

LINDE HKO LIMITED

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CONDITIONS OF SALE

1 July, 2012

1. **General Conditions**
1. APPLICATION OF THESE GENERAL CONDITIONS
- 1.1 Unless otherwise specifically agreed in writing these conditions shall be deemed to be incorporated in every offer, quotation, acceptance and contract for the sale or provision of goods or services ("Contract") by Linde HKO Limited (hereinafter called "LHKO", which include but not limited to sale of all types of gas, equipment and all kinds of goods and installation of equipment and all kinds of services rendered by LHKO, except when the goods sold or services rendered are specified to which LHKO's special conditions of sale apply then these conditions shall apply so far as they are not inconsistent with the LHKO's special conditions of sale applicable to those particular goods and services.
- 1.2 Any conditions of purchase proposed by customer of LHKO (hereinafter called the Customer) or printed on the Customer's purchase order are hereby excluded so far as they are inconsistent with the terms herein.
- 1.3 In these conditions goods mean equipment, gas or gas mixture supplied by LHKO, including liquid, liquefied, compressed or dissolved gas.
- 1.4 All orders for medical gas must be specifically identified as such.
2. PRICE
- 2.1 Prices appearing in LHKO's catalogues and price lists are prices in force as at the date of issue and are subject to alteration without prior notice. Unless otherwise specifically agreed in writing, the prices payable by the Customer shall be the prices in force as determined by LHKO as at the date of supply of the goods or services by LHKO.
- 2.2 Additional charge as determined by LHKO will be levied in force of certificates of analysis for gas mixtures and such other services rendered by LHKO to the Customer which are not provided for in LHKO's catalogues, price list or contract.
3. TERMS OF PAYMENT
- 3.1 Payment by the Customer who is granted credit by LHKO is due before the 20th day of the month following the month of delivery of goods or provision of services unless otherwise specifically agreed by LHKO and the Customer in writing. If the Customer fails to pay LHKO by the due date LHKO may either suspend all further deliveries under any contract until payment is made in full or cancel the order and subsequent orders insofar as goods remain to be delivered thereunder.
- 3.2 Without prejudice to the rights in 3.1 above, LHKO may charge interest on all amounts due but unpaid under the contract at the rate of 1.5% per month from the due date for payment down to receipt of LHKO of full payment.
- 3.3 Any amounts due to LHKO shall be deemed to be paid by the Customer on the day of receipt of the goods.
- 3.4 Any dispute to the accuracy of the particulars contained in the invoice should be notified by LHKO within 14 days from the date of the invoice. Should there be no complaint or requisition received by LHKO made within the (aforesaid period) the particulars therein shall be deemed to be correct and final.
- 3.5 Any obligations LHKO's part contained implied or incorporated in any contract for the sale of LHKO's goods or the provision of services are subject to the strict compliance by the Customer with the terms of payment and other obligations on the Customer's part in the contract contained.
4. DELIVERY AND RISK
- 4.1 Delivery dates or periods are only best estimates. LHKO will endeavour to keep to delivery dates, but, notwithstanding any other provisions herein contained or in any contract, such dates shall not be of the essence of the contract. LHKO shall not be liable for the consequences of any delay.
- 4.2 Delivery is complete on the date when LHKO accepts the Customer's order or when LHKO receives from the Customer any further information which it may require to proceed with the order, whichever is later.
- 4.3 Unless otherwise specifically agreed in writing, delivery shall be deemed to be effected and the risk in the goods shall pass from LHKO to the Customer when the goods are unloaded at the address designated by the Customer for delivery. In the case and when the goods are to be collected by the Customer or its agents then delivery shall be deemed to be effected and the risk in the goods pass when the goods are loaded onto the vehicle responsible for collection.
- 4.4 Notwithstanding delivery and the passing of risk in the goods, the property in the goods shall not pass to the Customer until LHKO has received full payment of the goods and charges for incidental services which the Customer is liable to pay.
- 4.5 Until such time as the property in the goods passes to the Customer, the Customer shall hold the goods as LHKO's fiduciary agent and bailee, and shall keep the goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as LHKO's goods.
- 4.6 Until such time as the property in the goods passes to the Customer, LHKO may at any time require the Customer to deliver up the goods to LHKO and if the Customer fails to do so forthwith, then on any premises of the Customer or any third party where the goods are stored and identified as LHKO's goods.
- 4.7 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of LHKO. If the Customer does so all moneys owing by the Customer to LHKO shall remain limited to the amount of the goods so pledged and the Customer shall remain liable to LHKO for the balance.
- 4.8 While the goods are in the possession of the Customer, regardless of whether the property of the goods has been passed to the Customer or not, the Customer shall be fully responsible for obtaining all necessary consents approval permits/licenses (from relevant governmental authorities or otherwise) and for complying with all prevailing legal obligations statutory requirements and code of practice (including but not limited to the Dangerous Goods Ordinance (Cap.295), the Gas Safety Ordinance (Cap.51) and the regulations thereunder) in connection with possession storage or other dealings of the goods. The Customer agrees to indemnify and keep indemnified LHKO for all loss and damage suffered by LHKO as a result of the obligations of the contract.
- 4.9 LHKO reserves the right to charge for delivery at such rate as it may deem fit.
- 4.10 Any shortage (including shortage of gas in a cylinder), loss, defect, damage or discrepancy must be notified promptly to LHKO and to the carrier if not LHKO. LHKO shall not be liable unless written notification is received within 30 working days of delivery of the goods or storage, damaged goods or packing must be reported by the date of intended dispatch in the case of total non-delivery. Damaged goods and packing must be kept for inspection by LHKO and/or the carrier.
- 4.11 Delivery or any part thereof cannot be made to the agreed drop point or delivery address due to the Customer's act or omission, LHKO is entitled to charge for abortive journey or part deliveries or such loss which LHKO suffers as a result thereof.
- 4.12 If the Customer fails to accept delivery or any part thereof LHKO shall be entitled to make arrangements for storage of the goods (excepted above) and for charging the Customer accordingly and the Customer shall be responsible for the risk of loss or damage to the goods and for paying the contract price as if the goods had been delivered.
- 4.13 Any obligations on LHKO's part in respect of the delivery of the goods as contained, implied or incorporated in any contract for the sale of LHKO's goods shall be deemed to be discharged by the Customer's acceptance of the goods and by-laws existing at the date of delivery and LHKO is entitled to levy additional charges in respect of delivery as may be necessary incurred by LHKO due to increased expenses caused by new regulations and/or changes of application of existing laws and ordinances by-laws.
- 4.14 The delivery and collection of goods by LHKO or LHKO's authorized carrier beyond the main gateway of the Customer's premises is made on the understanding that there is a safe and proper access to and to the point at which delivery or collection is to be made. The Customer shall accept all responsibility for damage to the goods or LHKO's or its authorized carrier's vehicles caused by the unsuitability of means of access from the main gateway to and from the loading or unloading points. LHKO or LHKO's authorized carrier shall not be responsible for damage to entrance gates, roadways, main pipes, bridges, weighbridges, buildings, erections, approaches or property within the Customer's premises, leading to and to the loading or unloading points, unless such damage is caused by the gross negligence of LHKO or its servants, or LHKO's authorized carrier or its servants. Notwithstanding the foregoing, LHKO is entitled to at any time refuse to enter the Customer's premises or access to and to any point of delivery or collection if in LHKO's opinion the access to and to such premises or points are unsafe or improper or they are unsuitable loading or unloading points.
5. LOADING, UNLOADING, INSPECTION, INSTALLATION AND COMMISSIONING ON SITE
- 5.1 If the contract covers delivery to site, or inspection, installation or commissioning by LHKO on site, the Customer shall provide free of charge adequate and safe access and facilities for LHKO, its employees representatives, agents and sub-contractors and their vehicles, and labour for loading and unloading of goods (including cylinders and other containers).
- 5.2 The Customer is responsible for carrying out any necessary preparatory works to LHKO's satisfaction and for supplying information or drawings sufficient to enable LHKO to supply the goods or services.
- 5.3 Any person engaged to work on site in connection with the contract (other than an employee, representative, agent or sub-contractor of LHKO) shall be deemed to be an employee or agent of the Customer. The Customer shall be liable for any injury or damage suffered by LHKO, its employees, representatives, agents or sub-contractors however caused on the Customer's premises or except to the extent caused by the gross negligence of LHKO, its employees, representatives, agents or sub-contractors.
6. TECHNICAL SPECIFICATIONS, CATALOGUES, ETC.
- 6.1 Descriptions, technical specifications, drawings, illustrations or particulars of weight or dimensions given in catalogues or other literature issued by LHKO while given in good faith shall not form part of the contract unless specifically agreed by LHKO or in writing.
- 6.2 LHKO's drawings, specifications, data and other documents are LHKO's property the copyright thereof belongs to LHKO.
7. WARRANTY AND DAMAGE
- 7.1 LHKO endeavours to manufacture and sell goods, equipments and materials with efficient workmanship and quality material.
- 7.2 Subject to Clause 4.10 herein, LHKO will repair or at its option replace the defective or damaged goods free of charge provided that the goods are returned to LHKO's premises with carriage charges paid by the Customer and provided also that this warranty shall apply to have effect if the goods have been used for any purpose other than that for which they are intended or otherwise in accordance with LHKO's written instructions and directions or have been wrongly or improperly installed by the Customer or stored in improper or unsuitable conditions or otherwise tampered with.
- 7.3 LHKO may at its option elect to refund or forgo the contract price and take back goods supplied or equipment provided in full satisfaction of any liability or obligation under Sub-clause 7.2 above.
- 7.4 Purty of industrial gas is warranted as suitable for general industrial process only. If a specific purity, tolerance or other specific requirements the Customer shall notify LHKO in writing in consultation with the Customer shall endeavour to make arrangements for supply.
- 7.5 Medical gas is warranted as suitable for general medical use and is also warranted to conform to the product specifications of European Pharmacopoeia.
8. REPRESENTATIONS, AVOIDANCE AND EXCLUSION OF IMPLIED TERMS
- 8.1 These Conditions of Sale set out all the rights, obligations and liabilities of the parties in respect of the subject matter(s) and any warranty or condition implied by common law or by statute or otherwise into a contract for the sale of goods or supply of services shall be excluded to its fullest extent, except to the extent that any warranty or condition cannot be lawfully so excluded.
- 8.2 No warranty is given that goods or services are suitable or sufficient for any specific purpose unless such purpose is defined in the contract and expressly accepted by LHKO in writing.
- 8.3 LHKO's employees or agents are not authorized to make any representations on behalf of LHKO concerning the goods sold or services rendered except only if LHKO agrees in writing to provide technical advice in return for a specific fee, in which case the liability of LHKO, its employees and agents shall be limited to the amount of the fee received for such advice. In entering into contract with LHKO the Customer acknowledges that it does not rely on any such representations made by LHKO's employees or agents.
9. RESPONSIBILITY FOR SAFETY AND LEGAL OBLIGATIONS
- 9.1 The Customer shall be responsible for obtaining all necessary consents approval permits/licenses (from relevant governmental authorities or otherwise) and for complying with all prevailing legal obligations statutory requirements and code of practice (including but not limited to the Dangerous Goods Ordinance (Cap.295), the Gas Safety Ordinance (Cap.51) and the regulations thereunder) in connection with any goods supplied, equipment provided to the Customer or work done on the Customer's site. The Customer agrees to indemnify and keep indemnified LHKO for all loss and damages suffered by LHKO as a result of the failure of the Customer to comply with its obligations herein.
- 9.2 The Customer is responsible for any risks to health or safety arising from LHKO goods or equipment in its possession. The Customer shall comply with all prevailing legal obligations statutory requirements and code of practice (including but not limited to the Dangerous Goods Ordinance (Cap.295), the Gas Safety Ordinance (Cap.51) and the regulations thereunder) concerning the storage handling conveyance and use of the goods and services supplied by LHKO. The Customer must ensure that persons handling LHKO goods and equipment receive adequate training. The Customer agrees to indemnify and keep indemnified LHKO for all loss and damages suffered by LHKO as a result of the failure of the Customer to comply with its obligations herein.
- 9.3 It is the Customer's responsibility to ensure that gas use for medical purposes is administered only through appropriate equipment and qualified personnel. LHKO shall not be liable for any loss or damages caused by the failure of the Customer to observe its duties herein. The Customer agrees to indemnify and keep indemnified LHKO for all loss and damages suffered by LHKO as a result of the failure of the Customer to comply with its obligations herein.
10. LIABILITY
- 10.1 LHKO shall not be liable under whatever circumstances for direct physical injury or other physical damage of whatever nature to persons or property however caused unless caused by the direct negligence of LHKO or its servants or performance of the obligations of the contract. The maximum liability of LHKO under these conditions shall be so far as can be excluded by law. In no case except the contract price for the goods sold or services rendered.
- 10.2 In no event shall LHKO be liable to the Customer or to any third party for incidental or consequential damage or any loss of business or profit.
- 10.3 Without prejudice to the generality of the provisions in this clause, LHKO shall not be liable for injury to persons or damage to property where the goods are installed, stored or used contrary to the instructions of LHKO or statutory requirements or any common law obligations or code of practice placed upon the Customer.
11. PACKING
- 11.1 Goods will be packed in accordance with LHKO's normal practice from time to time prevailing but LHKO reserves the right to alter the method of packing in respect of individual orders without prior notice.
12. EXPORT
- Unless otherwise specifically agreed in writing, the following conditions apply to goods for delivery overseas:-
- 12.1 Delivery shall be taken at LHKO's specified premises and the risk in the goods shall pass from LHKO to the Customer when the goods are loaded onto the vehicle responsible for collection.
- 12.2 Inspection of the goods shall take place at LHKO's specified premises by the Customer or its authorized agent. LHKO shall not be liable for any claims in respect of any defect which is not made forthwith after inspection, or claim which is made after shipment or during transit, or if the Customer did not inspect the goods at all.
- 12.3 Costs for all packing cases, crates, drums and other containers incurred by LHKO for delivery shall be reimbursed in full by the Customer.
- 12.4 LHKO does not undertake to provide its own cylinders for the supply of gases for export. Customer shall be responsible for providing proper cylinders as its own costs for such purpose which will be filled in accordance with the conditions herein and other instructions given by LHKO from time to time in respect of gases or liquid gases as appropriate. The cylinders provided by the Customer shall comply with statutory requirements in force in Hong Kong as well as the importation charges as determined by LHKO will be levied for periodical inspection and reconditioning of Customer's cylinders.
- 12.5 The Customer shall be fully responsible for obtaining such consents approvals licences and permits as may be required for the export of the goods.
- 12.6 The Customer shall be responsible for complying with all legal obligations statutory requirements and code of practice governing the importation of the goods into the country of destination and for the payment of any tax and duties on them.
- 12.7 LHKO shall not be liable under whatever circumstances to the Customer for any loss and damages caused by the refusal of the Customer to allow import or export of the goods by whatever reason or the non-compliance of the import requirements or local statutory requirements and code of practice of the country of destination.
- 12.8 LHKO shall not be liable for any loss and damages suffered by LHKO as a result of the failure of the Customer to comply with its obligations herein.
- 12.9 Unless otherwise specifically agreed in writing, terms of payment shall be net cash in exchange for shipping documents through licensed banks in Hong Kong. All other terms of these conditions shall be applicable to goods sold overseas unless inconsistent with the conditions set out in this Clause 12.
13. TRADE SECRETS AND INDUSTRIAL PROPERTY
- 13.1 Know-how, technical information or documents supplied at any time by LHKO to the Customer in connection with the contract or the performances thereon or any incidental dealings are confidential in nature and the Customer shall maintain their confidentiality. The Customer, its employees and agents shall not reproduce or disclose such information to any third party or use the information for any purpose other than those contemplated in the contract without LHKO's written consent. The duty of confidentiality shall cease and to the extent that such information has become public knowledge.
- 13.2 LHKO warrants that its goods (including gas) of standard manufacture (but not any particular use of such goods) are free from third party patent or other industrial property restrictions in Hong Kong. Subject to the aforesaid, LHKO shall under no circumstances be liable for any infringement of patent and other industrial property rights and it is the Customer's responsibility to ensure that no infringement of third party patent or other industrial property rights shall arise in respect of the use and disposal of the goods.
- 13.3 LHKO's trade marks and trade names shall not be used other than as applied by LHKO on the goods supplied.
14. TERMINATION OF SUPPLY AND REPOSSESSION OF LHKO PROPERTY
- 14.1 Without prejudice to any accrued rights of the parties to the contract, LHKO is entitled to stop supply of goods or services at any time, forthwith terminate the contract by notice to the Customer upon occurrence of any of the following events:
- if the Customer commits any act of bankruptcy or, being a company, has a receiver appointed or goes into liquidation (except for the purpose of reconstruction or amalgamation); or
 - if the Customer commits any breach of any provision of this contract with LHKO or these conditions; or
 - if the Customer fails to make payment of any sums due and payable to LHKO; or
 - if the Customer ceases or threatens to cease business; or
 - if the Customer stops payment to its creditors generally; or
 - a petition for bankruptcy or liquidation is presented against the Customer.
- 14.2 No previous waiver or indulgence given by LHKO shall prejudice or preclude the future exercise of such rights against any party.
- 14.3 LHKO ceases for any reason to supply gas or other goods to the Customer, without prejudice to LHKO's other rights and remedies under the contract, LHKO is hereby granted a licence to enter the Customer's premises for the purpose of repossessing any LHKO property (including where relevant, the Customer's gas in LHKO's cylinders or other containers).
15. FORCE MAJEURE
- 15.1 LHKO shall not be deemed to be in breach of contract with the Customer or be liable to the Customer for any delay in performance or non-performance of any of its obligations under the contract if the delay or non-performance is due to circumstances beyond the reasonable control of LHKO which include but not limited to strike, lock-out, industrial dispute, breakdown of plant, transport or equipment, etc. (hereinafter called Force Majeure).
16. JURISDICTION
- The contract made between LHKO and the Customer and the conditions herein shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region of the PRC ("Hong Kong") and the parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of the courts of Hong Kong.
17. EMERGENCY
- 17.1 LHKO will endeavour to execute all orders at prices in force ruling at the time of the acceptance of the order by LHKO and to maintain supplies and services so far as possible but it is entitled to alter prices or suspend or delay deliveries if necessitated by increases in the cost of materials, labour or transport or by Force Majeure. LHKO shall not be deemed to be in breach of contract should it exercise its right herein.
18. GENERAL
- 18.1 If upon the request of the Customer and the agreement of LHKO goods or services are supplied to any person designated by the Customer but who is not a party to the contract, the Customer shall procure that such person agrees to be bound by these conditions as though it were a party to the contract, and the Customer shall indemnify and keep indemnified LHKO for any loss and damages suffered by LHKO as a result of the failure of the Customer to do so.
- 18.2 The Customer shall indemnify and keep indemnified LHKO of any loss and damages incurred by LHKO to third parties as a result of breach of contract by the Customer.
- 18.3 The general conditions herein shall be applicable and in addition to the conditions for the sale of Cylinder Gas and Liquid Gas as set out in Clauses 19 to 30 ("Special Conditions") hereinafter unless they are inconsistent with the Special Conditions in which case the Special Conditions shall prevail.
- 18.4 In the event these conditions exclusive of the Special Conditions do not show hereinafter may be changed by LHKO and the revised clauses shall become effective and the Customer shall be deemed to agree to be bound by the revised clauses after LHKO giving one month's notice in writing to the Customer.
19. SUPPLY AND RETURN OF CYLINDERS
- 19.1 In these conditions "LHKO CYLINDER" means any single cylinder or batch arrangement of cylinders and includes any portable container for gas provided by LHKO.
- 19.2 LHKO cylinders is the property of LHKO and is supplied to the Customer for the Customer's sole use in Hong Kong only unless LHKO specifically agrees in writing for the Customer to use elsewhere. On termination of the contract all LHKO cylinders must be returned to LHKO in good condition and at the costs of the Customer.
- 19.3 LHKO does not undertake to fill cylinders other than LHKO cylinders unless LHKO agrees in writing otherwise. In such event, the filling of the cylinders shall be at the Customer's risk. Such filling is subject to cylinder examination, testing and replacement of valve by LHKO at the Customer's cost and at the Customer's risks in accordance with LHKO procedures and statutory requirements.
- 19.4 LHKO undertakes to supply gas to drop points agreed with the Customer upon prior arrangement.
- 19.5 The Customer is responsible for all costs and charges for collection of cylinders in areas outside LHKO's free transportation areas as may be determined by LHKO from time to time.
- 19.6 Upon prior agreement and the Customer's agreement as to payment after initial supply LHKO may deliver same number of filled LHKO Cylinder for replacement. Upon prior agreement and the Customer's agreement as to payment, LHKO may supply additional cylinders or collect empty cylinders without delivering filled cylinders for replacement.
- 19.7 The cylinders awaiting filling or collection by LHKO must be gathered together ready for prompt loading at the agreed drop point or collection point.
- 19.8 Upon prior arrangement with LHKO, Customer may collect and return cylinders at designated LHKO depots.
- 19.9 If the size of the cylinder requested by the Customer is not available, LHKO has the right to supply cylinders of nearest available size.
20. CYLINDERS ON DEPOSIT
- 20.1 Unless agreed in writing otherwise, the Customers shall pay LHKO deposit for using LHKO Cylinder at the rate fixed by LHKO.
- 20.2 LHKO is entitled to appropriate all or any part of the deposit as it may deem fit to pay for the costs and expenses incurred or loss and damages suffered by LHKO by reason of the failure of the Customer to comply with any provision in connection with LHKO Cylinder herein, without prejudice to LHKO's rights of action against the Customer for costs expenses loss and damages in excess thereof. In the event of any such appropriation being made, the Customer shall continue to make the deposit equal to the amount appropriated.
- 20.3 Upon the Customer's due performance of all terms and conditions of the contract including payment of all moneys due to LHKO and return of LHKO Cylinder in good condition to LHKO, LHKO shall refund the deposit without interest to the Customer.
21. CYLINDER RENTAL
- 21.1 Unless agreed otherwise in writing, the Customer shall pay LHKO rental for LHKO Cylinder in advance at the rates fixed and other LHKO's publications. In the event the rent being in arrears the Customer shall return the LHKO Cylinder to LHKO forthwith and LHKO's form demand for the return shall not be required.
- 21.2 If the Customer returns LHKO Cylinder in good condition before expiration of the paid rental period and does not require replacement, refund of the rental on monthly pro-rata basis for the unused term shall be made to the Customer. For avoidance of doubt, the month in which the Customer returns the LHKO Cylinder shall be treated as used term notwithstanding the LHKO Cylinder is returned to LHKO before the expiration of the entire month, and which shall not be included as part of the unused term for the purpose of calculating the amount of refund to the Customer.
- 21.3 If the Customer fails to return LHKO Cylinder after the expiration of the rental period, the Customer shall continue to be liable for payment of the rental of the LHKO Cylinder at the prevailing rental until the LHKO Cylinder is returned in good condition to LHKO.
- 21.4 Invoice issued by LHKO for rental for LHKO Cylinder is deemed conclusive (subject to transactions prior to the date of invoice which have not been included in the invoice and Sub-clause 22.9 below) as to the particulars and quantities of LHKO Cylinder held by the Customer for the period as shown on the invoice in question.
22. RESPONSIBILITY FOR CYLINDERS
- 22.1 The Customer is responsible for proper retention and maintenance of LHKO Cylinder from receipt (whether at the drop point or otherwise) to the return of the cylinder to LHKO. If the cylinder is damaged in writing, LHKO. Any loss or damage must be reported to LHKO promptly. Without prejudice to LHKO's rights and remedies in respect of the deposit under Clause 20, the Customer shall indemnify LHKO for loss and damages suffered by LHKO by reason of the Customer's failure to retain and maintain the LHKO Cylinder properly.
- 22.2 The Customer shall not be liable for the loss or damage to LHKO Cylinder otherwise than by LHKO or allow the same to be used otherwise than for storage, transport or use of gas supplied by LHKO.
- 22.3 The Customer shall not sell or offer to sale, mortgage, pledge, underlet, lend or deposit for storage or deposit as security in any way or part with the possession of evaporating equipment, manifolds, pipelines or cylinder supplied and owned by LHKO or allow any lien to be created thereon and shall pay all rent, rates, taxes, charges and impositions payable in respect of the premises wherein such evaporating equipment, manifolds, pipelines or cylinders are situated and shall protect the same against distress, execution or seizure and indemnify and keep indemnified LHKO against all losses, damages and expenses incurred by LHKO by reason or in respect thereof.
- 22.4 All LHKO Cylinder must be returned with valve closed and valve protecting caps properly fitted and in a clean and serviceable condition.
- 22.5 The Customer shall pay LHKO such charges as determined by LHKO for repair, renovation or cleaning due to the Customer's failure to take proper care or maintenance of LHKO Cylinder. The Customer shall pay the charge for a replacement LHKO Cylinder if any LHKO Cylinder is lost or damaged beyond repair. Where the Customer has paid for the replacement LHKO Cylinder, the loss of the lost/damaged and the replacement LHKO cylinders shall continue to be the property of LHKO. If the Customer subsequently relocates the lost LHKO Cylinder or is able to return a lost LHKO Cylinder in good condition to LHKO, LHKO may, but not be obliged, to refund the charges for the new LHKO Cylinder or part of it.
- 22.6 The Customer is hereby deemed to authorize LHKO or its employees or agents or contractors to enter into the Customer's premises at reasonable time but without prior notice to inspect the LHKO Cylinder of its safety or security, etc.
- 22.7 LHKO Cylinder shall be returned to LHKO forthwith upon occurrence of any of the following events:-
- the Customer in default in setting any account with LHKO in accordance with LHKO's terms of credit; or
 - in the opinion of LHKO, the Customer has retained the LHKO Cylinder for an unreasonable length of time, and upon notice by LHKO in writing to the Customer to return the LHKO Cylinder within a specified period the Customer fails to do so; or
 - the Customer in breach of any of the conditions herein contained.
- 22.8 In the event of failure on the part of the Customer to comply with any of its obligations herein or under any contract with the Customer, LHKO shall be entitled to stop supply of goods or services to the Customer and to sue the Customer for the amount of the contract price and to grant a licence to LHKO or its employees or agents or contractors to enter into its premises for the purpose of recovering possession of the LHKO Cylinder and to sue the Customer for the amount of the contract price and to sue the Customer for any other actions against the Customer as herein provided or allowed by law. In the event LHKO recovers possession of the LHKO Cylinder in accordance with this clause, the Customer shall not be entitled to the refund or any part thereof in respect of unused gas as contained in the LHKO Cylinder or unused rental for the unexpired term, except where LHKO agrees in writing to the contrary.
- 22.9 If it is found by LHKO that the LHKO Cylinder in possession of the Customer is of greater quantity or volume or size than those shown in LHKO's records, LHKO shall be entitled to amend its records and charge the Customer further rental for the previously uncharged quantity or portion of the LHKO Cylinder accordingly.
23. RETURNED CYLINDERS
- 23.1 If the Customer returns or if LHKO repossesses LHKO Cylinder, pursuant to the conditions herein, the Customer is still liable to pay for the Cylinder rental and price of the gas which are payable but have not been paid.
- 23.2 Where LHKO Cylinder is returned other than by LHKO's collection, the same must be properly labelled showing the Customer's name and address and the date of return. The Customer shall also give prior notice to LHKO of the means of return, the quantity, the type and serial number of the returned LHKO Cylinder. (See also Sub-clause 22.4.)
24. USE OF SUPPLIES
- 24.1 All Liquid Gases supplied by LHKO are for the sole use of the Customer and shall not be used for filling portable cylinders or containers except as authorised by LHKO in writing.
25. SUPPLY AND INSTALLATION OF APPARATUS
- 25.1 LHKO will provide and maintain apparatus for supply, evaporating and storing of liquid gases supplied by LHKO (hereinafter called the Apparatus) on terms to be agreed. LHKO is entitled to charge the Customer for costs of Apparatus and its maintenance. The Apparatus is the property of LHKO and the Customer shall be responsible for the safe custody and maintenance of the Apparatus and shall indemnify and keep indemnified LHKO against all loss or damages to the Apparatus by whatsoever causes.
- 25.2 Upon request of LHKO, the Customer shall provide at its costs:
- A site for the building to house the Apparatus which shall afford adequate access for the road tankers to and from the site and should enable the tankers to stand in the open within the Customer's own premises while the process of evaporator filling is in progress.
 - A building on the site for the purpose of safe and proper housing of the Apparatus, the design and specification of which must conform with LHKO's standard drawings and requirements as the Customer may be notified from time to time and comply with the statutory regulations of Hong Kong for such buildings. All approval, consents, licences, permits and authorities, whether from governmental authorities or other third parties for the construction and operation of such buildings and housing of the Apparatus must be duly provided and maintained. The building must be free from any peculiar hazard and possess ventilation directed to the open air.
 - All drawing out and making good.
 - Gases required for erection and test purposes.
 - Safe custody of all Apparatus delivered to the site.
- 25.3 It shall further be the responsibility and at the costs of the Customer to:-
- Provide the necessary electrical power and the necessary connections.
 - Operate the Apparatus in accordance with the working instructions as laid down by LHKO from time to time.
 - Keep the Apparatus and building in clean condition.
 - Strain from installing in the vicinity of the Apparatus a furnace or other heat emitting unit (other than that required and approved pursuant to Sub-clause (i) here) or operating any plant likely to interfere with the normal working of the Apparatus.
 - Provide qualified labour for operation of the Apparatus.
 - Provide the necessary electrical power and the necessary connections.
26. APPARATUS NOT TO BE MORTGAGED, ETC.
- The Customer shall not sell or offer to sale, mortgage, pledge, underlet, lend or deposit or storage or deposit as security in any way or part with the possession of Apparatus supplied and owned by LHKO or allow any lien to be created thereon and shall pay all rent, rates, taxes, charges and impositions payable in respect of the premises wherein such Apparatus is situated and shall protect such Apparatus against distress, execution or seizure and indemnify LHKO against all losses, damages and expenses incurred by LHKO by reason or in respect thereof.
27. NOTIFICATION OF FAILURES
- The Customer shall notify LHKO forthwith any defect, disfunctioning or malfunctioning in or of the Apparatus coming to the Customer's knowledge. LHKO shall only be notified for loss of liquid gases due to defects in the Apparatus arising from normal and proper use of the Apparatus in accordance with the conditions herein and instructions from LHKO and as from the time when such notification is received by LHKO.
28. DELIVERY AND MAINTENANCE
- LHKO shall have free and unrestricted access to and to the Apparatus with its transport and shall at all reasonable times have access to the Apparatus for inspection or to effect repairs. LHKO may discontinue the supply of liquid gases temporarily after giving notice to the Customer, for the purpose of making leakage test hydraulic test or repairs or replacement or for any other necessary purpose and if necessary, may remove the Apparatus for such purpose(s), all to be determined in LHKO's sole opinion. In the event of such interruption of supply of liquid gases LHKO shall endeavour to supply compressed gas in portable cylinders at the current price to the Customer for such compressed gas and subject to the conditions relating to the supply of gas in cylinders from time to time set out in these conditions, LHKO's price list and other publications.
29. OPERATION OF APPARATUS
- 29.1 The Customer shall not alter or interfere in any way with the Apparatus except with the written consent or instructions of LHKO.
- 29.2 The Customer shall not be entitled to make any use of the Apparatus except to draw off and use through the pipeline the evaporated liquid gases supplied by LHKO and shall not place or allow anything to be placed thereon other than the liquid gases supplied by LHKO. Provided that if by reason of Force Majeure LHKO is unable to supply or deliver the liquid gas to fulfill the Customer's requirements or arrange alternative means in place of liquid gas the Customer may during the continuance of such Force Majeure and upon prior written consent of LHKO use the Apparatus for supply, evaporating or storing of similar liquid gas obtained from such other sources as may be available but LHKO shall give no warranty as to the suitability of the Apparatus for such purpose.
30. REMOVAL OF APPARATUS
- Upon termination of contract whether by effluxion of time or by any other cause, LHKO shall have the right of entry into the Customer's premises during normal working hours, for the removal therefrom of all Apparatus and the Customer shall supply at its costs the necessary labour and handling facilities for the removal of such Apparatus.