

LINDE HKO LIMITED

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CONDITIONS OF SALE

1 July, 2012

- I. **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 or replacement of all types 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 the contract or terminate the contract 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 by LHKO of full payment.
- 3.3 Any amounts overdue the Customer shall be deemed to be due and payable by LHKO.
- 3.4 Any dispute to the accuracies 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 request 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 of goods 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, LHKO may on any premises of the Customer or any third party where the goods are stored and identify the 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 indebtedness. 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.
- 4.8 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.
- 4.9 LHKO's trade marks and trade names shall not be used other than as applied by LHKO on the goods supplied.
- 4.10 Termination of Supply and Reseption of LHKO PROPERTY
- 4.11 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 respect to these conditions; or
 - if the Customer fails to make payment of any sum 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.
- 4.12 No previous waiver or indulgence given by LHKO shall prejudice or preclude the future exercise of such rights against any party.
- 4.13 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 in other containers).
- 4.14 FORCE MAJEURE
- 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).
5. 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.
6. EMERGENCY
- 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.
7. SUPPLY AND RETURN OF CYLINDERS
- In these conditions "LHKO CYLINDER" means any single cylinder or batch arrangement of cylinders and includes any portable container for gas provided by LHKO.
- 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.
- 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.
- LHKO neither undertakes to supply gas to drop points agreed with the Customer upon prior arrangement.
- 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.
- 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.
- If the cylinders awaiting filling or collection by LHKO must be gathered together ready for prompt loading at the agreed drop point or collection point.
- Upon prior arrangement with LHKO, Customer may collect and return cylinders at designated LHKO depots.
- If the size of the cylinder requested by the Customer is not available, LHKO has the right to supply cylinders of nearest available size.
8. CYLINDERS ON DEPOSIT
- Unless agreed in writing otherwise, the Customers shall pay LHKO deposit for using LHKO Cylinder at the rate fixed by LHKO.
- 2.02 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.
- 2.03 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.
- 2.1. CYLINDER RENTAL
- 2.1.1 Unless agreed otherwise in writing, the Customer shall pay LHKO rental for LHKO Cylinder in advance at the rates fixed and in accordance to the conditions determined by LHKO from time to time as provided for in LHKO's price list 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.
- 2.1.2 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.
- 2.1.3 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.
- 2.1.4 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.
- 2.2. RESPONSIBILITY FOR CYLINDERS
- 2.2.1 The Customer is responsible for proper retention and maintenance of LHKO Cylinder from receipt (whether at the drop point or elsewhere) to the return of the cylinder to LHKO. In the event of any loss or damage, 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.
- 2.2.2 The Customer shall not refill or allow the refilling of 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.
- 2.2.3 The Customer shall not sell or offer for 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 cylinders supplied and owned by LHKO nor 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.
- 2.2.4 All LHKO Cylinder must be returned with valve closed and valve protecting caps properly fitted and in a clean and serviceable condition.
- 2.2.5 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 LHKO Cylinder and the same is lost or 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 obliged to, refund the charges for the new LHKO Cylinder or part of it to the Customer.
- 2.2.6 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.
- 2.2.7 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 of time, the Customer fails to do so; or
 - the Customer in breach of any of the conditions herein contained.
- 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 terminate the contract and to take such steps as may be necessary to secure the Customer for return of the LHKO Cylinder and/or loss and damages. The Customer is hereby deemed 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/or loss and damages. 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.)
- 2.3. RETURNED CYLINDERS
- 2.3.1 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.
- 2.3.2 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 Customer shall be deemed to have authorized LHKO to return to LHKO the means of return, the quantity, the type and serial number of the returned LHKO Cylinder. (See also Sub-clause 22.4.)
- 2.4. USE OF SUPPLIES
- 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.
- 2.5. SUPPLY AND INSTALLATION OF APPARATUS
- 2.5.1 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.
- 2.5.2 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.
- 2.5.3 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.
 - Refrain 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.
- 2.6. APPARATUS NOT TO BE MORTGAGED, ETC.
- The Customer shall not sell or offer for 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 nor 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.
- 2.7. 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.
- 2.8. 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.
- 2.9. OPERATION OF APPARATUS
- 2.9.1 The Customer shall not alter or interfere in any way with the Apparatus except with the written consent or instructions of LHKO.
- 2.9.2 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.
- 2.9.3 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 equipment which LHKO shall supply at its costs the necessary labour and handling facilities for the removal of such Apparatus.
- Pursuant to the Dangerous Goods (General Regulations) (Cap.295B), any person who uses any cylinder, or cause or permit any cylinder to be used, to contain permanent, liquefied or dissolved gases, which LHKO has not been tested and/or examined by a person approved by the Director of Fire Services for that purpose within the preceding 5 years as in the case of permanent and liquefied gases and the preceding 12 months as in the case of dissolved gases, the person shall be liable to a fine and imprisonment.