

SUPAGAS PURCHASE ORDER TERMS AND CONDITIONS

1. THIS AGREEMENT

- 1.1 These terms and conditions and the associated purchase order (**Order**) comprise the agreement between Supagas Pty Limited (ACN 074 008 496) of 5 Benson Road, Ingleburn, NSW 2565 (**us, we or our**) and the supplier identified in the relevant Order (**you or your**).
- 1.2 The Order is an offer by us to purchase the Products and/or Services set out in the Order on these terms and conditions. A contract for the supply of the Products and/or Services by you to us on these terms and conditions will be formed when you notify us that you accept the Order. Delivery or commencement of the Products and/or Services will be deemed conclusive evidence of your acceptance of an Order.
- 1.3 This agreement sets out the terms on which you will supply the Products or Services specified in the Order and will apply to the exclusion of all other terms and conditions which you purport to apply.
- 1.4 To the extent of any inconsistency the Order will take precedence over these terms and conditions.
- 1.5 You are not an exclusive supplier to us.
- 1.6 We have no obligation to purchase a minimum quantity of Products or Services.

2. DELIVERY AND COMPLETION

- 2.1 You must deliver the Products to the Delivery Location by the Due Date, and/or supply the Services at the Delivery Location by the Due Date. Time is of the essence.
- 2.2 You must immediately inform us if you have reason to believe that the Products or Services may not be delivered on time. You must take all reasonable steps to mitigate the delay.
- 2.3 If you do not deliver an Order on the Due Date, without limiting any other right or remedy we may have, we may:
- (a) refuse to take any subsequent attempted delivery of the Order;
 - (b) terminate the Order with immediate effect; and
 - (c) recover from you any resulting costs, expenses or losses (except to the extent that we cause the delay).
- 2.4 You must properly pack and secure the Products so that they reach their destination in good condition.
- 2.5 Title in the Products will pass to us when we pay the Price for the Products.
- 2.6 The risk of loss of, or damage to, the Products will pass to us on delivery.

3. REJECTED PRODUCTS AND SERVICES

- 3.1 If any Products or Services do not comply with this agreement we may, without limiting any right or remedy we may have:
- (a) reject the Order;
 - (b) elect for you to:
 - (i) re-supply the Products or Services as soon as possible;
 - (ii) pay the cost of us obtaining the supply of the Products or Services from a third party; or

- (iii) provide us with a full refund, and
- (c) claim damages for any other resulting costs, expenses or losses.

4. PAYMENT

- 4.1 You may issue an Invoice for the Price when you deliver the Products or the Services.
- 4.2 We will pay an Invoice within 30 days from the end of the month in which we receive it.
- 4.3 If we dispute an Invoice we may withhold payment of the disputed part of the relevant Invoice pending resolution of the dispute.
- 4.4 We may set-off or deduct any amount due under this agreement from any amount that you owe us. This clause does not limit any other rights we may have.
- 4.5 All amounts payable under this agreement are expressed on a GST exclusive basis. If GST is payable in relation to a Taxable Supply, the amount payable for that Taxable Supply is the amount for that Taxable Supply specified in the Order plus GST. The parties must provide each other with all documentation required to claim any Input Tax Credit, set off, rebate or refund for or in relation to any GST included in any payment made under this agreement.
- 4.6 In this clause 4, the terms "GST", "Taxable Supply", "Tax Invoice" and "Input Tax Credit" have the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and regulations made pursuant to that Act.

5. RECORDS AND AUDIT

- 5.1 You must provide all evidence we reasonably request to verify an Invoice, and/or your compliance with this agreement.
- 5.2 You will permit us to audit your books and records on reasonable request. If the audit reveals that we have overpaid you, you must:
- (a) immediately repay us the overpaid amount, and interest calculated at our bank's overdraft interest rate; and
 - (b) pay us our costs relating to the audit.

6. TERM AND TERMINATION

- 6.1 This agreement will start on the date it has been executed by both parties and end on the date you have delivered all of the Products and/or completed all of the Services, unless we terminate this agreement earlier.
- 6.2 Either party may terminate this agreement:
- (a) immediately on written notice if the other party is in default of this agreement and the default is irremediable or the other party does not remedy the default within 7 days of receiving written notice to remedy the default; or
 - (b) immediately, subject to the requirements of the *Corporations Act 2001* (Cth), on written notice if the other party is Insolvent.
- 6.3 We may terminate this agreement immediately upon notice to you in which case:

- (a) you may issue an Invoice for the Price for any Services you have performed, or any Products you have delivered, up to the date of termination; and
 - (b) you must immediately refund to us the unused portion of any Price paid to you in advance.
- 6.4 Clauses 3, 5, 7 8, 10 and 12 will survive termination of this agreement.

7. WARRANTIES

- 7.1 You represent and warrant that:
- (a) all Products and Services:
 - (i) will be of acceptable quality;
 - (ii) will be fit for their normal or any other specified purpose;
 - (iii) will conform to the Specification and any service levels;
 - (iv) are free from defects, and will remain so for at least 12 months following the date you deliver the Products or Services; and
 - (v) comply with all statutory and regulatory requirements.
 - (b) You will provide the Products and Services:
 - (i) in accordance with this agreement;
 - (ii) with due care and skill, using suitably qualified and competent personnel;
 - (iii) in a professional and timely manner to the best standards in the industry; and
 - (iv) in accordance with our business policies that we notify to you from time-to-time, or publish on our website.
- 7.2 You warrant that in performing the Services and delivering the Products, you will:
- (a) not be in breach of any obligation owed to any person;
 - (b) not breach any applicable law, code, standard or guideline;
 - (c) obtain and maintain in force all licences, permissions, authorisations and consents you need to manufacture (if applicable) and supply the Products and Services;
 - (d) not infringe the Intellectual Property Rights of any person;
 - (e) comply with our reasonable directions;
 - (f) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes, including the Modern Slavery Act 2018 (NSW) and Modern Slavery Act 2018 (Cth);
 - (g) not engage in any activity, practice or conduct that would constitute an offence under Division 270 or Division 271 of the Schedule to the Criminal Code Act 1995 (Cth) if such activity, practice or conduct were carried out in Australia; and
 - (h) include in your contracts with subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause.

8. INDEMNITY AND LIABILITY

You indemnify us against all damages, costs, losses or liabilities that are suffered or incurred by us arising from, or in connection with:

- (a) the Suppliers total aggregate liability arising out of or in connection with the Contract whether in contract, tort (including negligence), under an indemnity or otherwise at law or in equity is limited to an aggregate amount of 100% of the Original Contract Sum;
- (b) Limit of Liability does not limit the Suppliers liability to the extent that:
 - (i) the liability cannot be limited at law;
 - (ii) the liability arises out of or in connection with the Suppliers wilful default, gross negligence, fraud or criminal conduct;
 - (iii) the liability arises out of the injury, or death of any person; or
 - (iv) the liability arises out of any infringement of intellectual property rights.

Exclusion of Consequential Loss.

Despite any other clause of the agreement, under no circumstances will the Supplier be liable to the Purchaser for any indirect or consequential loss, which shall include, but not be limited to, loss of profit, loss of earnings, loss of use, loss of overheads, loss of reputation or loss of opportunity (other than claims relating to injury or death of any person or loss or damage to any property).

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 This agreement does not affect the ownership of Pre-existing Materials.
- 9.2 You grant to us a perpetual, royalty-free and non-exclusive licence to use your Pre-existing Materials to the extent that they form part of the Products or Services.
- 9.3 Unless otherwise agreed in writing, all Intellectual Property Rights created under this agreement will vest in us. You assign all Intellectual Property Rights that you create or have created on your behalf to us. You agree to execute such documents and do all things necessary to give effect to this clause.
- 9.4 Unless you obtain our prior consent, you must not use or reproduce our name, logos and trade marks, or publicise your relationship with us.

10. CONFIDENTIALITY

Each party will keep confidential the Confidential Information and use the Confidential Information for the sole purpose of performing its obligations under this agreement.

11. INSURANCE

During the term of this agreement you must hold the following insurance policies:

- (a) public liability of \$20 million per event;
- (b) product liability of \$20 million per event;
- (c) workers compensation in accordance with law; and
- (d) any other insurances we reasonably require.

12. GENERAL

12.1 Nothing in this agreement gives rise to a relationship of employment, agency or partnership.

12.2 This agreement contains the entire understanding between the parties concerning the subject matter of this agreement and supersedes all prior communications.

12.3 A right arising in this agreement may only be waived in writing, signed by the party waiving the right. A waiver does not affect the exercise of any other rights under this agreement.

12.4 You may not assign, novate, transfer, charge, subcontract, declare a trust over or deal in any other manner with any of your rights or obligations under this agreement without our prior written consent.

12.5 We may modify non-material terms of this agreement by notifying you of the change in writing or updating these terms on our website. Otherwise this agreement cannot be varied except in writing and signed by the parties.

12.6 You must notify us immediately if you become Insolvent.

12.7 If a court holds that any term or provision of this agreement is illegal, invalid or unenforceable under the applicable law, that term or provision will be severed from this agreement and the remaining terms and conditions will be unaffected.

12.8 This agreement is governed by and construed in accordance with the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

13. DEFINITIONS AND INTERPRETATION

13.1 In this agreement:

- (a) **Confidential Information** means the confidential, proprietary and commercially-sensitive information of either party, but does not include information which:
 - (i) is in the public domain other than by a breach of this agreement;
 - (ii) was in the receiving party's possession prior to disclosure;
 - (iii) was independently developed by the receiving party; or
 - (iv) is otherwise lawfully obtained by the receiving party from another person entitled to disclose such information.
- (b) **Delivery Location** means the location for delivery specified in the Order.

(c) **Due Date** means the time for delivery specified in the Order.

(d) **Insolvent** means you:

- (i) are under administration or insolvent (each as defined in the *Corporations Act 2001* (Cth));
- (ii) have had a controller appointed, or are in liquidation, in provisional liquidation, under administration or wound up or have had a receiver appointed to any part of your property;
- (iii) are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved; or
- (iv) are otherwise unable to pay your debts when they fall due.

(e) **Intellectual Property Rights** means all industrial and intellectual property rights throughout the world and includes rights in respect of copyright, patents, trade marks, designs, trade secrets, and know-how.

(f) **Invoice** means an invoice referencing the Order to which it relates, and comprising a Tax Invoice as defined in clause 4.6.

(g) **Order** has the meaning given in clause 1.1.

(h) **Pre-existing Materials** means any Intellectual Property Rights of a party that are either in existence prior to the date of this agreement, or developed independently of this agreement, and any enhancements, updates, improvements or modifications to them.

(i) **Price** mean the total fees specified in the Order for the Products and/or Services, which are, unless otherwise stated, inclusive of the cost of packaging, insurance and delivery.

(j) **Products** mean the products specified in the Order.

(k) **Services** mean the services specified in the Order.

(l) **Specification** means the relevant technical, functional, performance and other specifications set out in the Order, or otherwise notified to you in writing.

13.2 In this agreement, unless the context otherwise requires:

- (a) "including" and similar words do not imply any limitation; and
- (b) references to statutes include all statutes amending, consolidating or replacing such statutes.