

MOTUKEA GAS CO. LTD. - Supply Terms and Conditions

A. Definitions:

1. This agreement applies to all supply of gas cylinders by MGC and supersedes all previous negotiations and representations, whether oral or written, any earlier agreements for the goods and /or services and earlier sets of terms and conditions issued.
2. No variation or waiver of the agreement and no terms and conditions put forward by you or printed on your purchase order or other documents you give to us for the supply of goods and/or services will have any effect unless expressly agreed in writing by both parties. Failure to exercise and rights or remedy under this agreement in a timely manner will not constitute acceptance of the matter which give rise or right or remedy or a waiver of such right or remedy.
3. If any provision of this agreement is invalid, illegal or unenforceable, it will be read down to the extent necessary and reasonable to ensure that it is not invalid, illegal or unenforceable. If it or part of it cannot be so read down, it or the relevant part of it will be void and severable and the remaining provisions will not in any way be affected or impaired.
4. All warranties, releases, exclusions of liability and indemnities will remain valid and binding following termination.
5. If interpreting this agreement no rules of construction shall apply to our disadvantage on the basis that we put forward the agreement or any part of it. Headings are for convenience only and do not affect interpretation. To the extent of any inconsistency between the Terms and conditions of supply and special conditions, the special conditions shall prevail.
6. If the customer comprises two or more persons or entities, each of you is jointly and severally liable for all obligations and liabilities in this agreement.
7. A reference to legislation includes any subordinate legislation made under it and any legislation amending consolidating or replacing it.

B. Goods & Services

1. Goods sold by MGC to you will comply with any technical specifications provided by MGC and or the manufacturer. We do not warrant or guarantee that the good are suitable for your intended use or process. You are solely responsible for determining the suitability compatibility and use of the goods. Notwithstanding any clause to the contrary in this agreement we do not provide any warranties, express or implied of satisfactory quality or fitness for purpose in relation to the goods or services.
2. Where goods supplied by us or materials or equipment used in providing services, have not been manufactured by us to the extent we are not able to do so we will pass through to you the benefit of any manufacturer's warranty where it is available except in the event of user damage and disposable and perishable items. All other liability is excluded in accordance with this agreement.
3. If we supply gas to you, we will provide the gas containers and other equipment listed in this agreement. We may from time to time at our discretion change the mode of supply or model of equipment used to supply you the gases provided that he change does not increase the aggregate charges payable by you for the supply of those gases (except where clauses C.13 applies, or where a change is made with your consent or at your request).

C. Your obligations

You will:

1. Provide free of charge adequate and safe access to your premises, information and facilities (including labour for loading and unloading of goods and utilities supplies), and to our equipment and gas containers on your premises for us to carry out our duties and rights under this agreement including installation, replacement, delivery to and the inspection, audit, removal and servicing of equipment and gas containers. You will be responsible for any additional costs incurred by us in carrying out our duties and rights under this agreement including installation, replacement, delivery to and the inspection, audit, removal and servicing of equipment and gas containers, where those costs relate to inadequate or unsafe access to your premises, information and facilities or to our equipment and gas containers on your premises.
2. Ensure that all sites, works and materials for which you are responsible and all your equipment which is relevant to this agreement comply with current industry standards and all legal and statutory requirements including those relating to a safe workplace and with any specifications provided by us.
3. Obtain and maintain all necessary licences, permits authorisations, approvals and consents and comply with all legal obligations in connection with your possession and use of any goods supplied or our equipment and gas containers provided to you or work done on your site including installation or other services provided by us.
4. Insure our equipment and gas container to their full replacement cost against loss, damage and destruction and maintain other insurance as required by law and sufficient to insure your obligations under this agreement. If requested by us you will provide proof of any such insurance with 7 days.
5. No obliterate, remove or deface identification marks, tracking devices, labels, barcodes or notices on our equipment and gas containers.
6. Return all MGC equipment and gas containers in a clean and serviceable condition or pay the cost of restoring them to a clean and serviceable condition and pay the new replacement cost if any equipment or gas containers of MGC is lost or damaged beyond repair. No refund or allowance will be made for residual gas that may be in a returned gas container.
7. Not mortgage, pledge, sell or lend or create a security interest over our equipment or gas containers and you will not remove them from your premises shown in this agreement or otherwise part with possession of them except to us or to an agent or representative authorised by us;
8. Not at any time disclose any of the know-how technology, information, documents or other intellectual property supplied by us to you or contained in our equipment, gas containers, goods or service or otherwise made available to you, nor infringe our rights in such materials and you will use such for your internal purposes only;
9. Notify us in writing if you intend to sell your business with such notice being provided not less than twenty one (21) days before any such sale takes place.
10. Notify us in writing as soon as reasonably practicable after you become aware of any defect in goods or services supplied by us, any alleged breach of contract on our part, any negligence or other tort on our part, or any breach of statutory duty by us you acknowledge and agree that prompt notification may enable us to mitigate the loss or damage suffered by you as a result of the alleged act or omission or to assist you in doing so. Prompt notification may also enable us to identify defective goods and services and prevent other customers from suffering loss or injury;
11. Warrant that you do not have a binding exclusive supply arrangement with another supplier for the products and locations covered by this agreement;
12. Not use our equipment or gas containers to decant produce into other containers and will not on-sell, distribute or otherwise transfer any product unless this agreement expressly states otherwise.;
13. Pay all cost incurred by or on behalf of us, directly or indirectly, in connection with a request from you to modify or relocate a gas container or replace a gas container with a different size type or capacity of container, and

14. Only use gases in accordance with our material safety data sheets (MSDS) and use the MSDS to warn your personnel and others who may be exposed to the hazards associated with those gases. MSDS are available at no charge from our website, authorised agents or by contacting our customer service personal.

D. Ordering, delivery and collection

1. Cylinder gases, industrial and safety products, may be ordered in person at MGC plant, on-line, emailing purchase order or through MGC authorised agents.
2. MGC will schedule deliveries in appropriate quantities and frequency having regard to your average consumption rate, working patterns as advised by you in writing and the gas container capacity.
3. You acknowledge that collection of gas containers from and delivery of gas containers to MGC site or agent will be at your own risk and that you are responsible for handling and transporting the load safely, training the driver on the hazards of the goods and compliance with all relevant legislation. You indemnify us against any claims arising in any way from the collection, transport and delivery of gas containers by you or your agent.
4. In the absence of proof to the contrary our weights, records and measurements will be conclusive evidence of the quantities of goods delivered to you. If applicable, gas containers barcode information scanned at the point of delivery or return will be conclusive evidence of gas container delivered to or returned by you. Subject to clause our clauses, our delivery and collection note will be conclusive evidence as to the goods delivered.
5. If full delivery cannot be made due to your act or omission we may charge for abortive journeys or part deliveries.
6. We may abort deliveries of gas if the gas storage, handling or process equipment is considered by us not to be safe.
7. We may supply gas into gas containers owned by you and which we consider suitable by only by prior special arrangement with you. Such supply is subject to gas container examination and testing when necessary in accordance with our procedure and applicable statutory requirements and at your cost. We reserve the right to apply additional charge for filling service.
8. We have the right to charge a fee for the collection of empty gas container.

E. Title and Risk

1. All goods sold remain our property until you have paid for them and have paid all other outstanding amounts due and payable to us. The risk in goods sold or supplied passed to you upon delivery to you or your agent or collection by your or your agent.
2. Our equipment and gas containers remain at all times our absolute property even if affixed to real property owned or used by you and are supplied for your sole use. You have no rights over any property of ours or our contractors brought onto your site.
3. If our equipment or gas containers are installed at your site and you are not the owner of that site, you will provide us with the unconditional written agreement of the site owner confirming that the equipment or gas containers will at all times remain our property irrespective of how they may be affixed and that they may be repossessed by us in accordance with the agreement. You indemnify us against any cost, loss or damage if you fail to provide us with such site owner's agreement.

F. Charges, invoicing and payment

1. If we have a supply agreement with you the charges applicable at the time of entering into this agreement are shown in the tables or schedules forming part of the supply agreement or if none are specified will be our standard prices and charges for the relevant good or service. Charges are based on you estimated annual volumes given in the tables or schedules in the supply agreement. From time to time we will compare your actual volumes purchased against your estimated volumes on a pro rata basis. If you fail to purchase the estimated volumes we may vary these charges to reflect our current standard prices for your actual volumes and or vary the mode of supply or model of equipment used to supply you. If we do not have a supply agreement with you our standard prices and charges from time to time will apply.
2. If installation or other additional services are required, then additional charges may apply. We will normally tell you about such charges when you arrange that service. We may also offer to sell to you other goods and services (subject to availability). This may include maintenance, training, welding and safety equipment and consumables at our standard price.
3. If some of the cylinders are returned before the nominated rental monthly period expires and you do not take replacement cylinders no pro rata credit is provided. The periodic service charges for gas containers and our equipment allow us to provide services related to gas containers and equipment including but not limited to maintenance, repair (including repair, re-conditioning and labelling and testing as required by law, making gas containers available for customers (as agreed) and maintaining premises for this purpose, scrapping faulty or defective gas containers, research into gas delivery devices and inspecting gas cylinders prior to filing.
4. Unless stated otherwise in this agreement:
 - i) Gas and other product charges will be varied in proportion to changes in our standard prices for the applicable product from time to time (changes include, but are not limited to variations in market, economic and any other relevant circumstances).
 - ii) Delivery, handling and services charges will vary in line with our standard charges from time to time and
 - iii) All charges will be reviewed from time to time (and at least annually) taking into account all of the circumstances related to supply to you.
5. You agree that we may deliver invoices and notices to you by electronic means, such as email. If you do not use this method we may charge you and administration fee for the extra cost of processing. You must notify us immediately of any error on an invoice. You must pay all additional charges if any within seven (7) days of invoice date, including any disputed amount. After payment, if an adjustment in your favour is due, we will issue a credit note.
6. Our preferred method of payment is by direct debit. If you do not use this method, we may charge you and administration fee for the extra cost of processing if we incur any merchant or dishonour fees as a result of your method of payment, you agree that we may recover those fees from you at our discretion we may recover those fees from you directly or by adding the amount to a subsequent bill.
7. Notwithstanding, all our sales are cash sales unless you have a credit account approved by the management of MGC board.
8. Except where good delivered are not in accordance with your order or our selling specification or are defective the return of goods for credit is at our absolute discretion. If we grant credits they may be subject to charges for handling, or testing. Special gas mixtures cannot be returned for credit and if any order is cancelled by you a cancellation fee may apply. Medical Gases cannot be returned for credit.
9. If any amounts are overdue:
 - (i) We may suspend supply of goods and/or services to you and payment will become immediately due for all goods and services supplied under any agreement with you.
 - (ii) You may pay charges and interest in accordance with the latest Kina Facility Rate published by the Bank of Papua New Guinea or a rate stated on MGC invoice.
 - (iii) If we take debt recovery action against you, you must pay us our then applicable administrative fee, as advised by us at the time and pay us for the costs incurred in recovering overdue amounts owing by you and

- (iv) As a condition of any subsequent supply, we may vary your payment terms, including requiring you to provide a security of payment in a form acceptable to us (such as a bank undertaking, director or shareholder guarantee or pre-payment).
- 10. Prices in this agreement exclude GST unless stated otherwise. You will pay GST and any other government charges, duties or taxes in connection with supply of goods or services under this agreement.
- 11. Notwithstanding any other term of this agreement if at any time our costs of supplying goods and/or services under this agreement change due to government action (including imposition of a new tax or charge), a change in law, a change in tax or the introduction of any emissions trading scheme or any other scheme relating to greenhouse gases or other environmental emissions, unforeseen events or circumstances beyond our control (e.g. a significant and unexpected increase in cost of fuel, power, feedstock or distribution), inaccurate or inadequate provision of information by you or delay caused by you, we reserve the right to adjust prices to take account of such change in our costs including by applying a surcharge.12. Payment of a service charge invoice will be conclusive (subject to your holding of our equipment and gas container as shown on that invoice).
- 12. If any transaction or notification by you indicates a holding of our equipment and gas containers greater than recorded we may amend our records and charge you service charges accordingly.

G. Liability and Exclusions

- 1. Nothing in any agreement between MGC and you excludes, restricts or modifies any terms, conditions or warranties or our liability for them which are imposed or implied by any statute and which by statute cannot be excluded, restricted or modified. Limitations and exclusions are made only to the extent that we may legally do so.
- 2. Our liability for any kind of loss or damage suffered by you in connection with this agreement whether in contract, negligence or other sort of misrepresentation, breach of any statutory or equitable duty or otherwise and whether our act or omission is wilful or otherwise is excluded and/or limited (as the case may be) as set out in clause H. Our liability for any loss of or damage to revenue, profits, savings, use, contracts, production, goodwill, business opportunity or business and any consequential or indirect loss or damage is excluded.
- 3. We accept unlimited liability for personal injury or death to the extent that it directly results from our negligence but subject to the contributory liability of any other person.
- 4. We accept liability for physical damage to property to the extent that it was directly caused by our breach of contract or our negligence in connection with the performance of this agreement, subject to a limit stated in our public liability insurance policy.
- 5. We accept liability to the extent that it is directly caused by our breach of contract or our negligence in connection with the performance of this agreement for losses, costs, expenses or damage (in addition to and independent of our liability under clause 3.3 and 3.4 but subject to clause 3.2 and 3.6.
 - (i) Caused by us supplying any defective gas, up to a limit of PKG 10,000.00 or if greater, 20% of our anticipated monthly revenue generated under this agreement with you as that, for any one incident, or
 - (ii) Resulting from the provision of technical advice or training by us in return for a specific fee, up to a limit of the amount of the fee received for such advice or training.
- 6. Our sole liability for loss or damage incurred in respect of goods and/or services supplied (or agreed to be supplied) shall be limited to:
 - (i) In the case of goods at our option, the replacement of goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired, and
 - (ii) In case of services, at our option, supplying the services again or paying the cost of having the service supplied again.
- 7. Any action by you against us in relation to this agreement must be commenced within one year after the cause of action has accrued. You agree that we have no liability to you in relation to an action commenced after this period.
- 8. You indemnify us and hold us harmless against all loss, damage, proceedings, claims, costs and expenses howsoever caused arising directly or indirectly:
 - (i) Out of your possession, use or ownership (if applicable) of goods (including gases) or our gas containers:
 - (ii) From any unauthorised use of our intellectual property, and
 - (iii) From our presence on your site, including our equipment, materials and personnel, except to the extent caused by our negligence.
- 9. If performance of any contract obligation by its normal means is prevented or delayed due to any cause beyond your or our reasonable control, that contract obligation (other than a payment obligation) will be suspended during the period affected by such cause.
- 10. Failure by us to deliver goods or perform services by any time specified will not entitle you to terminate any agreement or make any claim against us.
- 11. We will not be liable for any defect arising from fair wear and tear to the materials or equipment installed or used in relation to or in connection with good and or services.
- 12. We will not be liable for any defect arising from fair wear and tear to the materials or equipment installed or used in relation to or in connection with the goods and or services.
- 13. We will not be liable for any shortage, loss, damaged goods or discrepancy unless you notify us in writing within 3 business days of receipt of goods by you or if you prove to us that it was not reasonably possible to notify us within that timeframe, you notify us within 3 working days after you first became aware or could reasonably be expected to have become aware of the claim.

H. Our containers and Equipment

- 1. Except as allowed under I.2 our gas containers can only be used in conjunction with gas placed in them by MGC you will not refill or allow the refilling of MGC gas containers or let them be used otherwise than for storage, transport or use of gas placed in them by us.
- 2. If and for as long as we are unable to supply bulk liquid gas you may use our gas container for handling equivalent gas obtained from another source, provided that you obtain our prior written consent. We will have no liability whatsoever in relation to any such supply and you will indemnify us against all claims, cost, expenses or liabilities resulting from such supply.
- 3. Our equipment will comply with any technical specifications provided by us. We do not warrant that the equipment is suitable for your intended use or process. If MGC warrants any particular performance levels, any claim for failure to meet those levels in any period is limited to proportional reduction in the service charge for that period.
- 4. We will maintain our equipment and gas containers in accordance with our procedures and current safety requirements. If this requires interruption of supply this will whenever possible be by arrangements with you.
- 5. Services charges are payable from delivery or from the date of completion where we provide installation, whichever is earlier.
- 6. We may maintain our equipment by a program of regular maintenance undertaken during normal business hours. If regular maintenance is carried out outside of normal business hours at your request then you will incur an addition charge at our then current rates.
- 7. For any repairs or maintenance required beyond that in I.6 will charge you an additional charge at our then current rates except to the extent that we caused the need for such repairs or maintenance.

8. You will comply with any manual (or other instructions) provided and will not otherwise adjust, repair or interfere with our gas containers or equipment. If you do not comply with this clause then we will have no liability to you for the consequences and we may charge you for additional service parts and or maintenance and repair charges as appropriate.

I. Breach and Termination

1. If you commit any act of bankruptcy or have a receiver, liquidator or administrator (or similar) appointed, or commit any breach of any provision of this agreement then we may by written notice with immediate effect either:
 - (i) Terminate the whole or any part of this agreement or
 - (ii) Suspend performance of all or any of our obligations, and at any time during such suspension terminate the whole or any part of this agreement. Services charges will continue to accrue and be payable by you during any period of suspension.
2. Termination will be without prejudice to any accrued rights of either party.
3. On Suspension or termination under any circumstances, or where you have breached clause C.10, we may recover possession of any goods, equipment, gas containers or materials belong to us (and where relevant, possession and title to any of your gas in our equipment or gas containers at no charge to us). And you irrevocably authorise us to enter your premises for this purpose. You must pay our charges for the costs of removal of our equipment and gas containers. Any costs of removal of our equipment and gas containers. Any delay by us in removing our equipment or gas containers will not waive our rights nor give you any rights over our property.
4. If we have a supply agreement with you, on termination by us under clause J.1 or by you without giving the required notice, you must pay by way of liquidated damages a sum equal to the service charges that you would have paid if the agreement had been validly terminated for convenience at the next available opportunity und the supply agreement.

J. General

1. If you purchase good and/or services from us through any MGC website or other e-commerce process, then (without limiting the foregoing) you agree to also be bound by the applicable terms and conditions set out or referred to in that site or relating to that process.
2. Nothing in this agreement will be interpreted or implied as constituting either us or you as having the relationship of employee and employer or you as our agent or us as your principal.
3. We may assign or transfer this agreement to a related body corporate at any time by notice to you. A party must not otherwise assign or transfer the benefits or obligations of this agreement without the prior written consent of the other party not to be unreasonably withheld.
4. We will be entitled to the full and unrestricted right, including the right to apply for patent or other protection in our own name to exploit any invention, technical information or know-how arising from or developed in the course of carrying out this agreement.
5. MGC and the MGC logo are trademarks and/or service marks of MGC. You have no right under the agreement to use any trademark, service mark, logo and/or trade name of MGC or its affiliates, suppliers, advertisers or agents or sponsors.
6. This agreement is governed by the laws of Papua New Guinea.

K. Confidentiality

1. You acknowledge that all pricing information and any other commercial sensitive or confidential information relating to this agreement is strictly confidential (Confidential Information).
2. Except as stated in this agreement the parties to this agreement are under an obligation to not and must not permit any of their offices, employees, agents, contractors or related bodies corporate to disclose any Confidential Information to any person other than their professional advisers or as required by law, without the prior written consent of the party to whom the Confidential Information relates.
3. This Clause;
 - (i) Operates for the benefit of all parties.
 - (ii) Continues despite the termination of this agreement.
4. Our treatment of personal information will be in accordance will be in accordance with normal International Privacy Policy.
5. You agree that MGC may obtain from, and provide to, third parties information about your credit worthiness and payment record. You agree that we may use for purposes related to this agreement, any personal information we hold on you.