



**MINCORP GAS LTD (t/a ROCKGAS NELSON & MARLBOROUGH)**  
**TERMS & CONDITIONS OF SUPPLY**

**1) GENERAL:**

These terms and conditions supersede all previous negotiations and conditions whether oral or written. Headings are for convenience only and do not affect interpretation. If the Customer has received these general terms and conditions of supply, any subsequent placing of orders by the Customer will be deemed to amount to acceptance of these terms and conditions.

**2) DEFINITIONS:**

“MGL” means Mincorp Gas Limited, its successors’ and assigns. “CUSTOMER” means the individual person or company purchasing the goods from MGL pursuant to these terms and conditions. “GOODS” means any goods including: Gas, Bulk Gas, Liquid, Bulk Liquid, supplied to the Customer by MGL in MGL owned or leased Cylinders, Dewars, Pallets, or any other ancillary gas storage equipment supplied in respect of each order received from the Customer, and then accepted by MGL, those goods described in the invoice issued by MGL to the Customer in respect of the relevant order. “LEASE EQUIPMENT” means MGL owned or leased assets including: cylinders, dewars or any gas or liquid containing vessels, cages, pallets, gas generation equipment, valves, cylinder valve caps and any ancillary associated gas equipment not purchased outright by the Customer but supplied by MGL to the Customer. “GAS/LIQUID CHARGES” means the cost, type and quantity of gas or liquid ordered by the Customer supplied by MGL in various size cylinders, dewars, or pallets as identified in MGL’s invoices. MGL reserves the right to vary gas / liquid charges upon written notice to the Customer. “GAS VOLUMES” means the volume of gas based on the Customers estimated annual volumes given to MGL’s representative upon original quotation. If the Customer fails to purchase these estimated volumes given in the Customers official quotation document, MGL may vary the charges to reflect MGL current standard prices according to your actual gas volumes. “RENTAL CHARGES” means a daily rental will be incurred on all lease equipment supplied by MGL to the Customer as shown on MGL’s records. Rental statements outlining any rental charges will be sent out to all Customers on a monthly basis. MGL reserves the right to vary rental charges upon written notice to the Customer. “DELIVERY CHARGES” means the Customer shall pay all costs if delivery unless otherwise agreed in writing. MGL reserve the right to vary delivery charges upon written notice to the Customer. “NOTICE” means any written notice given by MGL to the Customer that may be given in any one of the following ways:

- a) Posted Letter, Facsimile or Electronic Communication from MGL to the Customer as identified on credit application forms (The Customer must keep MGL fully advised at all times of any changes of address or contact details)

MGL reserve the right to assume that notice has been received within 3 days of notice being sent.

“OWNERSHIP CYLINDERS” means a cylinder that has been bought outright by the Customer and does not incur a daily rental or is associated with a cylinder exchange system. Proof of purchase MUST be sighted by MGL to ensure the cylinder in question is in fact a true “Ownership cylinder”. MGL is not obliged to refill cylinders not owned by it, and is entitled to impose any terms and conditions in relation to the refilling of such cylinders as they see fit. Refilling of ownership cylinders will be done so entirely at the risk of the Customer. MGL reserved the right to decline refilling of any such cylinders according to MGL’s Health and Safety Policies. Ownership waiver forms must be completed by the customer to confirm the ownership.

**3) PRICE, INVOICING AND PAYMENT:**

The price indicated on the invoice shall be increased by the amount of G.S.T and any other taxes and duties which may be applicable payable by the Customer. The price quoted to the Customer by an authorised agent or representative of MGL will be indicated on all invoices. Where no such quotation has been given, the current list price in effect at the day of delivery will be recorded. The Customer must pay all charges by the 20<sup>th</sup> of the month following the date of the relevant invoice issued by MGL by either cheque or direct debit into MGL’s nominated account. The Customer may not withhold payment or make any deductions for any moneys owed to MGL without MGL’s prior written consent. The Customer must notify MGL immediately upon receipt of the goods of any errors on an invoice for rectification. MGL will have the right to enter the Customer’s premises to audit, inspect and maintain MGL’s goods and lease equipment upon reasonable notice.

**4) DEFAULT IN PAYMENT:**

If any event of default in payment due to MGL occurs, MGL may at its discretion terminate any agreement governed by these terms. Where the Customer fails to pay for any goods or leased equipment supplied by MGL on the due date, MGL will be entitled to charge, and the Customer is required to pay interest on the total amount owing at the rate of 12% per annum. This is to be calculated on a daily basis and added to any unpaid portion of the price due until full payment has occurred. The event of a default occurring, all monies owned by the Customer to MGL shall immediately become due and payable notwithstanding that the due date has not arisen. The Customer shall indemnify MGL for any costs and expenses incurred by seeking recovery by any means for any outstanding payments (Including all legal or other enforcement costs) If at any time the Customer is in default, MGL may enter the Customer's premises and remove any goods and leased equipment supplied by MGL being held by the Customer. MGL reserves the right to charge the Customer all costs incurred by MGL in effecting removal of the goods and leased equipment. If the customer is in default or has suspended their account and has an asset belonging to MGL, MGL reserves the right to charge the customer full replacement cost of that asset if this has not been returned to MGL within 7 days of notification to MGL. The amount shall be direct debited from the customer's account after this period has expired.

**5) CREDIT LIMITS:**

If a Customer's credit limit set by MGL has been exceeded, MGL may refuse to accept any further orders from the Customer until such time as all outstanding payments exceeding the credit limit have been satisfied.

**6) DELIVERY/COLLECTION OF GOODS:**

Any time stated for delivery of goods is an estimate only. MGL is not liable for any delay in delivery. If MGL is unable to deliver or makes a defective delivery of part of the goods ordered, this does not entitle the Customer to terminate any supply agreement or make any claim against MGL. Delivery is deemed to have taken place at the time that the goods were unloaded at the Customer's premises. The Customer shall pay all costs of delivery unless otherwise agreed. The Customer must ensure safe and proper access to the Customer's premises for the purpose of delivery of the goods. If for any reason delivery cannot be made due to the Customers act or omission, MGL may charge additional fees for abortive or part deliveries. MGL may suspend deliveries of gas or liquid if the gas/liquid storage, handling or customer's process equipment is considered by MGL delivery staff to be unsafe for delivery. MGL reserves the right to subcontract the delivery of the goods to the Customer's site. The Customer acknowledges that collection of the goods from any MGL site or authorised agent/reseller will be at their own risk and that it is the Customer's responsibility for safe handling, transportation and compliance of dangerous goods in accordance with all relevant legislation.

**7) FORCE MAJEURE:**

In the event of any delay in the delivery or non-delivery of goods, or non-performance arising from wars, strikes, lockouts, labour disturbances, accidents, governmental restrictions, acts of god, manufacturer delays or defaults, or any cause beyond MGL reasonable control, then MGL shall:

- a) Be entitled to cancel or suspend delivery, AND
- b) Not be liable to the Customer for any delay or non-delivery.

**8) CUSTOMER RESPONSIBILITY:**

The Customer MUST provide free of charge, adequate and safe access to the Customer's premises, information and facilities (including labour for loading and unloading if required) for MGL to carry out its duties and rights under any agreement with the Customer. The Customer MUST ensure that all works and materials for which the Customer is responsible comply with industry standards and all legal and statutory requirements and with any advice given by MGL. The Customer MUST obtain all necessary consents and comply with all legal obligations in connection with installation, storage, handling, transportation and use of any goods supplied by MGL to the Customer. The Customer MUST insure the goods and lease equipment supplied by MGL for full replacement cost against loss, theft, damage and destruction. Certificates of insurance must be provided to MGL upon request to verify that insurance has been complied with. The Customer MUST pay MGL the current replacement value of any missing leased equipment according to MGL's records if the leased equipment is not returned to MGL within 7 days following a demand for return of equipment due to a default, breach or termination of any agreement with MGL. The Customer MUST not obliterate, remove, deface, paint identification marks or labels on MGL goods and any supplied lease equipment. The Customer MUST return ALL MGL goods and supplied lease equipment in a clean and servable manner. If any item supplied by MGL is returned in a condition that MGL finds unsatisfactory the Customer MUST pay the costs of restoring MGL's equipment to a clean and serviceable condition, and pay new replacement costs if any MGL owned or leased equipment is lost, stolen or damaged beyond repair. The Customer MUST not mortgage, pledge, sell lend or

part with possession or create a security interest under the PPSA relating to any of MGL's goods or leased equipment. The Customer MUST notify MGL in writing if the Customer intends to sell its business with such notice being provided not less than twenty one (21) days before any such sale takes place. In the event of this occurring, the Customer MUST identify all MGL supplied goods and Leased Equipment as belonging solely to MGL. The Customer MUST not transfer or assign its rights under this agreement without MGL's prior approval and subsequent closure of current account and payment of any outstanding debts to MGL. The Customer MUST notify MGL in writing as soon as reasonably practicable after the Customer becomes aware of any leaks or defect in the supplied goods or leased equipment. The Customer agrees that prompt notification to MGL of any leak or defect will enable MGL to identify defective goods and help to rectify the situation in a timely manner. The Customer MUST not use MGL owned or leased equipment for the storage or dispensing of any gas or liquid other than the gas or liquid supplied to the Customer by MGL. The Customer MUST operate and maintain the MGL supplied goods and lease equipment at all times in a safe manner in accordance with relevant compliances and legislation.

**9) MAINTENANCE:**

MGL shall maintain all the lease equipment in good working order and condition. MGL may maintain its leased equipment in accordance with relevant legislation and MGL's Operating Manuals. Regular maintenance will be conducted within normal business hours. If this requires interruption of supply MGL will endeavour to advise the Customers of any delays as soon as possible. MGL shall not be liable to the Customer for any loss suffered by the Customer as a result or failure of any part of the lease equipment or any defect in maintenance or repair of the leased equipment by MGL.

**10) RISK, TITLE AND PERSONAL PROPERTY SECURITIES ACT 1999:**

MGL retains ownership of all goods supplied to the Customer until such time as the Customer has paid for the goods and all other outstanding amounts payable to MGL on the due date in full. MGL's leased equipment remains at all times the absolute property of MGL and is supplied to the Customer for the Customer's sole use until such time as MGL requires its return. The Customer will have no rights over any other property of MGL or its contractor's bought onto the customer's site. The risk in goods sold or supplied to the Customer by MGL passes to the Customer upon dispatch or collection of those goods. The Customer acknowledges and agrees that if Title in any Products or Equipment has not passed to the Customer in accordance with the terms of this agreement, then:

- (a) The Customer shall hold the Products or Equipment on trust for MGL as bailee and the Customer shall be responsible for and liable to remedy any damage to any of MGL's Products or Equipment in the Customer's possession;
- (b) The Customer shall not under any circumstance sell, lease, dispose of, charge, mortgage, lease, licence or part with the possession of the Products or Equipment to any other person or entity;
- (c) The Customer irrevocably gives MGL (or its agents or representatives) authority (and MGL shall not be obliged to give any prior notice to the Customer) to enter the Customer's premises for the purpose of collecting any of MGL's Products or Equipment from the Customer
- (d) For the purposes of the Personal Property Securities Act 1999 ("PPSA"), this agreement constitutes a security interest and the Customer hereby grants a continuing and subsisting security interest in the Products or Equipment to MGL;
- (e) To the extent that Part 9 of the PPSA applies, the Customer agrees that the provisions of sections 114(1)(a), 120, 122, 133 and 134 of the PPSA which are for the Customer's benefit, or place any obligations on MGL in the Customer's favour, will not apply; and where MGL has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply;
- (f) To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA, and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by MGL; and
- (g) To treat the security interest in MGL's Products or Equipment as a continuing and subsisting security with priority over a registered general security interest and any unsecured creditors, regardless of whether MGL's Products or Equipment have become fixtures at any time.

**11) BREACH AND TERMINATION:**

If the Customer (being an individual), commits any act of bankruptcy OR (being a partnership), any of the partners commits any act of bankruptcy, OR (being a company), has a receiver, administrator (or similar) appointed, OR goes into liquidation, Or if the Customer commits any breach of any provision of any agreement with MGL, then MGL may by written notice to the Customer either:

- a) Terminate the agreement breached or any part, OR

- b) Suspend performance of all or any of its obligations, at any time during such suspension the agreement breached or any part

Termination will be without prejudice to any accrued rights of either party.

On suspension or termination, MGL may recover possession of any goods belonging to it (and where relevant, possession and title to any of the Customer's gas or liquid in MGL's leased equipment supplied by MGL to the Customer at no charge to MGL), and the Customer irrevocably authorises MGL to enter its premises for this purpose. The rights of this clause are in relation to "consumer goods" as that term is defined in the Credit (Repossession Act) 1997, subject to that act. On termination under any circumstances the Customer must pay MGL's charges for the costs of removal of MGL supplied goods and leased equipment.

**12) LIABILITY AND EXCLUSIONS:**

MGL's liability for all kinds of loss or damage suffered by the Customer in the context of a supply of goods and leased equipment (or an agreement to make sure a supply) from MGL to the Customer, irrespective of whether such liability arises in or is claimed on the basis of MGL's breach of contract, breach of a term, warranty, or condition implied by statute, negligence or other tort, or breach of any other statutory or equitable duty, and whether the act or omission of MGL is wilful or otherwise, is excluded and or limited (as the case may be) as set out below:

- a. MGL's liability for loss incurred as a direct result of a defect in or failure of the goods and or leased equipment supplied (or agreed to be supplied) by MGL to the Customer shall be excluded and to the extent permitted by law, the Sale of Goods Act 1908 and all other guarantees, warranties, terms, conditional and representations either express or implied, including without limitation implied warranties of merchantability, and fitness for purpose are expressly excluded. Any claim that the Customer makes under this section (b) must be made within 30 days of receipt of the goods.
- b. MGL's liability for indirect loss, economic loss, consequential loss, loss of profit and loss of business opportunity is excluded.

**13) GUARANTEES:**

Where the Consumer Guarantees Act 1993 applies to this agreement, if the goods and leased equipment 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 goods and leased equipment in trade to another 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 to the goods and lease equipment supplied. The Customer agrees to indemnify MGL against all liability or cost incurred by MGL under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of the obligations in these terms. The Customer MUST strictly observe any operating and maintenance instructions and procedures specified or advised by MGL. MGL shall not be liable for any damage to goods caused by incorrect use, lack of adequate maintenance, incorrect power supply, overload, shock, fall or by the Customer's fault or negligence. Repairs and Maintenance on leased equipment supplied to the Customer by MGL must only be carried out by authorised MGL personnel. MGL accepts no liability for any claim by the Customer or any other person, including without limitation any claim relating to or arising from:

- a) any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise whether expressly or implied by law, trade custom or otherwise, OR
- b) any representation, warranties, conditional or agreement made by any agent or representative, which are not expressly confirmed by MGL in writing, and the Customer agrees to indemnify MGL against any such claim.

In any event, MGL's liability under any claim shall not exceed the price of the goods purchased by the Customer.

**14) PRIVACY ACT:**

Upon establishing an account with MGL, the Customer, proprietors, partners or directors of the Customer authorised MGL to collect retain and use information about the Customer, such sources (including credit reference agencies and other credit service providers) as MGL may require for the purposes of administering the Customer's account, assessing the creditworthiness, enforcing any rights or marketing and goods leased equipment provided by MGL and to use the information in any dealings with the Customer and authorised any person to provide to MGL such information about the Customer may require in response to its queries and for any of the purposes set out above, AND disclose any information about the Customer to credit reference

agencies or credit and service providers, or enforcement agencies. The Customer may on request, see and correct any information held by MGL relating to that Customer. The Customer confirms that the above Privacy Act clause has been read and understood.

**15) PROPRIETARY INFORMATION:**

All information contained within the MGL website ([www.southerngas.co.nz](http://www.southerngas.co.nz)) is the property of Southern Gas Services Limited and or its affiliates. Except for a single copy made for personal use only, you may not reprint, republish, resell or redistribute this information in any form without the prior written permission of the owner(s) of the information which may be protected from copying by national and international copyright laws and treaties.

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