly revenue generated under this Agreement at that time, for any one incident;
 - (ii) arising from delay or failure by BOC in delivery of any Gas, BOC Equipment or Goods up to a limit of an amount equal to BOC's price for the Gas, BOC Equipment or Goods that BOC has failed to deliver or, if greater, 25% of BOC's anticipated monthly revenue generated under this Agreement at that time, for any one incident; and
 - (iii) resulting from the provision of Services by BOC in return for a specific fee up to a limit of the amount of the fee received for such Services.
- (e) BOC warrants that, at the time of delivery, Gas is to the purity set out in the relevant BOC specification sheet relating to that Gas.
- (f) If a specific purity, tolerance or stability of Gas is required, the Customer shall notify BOC who in conjunction with the Customer shall make suitable arrangements for supply.
- (g) Medical Gases: BOC warrants that at the time of delivery the Gas is to the purity set out in the BOC Marketing Authorisation and details in the Safety Data Sheet relating to that Gas. BOC will only supply those Customers who can demonstrate that they are authorised to use medical Gases under the Medicines Act 1968; this does not apply to medical oxygen and medical air.
- (h) Save as set out in Conditions (e) to (g) above or as specified in the Safety Data Sheet for a particular Gas, BOC cannot guarantee or warrant

that Gas is suitable for the use or process that the Customer intends to use the Gas.

- (i) BOC warrants that (a) to the extent that the BOC Equipment is utilised for the storage and/or use of Gas, it will be suitable for such storage and/or use; and (b) the Services (if any) will be provided with reasonable care and skill. BOC's warranty in relation to Goods is set out in Condition 16.
- (j) BOC shall not be liable for any shortage, loss, damage or discrepancy in Gas, BOC Equipment or, Goods or failure to perform the Services unless notified to BOC in writing within five Business Days of completion of the Services or receipt of the relevant Gas, BOC Equipment or Goods by the Customer. This exclusion of liability shall not apply if the Customer proves that it was not reasonably possible to notify BOC within this time period, and such notification was given as soon as was practicable and in any event within five working days after the Customer became aware, or could reasonably be expected to have become aware, of the claim. If acceptance tests are provided in the Agreement for Gas, BOC Equipment, Goods or Services this Condition 7(j) shall not apply to such Gas, BOC Equipment, Goods or Services and the Customer shall be deemed to have accepted the Gas, BOC Equipment, Goods or Services upon successful completion of those tests.
- (k) Subject to the other terms of the Agreement (and in particular Condition 16), where any shortage, loss, damage or discrepancy in Gas, BOC Equipment or Goods and/or failure to perform the Services is notified to BOC in accordance with Condition 7(j), BOC shall at its option rectify the shortage, loss, damage or discrepancy in the Gas, BOC Equipment or Goods free of charge, re-perform the Services or refund or forego an appropriate proportion of the price for the Gas, BOC Equipment, Goods or Services. If BOC complies with this obligation it shall have no further liability in respect of, or arising from the relevant Gas, BOC Equipment, Goods or Services under this Condition 7(k).
- (l) If BOC's performance of any contract obligation by its normal means is prevented or delayed due to any cause beyond BOC's reasonable control, that contract obligation shall be suspended during the period BOC is affected by such cause.
- (m) In the event of BOC's supply of Gas from the Product Source being interrupted under Condition 7(l) and for the duration of the period BOC is affected by such cause either:
 - (i) BOC may obtain Gas from another source, in which case BOC reserves the right to vary the price for the duration of the affected period to recover its additional costs, such additional costs to be notified to the Customer in advance, or;
 - (ii) bulk Containers may be used for handling equivalent Gas obtained from a third party for the duration of the event provided that

the Customer notifies BOC in advance. BOC shall have no liability whatsoever in relation to any such supply and the Customer hereby indemnifies and keeps indemnified and holds harmless BOC at all times against all claims, demands, liability, loss, damages, costs (including legal costs on a full indemnity basis) and expenses incurred by BOC arising out of or in connection with such supply.

- (n) All warranties and conditions which arise from statute and relate to the supply of goods and services are excluded from the Agreement except to the extent that such exclusion is prevented by law.
- (o) The Customer shall indemnify and keep indemnified and hold harmless BOC at all times against all claims, demands, liability, loss, damages, costs (including legal costs on a full indemnity basis) and expenses incurred by BOC arising out of or in connection with BOC's presence on the Customer's or its nominee's site except to the extent caused by the negligence of BOC.
- (p) Technical advice or training supplied to the Customer by BOC shall be prepared or delivered in good faith, in the context of the law in force as at the date of its preparation and on the basis of the matters and information disclosed by the Customer to BOC. BOC accepts no responsibility for subsequent changes in law which may affect the conclusions of and/or recommendations in technical advice or training or for any loss or damage incurred or suffered by the Customer arising out of a failure by the Customer to disclose facts or circumstances necessary for the preparation of technical advice or training.
- (q) The Customer and BOC both recognise that it is open to either party to consider insuring against the risks apportioned in this Condition 7.

8. RECOVERY OF EQUIPMENT

- (a) If:
 - (i) payment becomes overdue;
 - (ii) the Customer is in breach of any of its obligations relating to the Gas or BOC Equipment (including, without limitation, any obligations under Condition 4(b));
 - (iii) BOC exercises any right to suspend or terminate the Agreement;
 - (iv) BOC reasonably determines that the Customer's use of any Gas or BOC Equipment poses a risk to health and safety; or
 - (v) any event referred to in Condition 9(a)(i) occurs;

BOC shall be entitled upon demand to the immediate return of all or any Gas, BOC Equipment and any gas owned by the Customer stored in the BOC Equipment. The Customer irrevocably authorises BOC to recover such Gas, BOC Equipment and Customer owned gas and any documentation relating thereto and for that purpose, to enter any sites, vehicle or other

location of, or under the control of, the Customer. Where BOC Equipment contains any gas owned by the Customer credit will only be given for such unused gas at BOC's discretion. The Customer shall take all reasonable steps to help BOC to recover the Gas or BOC Equipment. Demand for, or recovery of, Gas or BOC Equipment shall not of itself discharge the Customer's liability to pay the whole of the price or any other rights of BOC under the Agreement. BOC may also charge and the Customer will pay all reasonable costs of removal of Gas or BOC Equipment.

9. BREACH AND TERMINATION

- (a) Without affecting any other rights or remedies that BOC may have, BOC may terminate the Agreement immediately at any time by written notice to the Customer if the Customer:
 - (i) has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up other than for the purpose of a bona fide scheme of solvent reconstruction or amalgamation, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets which is not discharged or paid out in full within three business days or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the Customer is incorporated, resident or carries on business; or
 - (ii) fails to make any payment due to BOC.
- (b) Without prejudice to either party's other rights and remedies either party may terminate the Agreement by written notice at any time if the other party is in material breach of any of its terms and (in the case of a remediable breach) the breach is not remedied within twenty eight days of receipt of a notice specifying the breach and requiring it to be remedied.
- (c) Without prejudice to its other rights or remedies (including its rights of termination) BOC may elect to suspend performance of all or any of its obligations under the Agreement by written notice to the Customer upon the occurrence of any of the events specified in Conditions 9 (a)(i), (a)(ii) or (b).
- (d) Termination shall be without prejudice to any accrued rights of either party.
- (e) If the Agreement is terminated and any charges which are payable in instalments are still outstanding, an amount representing the outstanding instalments shall become due and payable by the Customer on termination of the Agreement.

10. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- (a) BOC's trade marks and names shall not be used

otherwise than as applied by BOC to Containers and other BOC Equipment or Goods and Services.

- (b) No right or licence is granted under the Agreement to the Customer under any patent, trade mark, copyright, registered design or other intellectual property right, except the right to use or re-sell the Gas and/or Goods as permitted under the Agreement. No warranty is given as to whether that use or re-sale will infringe the rights of any third party.
- (c) Any know how, information or documents supplied at any time by BOC to the Customer shall be treated as confidential by the Customer and shall not be disclosed to any third party or used for any purpose other than for the purpose of the Agreement without the prior written consent of BOC, unless and until the same is public knowledge other than through default of the Customer or comes into the Customer's possession bona fide from a third party.
- (d) BOC retains all intellectual property rights in its drawings, specifications, data and all other information and documents prepared by BOC for the Customer in whatever medium.

11. NOTICES

- (a) Any notices under the Agreement shall be in writing and signed by or on behalf of the party giving it.
- (b) Any such notice may be served by delivering it personally or by sending it by pre-paid recorded delivery post or facsimile transmission at or to the address shown above of the relevant party or any other address which it may from time to time notify in writing to the other parties.
- (c) Any such notice delivered personally shall be deemed to be received when delivered (or, if delivered otherwise than between 9.00am and 5.00pm on a Business Day, at 9.00am on the next Business Day); any notice sent by pre-paid recorded delivery post shall be deemed to be received two Business Days after posting and in proving the time of despatch it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and posted; and any such notice sent by facsimile transmission shall be deemed to have been received at the time of transmission (or, if transmitted otherwise than entirely between 9.00am and 5.00pm on a Business Day, at 9.00am on the next Business Day), and in proving the service of the same it shall be sufficient to show that such facsimile transmission was duly transmitted to a current facsimile number of the addressee provided that any service by facsimile transmission shall not be effective unless the sender shall have received printed confirmation of the transmission and a copy of such transmitted notice is sent by recorded delivery post no later than four Business Days after the day of such facsimile transmission being effected.

12. ASSIGNMENT

- (a) BOC shall be entitled to assign, novate, charge or hold on trust for another all or any of its rights and obligations under the Agreement on giving written notice to the Customer, but without any further consent of the Customer being requested. BOC shall be entitled to sub-contract any of its obligations under the Agreement provided that BOC shall remain liable for the acts and/or omissions of its sub-contractors.
- (b) The Customer shall not without the prior written consent of BOC assign, novate, charge or hold on trust any of its rights or sub-contract any of its obligations under the Agreement in whole or in part to any third party.

13. DATA PROTECTION

- (a) The Data Protection Act places obligations on users of personal data and lays down principles for its use. One principle states that personal data has to be processed fairly and lawfully. This means that you are entitled to know how BOC intends to use any personal data provided by you. Personal data is any information that relates to a living individual who can be identified from that information.
- (b) BOC will use personal data provided by you in the following ways:
 - (i) primarily in order to provide the agreed goods and services and for invoicing, account maintenance, record-keeping, statistical analysis and internal reporting and research purposes. This may involve disclosing the personal data to our data processors, agents, sub-contractors and other companies within the BOC group of companies.
 - (ii) to obtain credit references checks and for debt collection and fraud prevention purposes. This may involve disclosing personal data to licensed credit reference agencies, debt collection agencies and lawyers. The credit reference agencies will maintain a record of the personal data supplied by us. This may be used by lenders to make decisions on future applications for credit; and
 - (iii) occasionally, to inform you about other goods and services which we think that you may be interested in. This may involve disclosing the personal data to other companies within the BOC group of companies and to our data processes, agents and sub-contractors. You may opt out of receiving this information by ticking the appropriate box in the account opening form signed or to be signed by you at the time of opening your account with BOC or at any time by contacting BOC at Priestley Road, Worsley, Manchester M28 2UT (for the attention of: The Data Protection Officer).
- (c) We will also provide personal data to any Government department, public body or other third party where we believe in good faith that

the law requires this or in the interests of public health and safety or in the event of an emergency. In addition, we will provide personal data to third parties if authorised by you to do so.

- (d) BOC may transfer the personal data of its customers to countries outside of the European Economic Area from time to time. By ordering from us, you agree to any such transfer of your personal data.
- (e) We (or reputable organisations selected by us) may monitor and/or record telephone conversations to or from you in order to offer you additional security, resolve complaints, improve our service standards and for staff training purposes. Occasionally where we are supplying medical goods and services we may ask you to provide sensitive personal data relating to your physical condition. If so, we will ask for your explicit consent to allow us to process this data and treat it in the strictest confidence.

14. GENERAL

- (a) If by arrangement with the Customer, Gas, BOC Equipment, Goods, or Services are supplied to any person who is not a party to the Agreement, the Customer shall procure that such person agrees to be bound by the terms of the Agreement as though a party to the Agreement. The Customer shall indemnify and hold harmless BOC against any consequences (including any claim made by such person which he could not make if a party to the Agreement) of the Customer failing to do so or of such person not fulfilling the obligations applicable to it under the Agreement. Any order from or supply to such person shall be on behalf of the Customer and is made pursuant to the terms of the Agreement. Nothing in this Condition 14 shall relieve the Customer of any of its obligations under the Agreement, in particular, without limitation, payment of any Charges and any liability in relation to BOC Equipment.
- (b) Save as provided by Condition 14(a), no term of the Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Agreement.
- (c) Any variation or waiver of the Agreement must be expressly agreed in writing by both parties. A failure to enforce or delay in enforcing a right or remedy in the Agreement does not constitute a waiver of that right or remedy.
- (d) If the Customer is not a company and not covered by any of the exception under the Consumer Credit Act 1974 the hire of Containers and equipment will be governed by the terms of a separate regulated Consumer Hire Agreement.
- (e) If any provision of the Agreement is or becomes invalid, illegal or unenforceable in any way under any law, it shall to the extent of such invalidity, illegality or unenforceability be deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.
- (f) The Agreement constitutes the whole and only

agreement between the parties relating to the subject matter of the Agreement and supersedes any previous agreement or understanding between the parties relating to the supply of Gas, BOC Equipment, Goods and/or Services by BOC to the Customer including, without limitation, any previous forms of BOC's General Conditions of Sale supplied to you by us. Unless otherwise agreed in writing by BOC, no terms or conditions endorsed upon, delivered with or contained in the Customer's acceptance or acknowledgement of the Agreement, purchase order(s), specifications or similar documents will amend or vary the provisions of the Agreement and the Customer waives any right which it might otherwise have to rely on such terms and conditions.

- (g) The Customer acknowledges and agrees that:
- (i) in entering into the Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty (in each case whether negligently or innocently made), or understanding of any person (whether party to the Agreement or not) which is not expressly set out in these terms and/or the Agreement; and
 - (ii) the only remedy available to it for breach of any statement, representation or other term that is expressly set out in the Agreement shall be for breach of contract under the terms of the Agreement.
- Nothing in this Condition 14(g) shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation.
- (h) The Agreement shall be governed by English law if the registered office of the Customer is in England or Wales and the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales.
- (i) The terms and conditions for the sale of Goods and the provision of Services, to the extent not already covered by these Conditions shall be specifically agreed in writing between BOC and the Customer.

CONDITIONS FOR THE INSPECTION AND MAINTENANCE OF CUSTOMER OWNED EQUIPMENT

15. CUSTOMER OWNED EQUIPMENT

Where BOC agrees to provide inspections and maintenance of Customer Equipment:

- (a) BOC will inspect the Customer Equipment at the Customer's cost unless otherwise agreed prior to commencement of the inspection and maintenance service. This inspection will be conducted to assess the overall condition of the Customer Equipment with regard to maintenance, safety and legal requirements.
- (b) The Customer will make available at such inspection all available drawings, test certificates and maintenance inspection reports and any

other documents or information that BOC requests applicable to the operation of the Customer Equipment.

- (c) BOC reserves the right to refuse to supply maintenance services if remedial work which BOC considers is essential to the safe operation of the Customer Equipment is not carried out.
- (d) Following the inspection and agreement of recommended remedial work, the parties will agree the items of Customer Equipment for which BOC shall have inspection and maintenance responsibility and the frequency of inspections and maintenance. BOC shall carry out inspections and preventative maintenance having regard to legal requirements and good safety practices and in accordance with BOC's Planned Preventative Maintenance Schedule as notified to the Customer. As evidence of inspection, BOC shall provide an inspection certificate. This shall reflect the condition of the Customer Equipment at the time of inspection and shall not in any way be a warranty of, or render BOC liable for, the condition or fitness for purpose of the Customer Equipment. On completion of maintenance BOC will provide the Customer with a copy of BOC's completed maintenance report detailing the maintenance carried out. The Customer shall be responsible for the safe retention of all inspection and maintenance documentation provided by BOC.
- (e) BOC shall, having regard to other commitments and availability of suitably skilled staff, respond as soon as is reasonably practicable to any request by the Customer for work outside the scope of the Planned Preventative Maintenance Schedule. If no specific price or charging basis for such work is agreed in writing, the Customer shall pay for all materials and expenses at BOC's then current list price and for time at BOC's then current labour rate including travel time to and from BOC's base.
- (f) If BOC requires to interrupt supply of Gas from or through Customer Equipment in order to carry out maintenance this will be by prior arrangement with the Customer except in an emergency.
- (g) The Customer shall report any unsatisfactory operation of the Customer Equipment and changes of layout or withdrawals from service of the Customer Equipment promptly to BOC. Where an item of Customer Equipment is withdrawn from service by the Customer, the Customer and BOC will agree an appropriate adjustment to the inspection and maintenance charges applicable during the remainder of the period of services.
- (h) The Customer shall make Customer Equipment available to BOC for the inspection and maintenance services at the time agreed. If the Customer causes undue delay to the BOC engineer's work, then BOC may charge for the time spent and where appropriate for travelling time, call time and expenses incurred.
- (i) Maintenance charges do not include items of

Customer Equipment in need of replacement or repair. BOC shall notify the Customer of such items and should the Customer require such work to be carried out BOC will charge in the manner described in Condition 15(e) above.

- (j) BOC reserves the right to delete any item of Customer Equipment from the scope of the Agreement if BOC considers the Customer Equipment unserviceable for any reason, in which event BOC will notify the Customer and agree an appropriate reduction in the maintenance charges applicable during the remainder of the period of maintenance services.
- (k) BOC disclaims all responsibility for the proper functioning and maintenance of the Customer Equipment if the Customer has, without BOC's consent, allowed the Customer Equipment to be worked on or repaired, save in the course of proper operation, by anyone other than a BOC engineer.
- (l) If damage, maloperation or breakdown of Customer Equipment serviced or repaired by BOC is due to failure on BOC's part to carry out such work correctly, BOC shall, at BOC's option:
 - (i) repay a proportionate amount of the maintenance charge appropriate to the items of Customer Equipment concerned; or
 - (ii) at BOC's discretion, and at no cost to the Customer for materials or labour, either rectify the damage, maloperation or breakdown or replace the item of Customer Equipment concerned.
- (m) BOC or the Customer may terminate the Customer maintenance service at any time on or after twelve months from commencement by giving not less than six months written notice to the other, such notice to expire on or at any time after the initial twelve month period only. BOC reserves the right to carry out servicing of Customer Equipment within the six months notice period and charge accordingly or make an appropriate reduction in the maintenance charge remaining due.

CONDITIONS FOR THE SALE OF GOODS

16. WARRANTY

- (a) BOC undertakes to repair or, at its option, replace Goods of its own manufacture or parts thereof which fail (fair wear and tear excepted) as a result of a defect in BOC's materials or workmanship, arising within twelve months of the sale of the Goods to the Customer (or within such other period as may be specified by BOC in the Agreement having regard to the nature and properties of the Goods concerned), and occurring under normal conditions and subject to proper storage, use and maintenance, provided that:
 - (i) the Customer notifies BOC promptly in writing with details of any alleged defects or

malfunction;

- (ii) the Customer gives BOC or its agent the opportunity to inspect the Goods and, if BOC so requests, the Goods are returned promptly carriage paid (and details of carriage notified in writing to BOC in advance); and
 - (iii) the Goods have not been repaired, tampered with, modified or altered by anyone other than BOC or its agents.
- (b) In the case of Goods not of BOC manufacture, the Customer shall be entitled (subject to compliance with Condition 16(a) above) only to the benefit of any guarantee BOC may have from the supplier or manufacturer provided that subsequent purchasers are entitled to the benefit of that guarantee.
 - (c) If Goods sold by BOC are found to be defective, BOC undertakes to refund the Customer's reasonable expenses incurred in returning the Goods to BOC or to BOC's order.
 - (d) BOC may at its option elect to refund or forego the contract price for the defective Goods and take back the Goods sold in full satisfaction of any liability or obligation under Condition 16(a) and (b) above.

17. EXPORT CONTRACTS

If the Customer is located outside the United Kingdom, the following additional provisions shall apply, unless otherwise agreed:

- (a) all Gas and/or Goods shall be supplied ex-works as defined in accordance with Incoterms as in force on the date of the Agreement and BOC shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979;
- (b) the Customer shall be responsible for complying with any legislation or regulations governing the export of the Gas and/or Goods from the UK and import into the country of destination and for the payment of any duties;
- (c) the Customer may at its cost inspect the Gas and/or Goods at BOC's works before shipment, at a time to be agreed, and BOC shall rectify any defects notified by the Customer during such inspection. BOC shall not be liable for any defect discovered after shipment from BOC's works which would have been apparent on inspection (whether or not carried out), or any claim in respect of damage during transit;
- (d) in the event of a claim under the warranty in Condition 16(a) the Customer shall arrange and pay for transport of defective Gas and/or Goods to BOC and replacement Gas and/or replacement or repaired Goods shall be supplied to the Customer ex-works; and
- (e) payment shall be made by means of an irrevocable letter of credit in a form agreed by BOC and confirmed by a bank in the United Kingdom acceptable to BOC.

BOC

Customer Service Centre, Priestley Road, Worsley, Manchester M28 2UT

Phone 0800 111 333, Fax 0800 111 555, www.BOConline.co.uk

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