

# SUPAGAS 2009 Limited – Terms & Conditions of Trade

## 1. Introduction

These terms and conditions together with the purchase order completed by the Customer and accepted by Supagas form the entire agreement between the parties, and no other conditions shall apply except where Supagas has agreed in writing to vary such terms and conditions. These terms and conditions apply in respect of any purchase by a Customer of products supplied by Supagas. By purchasing products from Supagas, you are accepting these terms and conditions. Supagas reserves the right to update or correct the terms and/or conditions, such change to take effect from the date the change is made, without the necessity of giving notice. Any existing order for product shall be governed by the terms and conditions current at the time the order was accepted by Supagas.

## 2. Products and Prices

Any information supplied by Supagas is subject to subsequent variation without notice. Any prices may be subject to increases or decreases from time to time. The price of any product shall be the price quoted by Supagas at the time of making the order, and any cost associated with the getting the product to you (delivery costs etc). Products are subject to availability, listed products may not be currently available. Supagas reserves the right to alter orders should requested items not be available. Orders are not binding upon Supagas until accepted by Supagas. Supagas remains the owner of all product until you have paid all amounts owing on all products including any applicable storage and delivery costs. Supagas may revise product prices and/or discontinue any product without prior notice. In respect of any variation in price, such variation will only be effective if Supagas and the Customer agree or if Supagas has given notice of any change in price. All prices are exclusive of GST and payment shall be in New Zealand currency unless Supagas agrees in writing to another currency. Supagas may enter your business premises without notice to collect any products which have not been paid for or which Supagas deems unsafe. Supagas shall give the Customer notice to enter the Customer's premises in the event of delivery, inspection or disconnection (other than where the products are at risk or a safety issue has arisen or is likely to arise, or where the Customer is in breach of this contract).

## 3. Payment

Supagas and the Customer each agree payment for products is on the following basis:

- (a) any contract between Supagas and the Customer is to be on a "cash sale" basis unless otherwise agreed and the Customer shall pay the amount owing prior to delivery of any products;
- (b) any deposit required by Supagas will be paid immediately on creation of any sale contract and subject to clause 6 (product returns) is non-refundable;
- (c) where payment is on credit, then payment is due on the 20<sup>th</sup> of the month following the date of delivery;
- (d) settlement of monthly accounts requires payment in full either by cash, cheque, electronic funds transfer or any other payments which is first approved by Supagas;
- (e) Supagas may impose upon the Customer a credit limit and at its discretion may alter that credit limit without notice to the Customer. Where the credit limit is exceeded, Supagas may refuse to supply further product to the Customer until such time as the amounts owing to Supagas are within a credit limit acceptable to Supagas;
- (f) In addition to the price, the Customer will pay any GST payable in respect of the supply of the product by Supagas to the Customer;
- (g) Payment of the amounts owing shall be in full and free of any counterclaims, set-off, deduction or other claim whatsoever against Supagas;
- (h) Supagas may suspend the supply of products if the Customer has not paid any amounts owed to Supagas and such suspension is without prejudice to any other rights of Supagas pursuant to this contract;
- (i) Supagas may charge a storage fee for the products if the Customer refuses or fails to take delivery of the products or Supagas elects not to deliver the product in the event the Customer is in breach of this contract

## 4. Ordinary Course of Business

The Customer acknowledges that Supagas supplies the Customer on condition that all payments made to and received by Supagas from the Customer are valid and made in the ordinary course of business. Any payments are agreed to be received in good faith and in the reasonably held belief that the payments are valid. The Customer acknowledges that Supagas may by accepting payment from the Customer, have altered its position and reliance on the validity of that payment.

## 5. Delivery and Installation

Supagas will endeavour to meet the Customer's delivery requirements at all times, but gives no guarantee it will do so. Supagas will use its best endeavours to advise the Customer of any delays due to product unavailability or any other reason. All products are at the Customer's own risk as soon as they leave Supagas' premises. Supagas reserves the right to deliver after the

requested date/time due to traffic delays or shipping delays or any delays beyond Supagas' control. Where practical Supagas will inform you prior to delivery. Delivery shall be made at Supagas' premises unless otherwise agreed to in writing between Supagas and the Customer and shall be deemed to take place at the time when the products are made available for dispatch at Supagas' premises. If Supagas subsequently arranges transportation, shipping, storage or insurance of the products, Supagas does this as the Customer's agent. The Customer shall indemnify Supagas for any liability incurred by Supagas in providing this service, and pay any transportation costs incurred as a result (except where the contract specifies that Supagas is responsible for such transportation costs). Supagas may deliver the products by instalments, and each instalment shall be treated as a separate contract under the terms of the contract. If Supagas fails to deliver or makes defective delivery of part of the products, this does not entitle the Customer to cancel the contract. Any time stated for delivery is an estimate only. Supagas is not liable for any delay in delivery. Where the product is to be delivered to the Customer's premises by Supagas, the Customer must provide Supagas with a copy of any certificate in relation to the gas installation at the Customer's premises required by the Gas Regulations 1993 (or any statute, regulation or code in substitution therefore). Product supplied by Supagas will be of a specification that complies with all applicable laws. Supagas may suspend the supply of products to the Customer's premises if the gas installation used for distributing gas throughout the Customer's premises does not comply with sound engineering practice and workmanship of applicable law, New Zealand Standard or Code of Practice from time to time, so that it is safe when connected. Except where expressly agreed in writing by Supagas, the Customer is responsible for installation and insurance of the product. Insurance shall be for full replacement value.

## 6. Product Returns

Products supplied by Supagas will be of a specification that is suitable for general industrial purposes and complies with all applicable laws. Where Supagas at its discretion allows the Customer to return products other than defective or non-complying products, Supagas reserves the right to charge a return fee equal to 25% of the price of such products. Any product accepted for return must be in original order and in the same condition as when delivered/collected. Products that are procured or made to specific customer requirements are not returnable. Any freight or delivery charges on products returned are non-refundable.

## 7. Guarantees

If the products are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply. Where the Customer supplies the products to a person acquiring them for business purposes, it must be a term of the Customer's contract with that person that the Consumer Guarantees Act 1993 does not apply in respect of the products. The Customer agrees to indemnify Supagas against any liability or cost incurred by Supagas under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of the obligations contained in the contract. The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to the contract, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:

- (a) Defective products or products which do not comply with the contract shall at Supagas' discretion be repaired or replaced, or the price refunded;
- (b) Any right which the Customer may have to reject non-conforming or defective products shall only be effective if the Customer notifies Supagas in writing within seven days following delivery and Supagas is given the opportunity to inspect the products;
- (c) Supagas accepts no liability for any claim by the Customer or any other person, including without limitation any claim relating to or arising from:
  - (i) any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise;
  - (ii) any representations, warranties, conditions or agreement made by any agent or representative, which are not expressly confirmed by Supagas in writing, and the Customer agrees to indemnify Supagas against any such claim.

In any event, Supagas' liability under any claim shall not exceed the price of the products. Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms are to be modified to the extent necessary to give effect to that intention.

## 8. Supagas Liability

Supagas will not be liable for any damage to a product as a result of external causes including accident, abuse, misuse, failure to follow operating instructions, not following preventative measures, and problems as a result of secondary supplied parts and/or components not supplied by Supagas. Any claim against Supagas must be made within 6 months of the date the Customer takes delivery of the product unless Supagas agrees in writing that a longer period will apply. To the extent allowed by law, Supagas has no liability (in contract or tort including negligence) to the Customer for any physical, direct or indirect damage, loss (including consequential loss) or costs (including legal costs), loss of profit caused or contributed to by Supagas or

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any of its representatives in respect of any contract between Supagas and the Customer except to the extent of direct damage to the Customer caused by a breach of this contract by Supagas. Supagas has no responsibility for any dangerous, contaminated, ozone depleting or hazardous substance in or omitted from any product. Supagas has no liability arising under sections 6 to 10 (inclusive) of the Contractual Remedies Act 1979 or the Sale of Goods Act 1908. To the extent allowed by law, every warranty or guarantee implied by custom or law is excluded and any liability of Supagas shall be limited to \$2,000.

## 9. Customer Liability

Orders of all product must be in accordance with Supagas' instructions or otherwise advised in writing by Supagas. All orders must be paid for by authorising Supagas to charge a nominated payment facility. The Customer is liable for all orders accepted by Supagas. The Customer will not fill or allow the refilling of any rented product other than through Supagas. The Customer agrees to indemnify Supagas against any claims or damages arising from the use or misuse of the Customer's account by any other person. The Customer agrees to indemnify Supagas for any physical, direct or indirect damage, loss (including consequential loss and loss of profit) or cost (including legal and lawyer/client costs) to Supagas resulting from an omission or act (including the Customer failing to pay for the product) of the Customer. The Customer will protect Supagas from any claim or proceedings against Supagas to the extent caused or contributed to by the Customer in respect of this contract or by a product after risk or title has passed to the Customer. If the Customer defaults in payment of any amount owing to Supagas then the Customer shall pay interest on such amount owing at the rate which is 7% above Supagas' business overdraft lending rate. That interest rate will apply from the date when payment was due for the product until the date of actual payment. The Customer shall be responsible for the safe custody of any product and shall take steps to ensure any product (not being gas) is maintained in good condition (fair wear and tear excepted).

## 10. Title and Security

Title in any products supplied by Supagas passes to the Customer only when the Customer has made payment in full for all products provided by Supagas and of all other sums due to Supagas by the Customer on any account whatsoever. Until all sums due to Supagas by the Customer have been paid in full, Supagas has a Purchase Money Security Interest as that term is defined in the Personal Property Security Act 1999 ("PPSA") in all products and all proceeds of sale of the products. Title to any product rented by the Customer from Supagas shall remain with Supagas despite the term of any rental agreement. If the products are attached, fixed or incorporated into any property or premises of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the products shall remain with Supagas until the Customer has made payment for all products, and where those products are mixed with other property so as to be part of or a constituent of any new products, title to these new products shall be deemed to be assigned to Supagas as security for the full satisfaction by the Customer of the full amount owing between Supagas and the Customer. The Customer gives irrevocable authority to Supagas to enter any property or premises occupied by the Customer or on which products are situated at any reasonable time after default by the Customer or before default if Supagas believes a default is likely and to remove and repossess any products and any other property to which products are attached or in which products are incorporated. Supagas shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Supagas may either resell any repossessed products and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed products and credit the Customer's account with the invoice value thereof less such sum as Supagas reasonably determined on account of wear and tear, depreciation, obsolescence, loss or profit and costs. Where products are retained by Supagas pursuant to this clause, the Customer waives the right to receive notice under s.120 of the PPSA and to object under s.121 of the PPSA. The following shall constitute defaults by the Customer:

- (a) Non-payment of any sum by the due date;
- (b) The Customer intimates that it will not pay any sum by the due date;
- (c) Any products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize products;
- (d) Any products in the possession of the Customer are removed from the Customer's premises or damaged while any sum due from the Customer to Supagas remains unpaid;
- (e) The Customer is bankrupted or put into liquidation or a receiver or administrator is appointed to any of the Customer's assets or a landlord distrains against any of the Customer's assets;
- (f) A Court judgment is entered against the Customer and remains unsatisfied for 7 days;
- (g) Any material adverse change in the financial position of the Customer;
- (h) The Customer grants or attempts to grant a security interest in the products to a party other than Supagas;
- (i) The Customer fails to insure the product and note Supagas as an entitled party on such insurance.

The Customer agrees it has no rights under, or by reference to sections 114(1)(a), 133 and 134. The Customer hereby waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA and waives its rights to receive a verification statement in respect of any financing statement or financing change statement.

## 11. General Terms

- (a) If any provision of these terms and conditions is unlawful, void or unenforceable for any other reason, that provision shall be deemed severable and shall not affect the validity and enforceability of the remaining terms and conditions.
- (b) Any contract between Supagas and the Customer shall be governed by the Courts of New Zealand. If the Customer utilises the product outside New Zealand the Customer is responsible for compliance with the Customer's local laws, if and to the extent such local laws apply.
- (c) Without limiting any other provisions of the contract, neither Supagas nor the Customer shall be liable for any delay or failure in the performance of any obligation or the exercise of any right under the contract or for any loss or damage (including indirect or consequential loss or damage) if such performance or exercise is prevented or hindered in whole or in part by reason of a force majeure event. Nothing in this clause shall excuse payment of any money due or which becomes due under the contract. The rights and obligations of either party which are affected by a force majeure event shall be suspended during the continuance of the force majeure event, and either party claiming to be affected by the force majeure event shall give immediate notice to the other party containing full particulars of the force majeure event. The party giving notice under this clause shall take all reasonable steps to mitigate the effects of the force majeure event and remove such force majeure event provided that neither party shall be required to remove any such force majeure event if to do so would require it contrary to its judgment to settle a strike or labour dispute or otherwise submit to the demands of opposing parties.
- (d) To the extent permitted under the Consumer Guarantees Act, either party may require any dispute arising which has not been resolved within 14 days to be referred to mediation. The mediator shall be appointed by both parties or, where the parties cannot agree within 14 days, appointed by the chairperson or any other office holder of LEADR New Zealand Incorporated. The mediator shall conduct the mediation in accordance with the guidelines agreed between the parties or, if the parties cannot agree within 14 days following the appointment of the mediator, in accordance with the guidelines set by the mediator. The costs and expenses of the mediator shall be shared by the parties equally unless the mediator orders otherwise.
- (e) Every effort has been made to ensure that all of the information supplied by Supagas is accurate and reliable. Its accuracy is, however, not guaranteed. All product is supplied to the Customer on the premise that the Customer will make its own determination as to its suitability for use. Supagas will not be liable for any damages or liabilities whatsoever, including performance failures, errors, omissions, defects, interruptions and/or other failures.
- (f) Each provision in this contract survives to the extent unfulfilled, and remains enforceable and does not merge on performance of another provision.
- (g) No delay or failure to act is a waiver. No waiver is effected unless it is in writing. A waiver of a breach is not a waiver of any other breach.
- (h) Supagas may rely on any plans, specifications, information or quality and/or other standard of any manufactured product used and supplied by the Customer and has no liability whatsoever for any loss or damage caused or contributed to by any act of the Customer.
- (i) All trade marks used by Supagas belong to Supagas or the registered owner of such marks. All intellectual property rights relating to such trademarks and all copyright and other intellectual property rights in respect of Supagas' products are the property of Supagas or in the care of registered trademarks, the owner of those trademarks.
- (j) The Customer authorises Supagas to collect and retain information about the Customer from credit reference agencies and/or trade references. Supagas will not sell, lend, trade or otherwise disclose such information to any person or agency other than for credit purposes. The Customer has the right under the Privacy Act 1993 to access any personal information held about the Customer and to correct and delete such information from Supagas' database.

## 12. Words Used In This Contract

Unless the context requires the following words shall be defined as follows:

- (a) "**Customer**" means the person purchasing the products from Supagas pursuant to the contract, including that person's successors and assigns.
- (b) "**GST**" means Goods and Services Tax payable pursuant to the Goods and Services Tax Act 1985.
- (c) "**products**" means products ordered by the Customer from time to time under the contract and includes gas, gas cylinders, connections, pipes, appliances supplied by Supagas and any goods or services forming part of the supply of the products.
- (d) "**Supagas**" means Supagas 2009 Limited trading as "Supagas", including its successors and assigns.

References to the Consumer Guarantees Act 1993, the Privacy Act 1993, the Goods and Services Tax Act 1985 and the PPSA include such legislation from time to time amended, re-enacted or substituted and any statutory instruments regulations and orders issued under such legislation.