

# CONDITIONS OF QUOTATION AND SALE AND HIRE

## **1. INTERPRETATION**

- (a) "Company" means Renegade Gas Pty Ltd trading as Supagas NSW or Supagas Qld.
- (b) "Contract for Sale" means any contract arising from the Company's acceptance of any purchase order made by the Customer.
- (c) "Customer" means the person named in the Delivery Docket, Hire Notice, Sales Invoice Form or Quotation. A reference to "Customer" shall include all Successors and assigns (if a corporation) and the legal personal representative (if an individual or partnership of individuals).
- (d) "Goods" means the goods and services the subject of the Contract for Sale or the Hire Contract.
- (e) "Hire Contract" means any hire contract which arises from the Company's acceptance of any offer by the Customer to hire goods from the Company.
- (f) "Quotation" means any written quotation submitted by the Company to the Customer.

## **2. CONDITIONS PRECEDENT**

- (a) This Quotation or Contract for Sale or Hire Contract includes the terms shown overleaf and includes any special conditions set forth in any Quotation which gives rise to any Contract for Sale or Hire Contract comprised by this document.
- (b) A Quotation may be withdrawn by the Company at any time before acceptance and in any event shall lapse unless accepted by the Customer within 7 days or such other period as is stated in the Quotation.
- (c) The Quotation is not to be construed as an offer to sell or hire and no contractual relationship shall arise therefrom until the Company confirms the Customers order in writing or the customer accepts delivery of the goods.
- (d) These conditions apply to all sales and hire of the Company's Goods despite any contrary terms in any of the Customer's documents and constitutes the entire agreement between the parties to the exclusion of all other conditions. Acceptance of delivery of the Goods indicates the Customer's acceptance of these conditions unamended. No representations, inducements, promises or agreements between the parties shall be of any force or effect in varying these conditions unless in writing and signed by both parties.

## **3. DELIVERY**

- (a) The Company shall not be liable for any loss or damage howsoever arising resulting from delays in delivery. Delay in delivery shall not entitle the Customer to cancel the Contract for Sale or Hire Contract.
- (b) Should the performance of the Company's obligations be hindered or delayed by any circumstances beyond the Company's reasonable control, including but without limiting the generality thereof strikes, lock outs, rebellions, fire, acts of God, war, epidemics, governmental intervention, accidents or the inability of the Company to procure necessary materials or services, the time for such performance shall be extended for such time as may be reasonable and any such extension of time shall exonerate the Company from any liability in respect of such hindrance or delay.
- (c) The Quotation or Contract for Sale or Hire Contract is for supply of the Goods only. Installation and commissioning (if any) is at the Customer's expense unless otherwise specified in writing by the Company.
- (d) With respect to a Contract of Sale or Hire Contract, the Company reserves the right to over or under supply an order within reasonable limits and the Customer accepts that it shall in the event of oversupply, pay for Goods delivered in addition to those ordered at the contract rate for such Goods.

## **4. PRICES**

- (a) The prices stated in the Quotation are current prices and subject to change without notice.
- (b) The Goods are sold on condition that the Customer will pay any additional costs or expenses not specifically provided for in the Quotation or Contract for Sale including without limitations any tax, GST, stamp duty, fee, levy or charge of any nature whatsoever imposed by any semigovernment or government authority in respect of the sale.
- (c) With respect to a Hire Contract, the Customer will pay hire charges at the rate and in the manner specified by the Company on and from the day of delivery until: either the Goods are returned by the Customer to the premises of the Company, or the second weekday after receipt by the Company of notice in writing from the Customer notifying that the Goods are ready for collection.

## **5. TERMS OF PAYMENT**

- (a) Terms of payment stipulated in the Quotation or Contract for Sale or Hire Contract shall be strictly adhered to and in this regard time shall be of the essence. If no terms of payment are stipulated all invoices and charges of any kind are payable by the last working day of the month immediately following the month of supply.
- (b) With respect to a Contract for Sale, should the Customer fail to Comply with the Company's terms of payment, the Company reserves to itself the right to either cancel all agreed trade discounts or rebates: and charge interest upon all outstanding amounts at an interest rate not more than 3 per cent in excess of the ANZ Banking Group Ltd indicator lending rate as published from time to time.
- (c) With respect to a Hire Contract, unless otherwise stated in writing, all invoices, additional costs and charges of any kind (including hire, delivery, installation and collection charges) are payable net thirty (30) days from the date of the invoice.
- (d) With respect to a Hire Contract, if the price charged is a special rate determined by reference to intended length of hire and if the Company agrees to accept an early return of the Goods, such acceptance will only be on the condition that the Company is entitled to charge and recover a retrospective price increase related to the standard hire charge as at the date of commencement of the hire.

## **6. DEFAULT BY CUSTOMER**

In the event that the Customer defaults in any payment due to the Company and such default continues for a period of seven (7) days after notice is issued by the Company to the Customer in writing requiring the Customer to rectify such default or if the Customer commits any act of bankruptcy or enters into voluntary liquidation or a petition to wind up the Customer is presented in any Court of competent Jurisdiction the Company may at its sole discretion, and without prejudice to any other rights or remedies available to it terminate the Contract for Sale or Hire Contract by notice in writing or to suspend delivery of goods hereunder and where it still retains title to the Goods hereunder retake possession of them.

## **7. RETENTION OF TITLE**

- (a) With respect to a Contract for Sale, the Goods remain the property at the Company (notwithstanding that they have been put into transit or actually delivered to the Customer) until the whole of the purchase price and transport and other charges paid by the Customer in cash cheques or other negotiable securities given by the Company shall not be deemed to be cash payment until cleared. If the Customer makes default in paying the whole or any part of the purchase price or transport or other charges or if the Customer parts with possession of the Goods otherwise than by way of sale to a Customer in the ordinary course of the Customers business or, being a company commences to be wound up or is placed under official management or a receiver is appointed or an encumbrancer takes possession of its undertaking or property or any part thereof or, being an individual becomes insolvent or bankrupt or commits an act of bankruptcy, it shall be lawful for the Company without previous notice to re take possession of the Goods and for that purpose to enter upon any premises occupied by the Customer or any other place where the goods may be.
- (b) Until payment of the Goods has been made in full by the Customer, the Goods shall be stored by the Customer separately from any other goods and in such a manner that they shall be readily identifiable by the Company and available to the Company to conveniently re take possession thereof.

## **8. EXCLUSION OF LIABILITY**

Subject to Clause 9 and any legislation to the contrary--

- (a) The Company provides no warranty of any kind where the Goods are installed and/or used in conjunction with the Goods of a supplier other than the Company and denies all Liability for any damage whatsoever suffered by any person arising from such use:
- (b) Representations and agreements not expressly contained herein shall not be binding upon the Company as conditions, warranties and representations. All such conditions warranties and representations on the part of the Company whether express or implied statutory or otherwise whether collateral or antecedent or otherwise are hereby expressly negated and excluded.
- (c) The Company shall be under no liability to the Customer for any loss (including but not limited to loss of profits and consequential loss) or for damage to persons or property or for death or injury caused by any act or omission (including negligent acts or omissions) of the Company or the Company's agents. If the Customer requires that the Company's products be delivered onto the customers premises then the Company will enter the premises at the Customers risk and will not be responsible for any accidental damage to the Customers property or premises.
- (d) The Customer shall indemnify the Company against any claims made against the Company by any third party in

respect of any such loss, damage, death or injury as is set out in sub paragraph (c) hereof and the Customer further agrees to indemnify the Company against all losses and expenses which the Company may suffer or incur due to the failure of the Customer fully to observe its obligations under this Contract.

- (e) Nothing contained in this Clause shall be read or applied so as to purport to exclude restrict or modify or have the effect of excluding restricting or modifying the application in relation to the supply of the Goods of all or any of the provisions of part V of the Trade Practices Act 1974 (as amended) or any relevant State or Territory Statute which by law cannot be excluded, restricted or modified PROVIDED THAT to the extent that any such Statute permits the Company to limit its liabilities to Compensate or indemnify any person for breach of a Condition or warranty implied thereby, then the respective liabilities of the Company for such breach shall be limited in the case of goods to the replacement of the goods or supply of equivalent goods and in the case of services to the resupply of the services.

## **9. CONTRACT FOR SALE - WARRANTY**

With respect to a Contract for Sale the Company warrants that in the event of any short supply or delivery of the Goods or any defect in the Goods due to either faulty material or workmanship which is notified to the Company by the Customer within seven (7) days from delivery of the Goods, then the Company may in its absolute discretion either replace the Goods, or accept the return of the Goods and repay the purchase price to the Customer provided that the Goods are returned to the Company within seven days and the Original invoice number and date are provided to the Company and the Company in its sole and unfettered opinion is satisfied that the Goods were defective at the time of delivery.

## **10. RETURN OF GOODS**

- (a) With respect to a Contract for Sale, should the Customer return to the Company any Goods which are not defective or incorrectly supplied, the Company may, in its absolute discretion i. Accept the return of the Goods and provide a credit for the value of the Goods to the Customers account, ii. Apply a restocking fee, iii. Refuse to grant any credit to the customer's account should the manufacturer of the Goods not accept their return, iv. Reduce any credit provided to the Customer's account or reject such Goods as are not in their original packages or are in any way damaged, shop-soiled or obsolete, PROVIDED THAT the Company will not accept the return of non-standard Goods or Goods designed to Customer's specifications.
- (b) With respect to a Hire Contract, at the termination of hire all Goods shall be returned to the Company in good condition excepting only fair wear and tear. All Goods shall be deemed in good condition unless the Company notifies the Customer to the contrary within 72 hours of delivery of the goods. The Customer shall on demand pay in respect of any Goods damaged or not so returned the then current selling price for the Goods. Until such sum is paid, hire charges shall continue to accrue together with any and all other costs and expenses incurred by the Company as a result of such shortages or losses. The Customer's responsibility for the preservation and safekeeping of the Goods shall not be determined until the Goods are physically handed over to the Company by the Customer.
- (c) With respect to applying credits and fees for return of full cylinders, Supagas will apply a restocking fee of 20% (exclusive of GST).
- (d) A credit can then be applied for the invoice value of the item, less the restocking fee. The fee will not apply where an item is exchanged for another cylinder, of similar value.
- (e) Please note we are unable to provide a cylinder rental refund if cylinders are returned before your nominated fixed period expires.

## **11. PROMOTIONAL MATERIAL**

Photographs, drawings, illustrations, specifications, samples and any other particulars accompanying or associated with either a Quotation or any catalogue, price list or advertising material provided by the Company represent generally the goods described therein but do not form part of the Contract for Sale and the Company accepts no responsibility as to the accuracy thereof nor will the Company be liable for any Consequential loss or damage caused by any defect or otherwise.

## **12. SUBSTITUTION**

Unless agreed to the contrary in writing, the Company reserves the right to supply goods and services with the same properties and Capacities as the Goods in substitution for the Goods.

## **13. WAIVER**

No provision hereof and no breach of any provision shall be deemed waived by reason of any previous waiver of any breach hereof.

## **14. APPLICABLE LAW**

The applicable law shall be the law of the State of New South Wales and the parties hereto agree to submit to the jurisdiction of the Courts of the State of New South Wales.

## **15. CONDITION OF THE GOODS – HIRE CONTRACT**

With respect to a Hire Contract, the Customer agrees to allow the Company to inspect the Goods from time to time and the Customer shall ensure that the Goods are used at all times in a proper and responsible manner and are being maintained in proper condition.

## **16. TERMINATION – HIRE CONTRACT**

With respect to a Hire Contract, the Company shall be at liberty to cancel this Hire Contract at any time without notice to the Customer and without being liable for damages for so doing in the following circumstances:-

- (a) The Customer commits a breach of this or any other uncompleted Contract between it and the Company,
- (b) The Customer goes into liquidation,
- (c) A receiver and manager of any of the Customer's undertakings or assets is appointed,
- (d) The Customer proposes or makes any composition or arrangement with its creditors,
- (e) The Customer becomes bankrupt or applies to take benefit of any law for relief of bankrupt or insolvent debtors or compounds with his creditors or makes an assignment of his remuneration for their benefit. In such circumstances the Company shall be entitled then and at any time thereafter, at the expense of the Customer, to enter upon the Customer's premises and remove the Goods therefrom, without prejudice to any action or other remedy which the Company has or might or otherwise could have for arrears of hire charges, for other sums due or for any breach of the Customer's obligations hereunder.

## **17. REPOSSESSION – HIRE CONTRACT**

With respect to a Hire Contract, where the Company is entitled hereunder to retake possession of the Goods, the Customer hereby grants a licence to the Company to enter any place where any of the Goods may be for the purpose of removing same and if the Customer is unable to grant the Company any such licence the Customer shall, upon being requested by the Company so to do, forthwith deliver to the Company such of the Goods as the Company may demand at the nearest place accessible to the Company and convenient to it for removing same and the Customer shall reimburse the Company for all additional costs, charges and expenses which the Company may incur in obtaining possession of all or any of the Goods (without prejudice to the Company's claim for extra charges for Goods retained for a longer period than the period provided for in the Hire Contract). If the Company incurs any cost or liability for whatever reason as a result of taking possession as aforesaid the Customer hereby indemnifies the Company against any such liability or cost.

## **18. TRANSFER OF GOODS – HIRE CONTRACT**

With respect to a Hire Contract, except as herein provided, the Goods must remain in the Customer's possession during the currency of the hiring. The Customer shall not sell or offer for sale, assign or rehire, grant a lien over or otherwise deal with the Goods.

## **19. OCCUPATIONAL HEALTH AND SAFETY**

With respect of a Hire Contract:-

- (a) The Customer shall use the Goods solely for the purpose for which the Goods are supplied and in accordance with any limitations on the use of the Goods arising from any legislation or the requirements of any local regulatory authority.
- (b) All safety information provided by the Company will be conveyed by the Customer to all persons responsible for the utilisation of the Goods.
- (c) The Customer shall attach and maintain all safety signs supplied with the Goods in prominent positions on the Goods or in such other positions as are necessary to bring the signs to the attention of any users of the Goods.
- (d) The Customer shall at all times comply with any relevant legislation creating occupational health and safety requirements in connection with the use of the Goods.