



# Terms and Conditions of Sale



**IMPORTANT NOTE TO CUSTOMER:**

By entering into a Contract which incorporates these Standard Terms and Conditions, you acknowledge that you have read these terms and conditions, and are aware of the following key terms which may be prejudicial to you:

- **Delivery dates not guaranteed:** Timeframes for delivery are estimates only and not guaranteed (*clause 6*).
- **Retention of title and security:** Blacksmith Jack's retains title to Rental Equipment at all times and retains title in goods until paid for. Customer must consent to and assist Blacksmith Jack's perfect any security interest (*clause 8*).
- **Charges and duties:** Responsibility for any increase in the statutory charges or taxes forming part of the Price after the date of quotation or invoice is placed on the Customer (*clause 3.6*);
- **Blacksmith Jack's' liability is limited:** To the extent permitted by law:
  - Blacksmith Jack's is not liable for particular types of loss including indirect and consequential loss (*clause 11.5*);
  - Blacksmith Jack's' total liability (except for its fraud, breach of confidentiality or third party intellectual property infringement) in respect of any calendar year is limited to the amounts that are recovered under its insurance (or that should have been recovered had it complied with the relevant policy), or if the liability is not subject to a policy of insurance, to the value of the Prices paid by the Customer during that calendar year (*clause 11.6*).
- **Customer responsible for Rental Equipment:** The Customer indemnifies Blacksmith Jack's for:
  - All loss and damage to the Rental Equipment up to the current replacement value, except where due to fair wear and tear or caused by Blacksmith Jack's (*clause 13.1(i)*);
  - All actions and proceedings etc arising from Customer's use of the Rental Equipment, except to the extent caused by Blacksmith Jack's' wilful act or omission, fraud, negligence or breach of the Contract (*clause 13.1(j)*);
  - loss and damage arising from Customer's breach of confidentiality or infringement of Blacksmith Jack's' intellectual property, except to the extent caused by Blacksmith Jack's (*clause 9.3*).
- **Blacksmith Jack's not liable for loss of gas:** Blacksmith Jack's is not liable for loss of any gas from the Rental Equipment (*clause 13.6*) unless the Rental Equipment is defective and the Customer or its officers, employees or agents have not caused or contributed to the defect.
- **Price Adjustment for Change in law:** Blacksmith Jack's may adjust the price payable for Goods to reflect any Change of Law (*clause 25*).
- **Terms may change:** When Customer orders goods, the terms and conditions apply as at the time of order. These terms may change from time to time without notice. Buyer should check terms before each purchase. Customer is not obliged to comply with changed obligations that would cause a material detriment to the Customer (*clauses 2 and 21.6*).

Thank you for using Blacksmith Jack's. This booklet contains our Standard Terms and Conditions for Blacksmith Jack's Goods and Services.

Please ensure you have read and understood these Terms and Conditions.

## 1 DEFINITIONS AND INTERPRETATION

1.1 In these Standard Terms and Conditions, unless the context otherwise requires:

**"Australian Consumer Law"** means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of State Fair Trading legislation.

**"Blacksmith Jack's"** means Blacksmith Jack's Pty Ltd ABN 44 115 803 659.

**"Blacksmith Jack's List Prices"** means the standard prices for the Goods and/or Services levied by Blacksmith Jack's from time to time.

**"Bulk Vessel Rental Equipment"** means Rental Equipment used for the storage of bulk liquids.

**"Change of Law"** means any enactment or promulgation of any new law or regulation or the amendment of any law or regulation existing, including any law or regulation relating to the imposition or change in any tax (other than income tax), impost, fee, charge, excise or levy, in Australia or New Zealand which results in an increase or decrease, as applicable, in the actual costs incurred by Blacksmith Jack's in supplying the Goods under these Standard Terms and Conditions.

**"Commissioned Technical Report"** means any certified scientific analysis report requested and purchased by the Customer in relation to the Goods.

**"Confidential Information"** means the terms of the Contract and all information, know-how, ideas, concepts, technology, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of a Party which is disclosed to the other Party under or in connection with the Contract, but does not include information which:

- (a) is or becomes generally available in the public domain, other than through any breach of confidence;
- (b) was rightfully received by the other Party from a third party who is under no obligation of confidentiality in relation to the information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first Party; or has been independently developed by the other Party.

**"Consumer"** means a consumer as defined in the Australian Consumer Law.

**"Contract"** means a contract for the supply of Goods and/or Services entered into between Blacksmith Jack's and the Customer which incorporates these Standard Terms and Conditions.

**"Control"** has the meaning given in section 50AA of the Corporations Act 2001 (Cth).

**"Customer"** is the person (including their successors and assigns) purchasing Goods and/or Services from Blacksmith Jack's.

**"date of delivery"** means:

- (a) in respect of Goods: the date upon which the Goods are supplied to the Customer; and

- (b) in respect of Services: the date the Services are rendered.

**"Defect"** or **"Defective"** means a defect or flaw in the Goods / Equipment which prevents the Goods / Equipment from being used for the purposes intended for such Goods / Equipment or which makes the use of the Goods / Equipment dangerous, but does not include an Obvious Defect or any defect that is trivial or insubstantial.

**"Equipment"** means:

- (a) any processing, dispensing, scanning or monitoring equipment and storage vessels, including manifolds, vapourisers, piping, cylinder scanners and other devices; or
- (b) gas cylinders or liquid vessels including any inherent valve/s, pressure gauges, regulators and gas controlling and conserving devices and includes but is not limited to cylinders, packs, pallets and vessels in which gas or gas cylinders may be stored or transported.

**"Force Majeure Event"** means any cause beyond the reasonable control of Blacksmith Jack's including an act of God, war, fires, explosions, breakdown of machinery, transport or equipment, epidemic, pandemic, quarantine restriction, public health emergency, communicable disease outbreak (including the Covid-19 outbreak), measures or actions taken by any government or government body including, without limitation, in connection with bio-security, public health and importation of goods, non-delivery or shortage of supplies, strike, lockout or other industrial disturbance.

**"Goods"** refers to all goods or Equipment supplied by Blacksmith Jack's to the Customer under the Contract including all forms of gas, excluding Rental Equipment.

**"GST"** and **"Input Tax Credit"** have the same meanings as in the New Tax System (Goods and Services Tax) Act 1999 (Commonwealth).

A person is **"Insolvent"** if:

- (a) it is (or states that it is) unable to pay its debts when they fall due;
- (b) it is bankrupt; or
- (c) it takes any step to obtain protection or is granted protection from its creditors under any applicable legislation, or a liquidator, administrator, receiver, manager or receiver and manager is appointed to the person or any of its assets or undertakings, or anything analogous or having substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**"Non-Excludable Rights"** has the meaning given in clause 11.3.

**"Obvious Defect"** means any defect in the Goods / Equipment that is obvious and able to be detected by a visual inspection of the Goods / Equipment.

**"Party"** or **"Parties"** means one or both of Blacksmith Jack's or the Customer, as applicable.

**"PPSA"** means the Personal Property Securities Act 2009 (Cth).

**"Price"** means the price for Goods, Rental Equipment and/or Services determined in accordance with clause 3.

**"Related Body Corporate"** has the meaning given to that term in section 50 of the Corporations Act 2001 (Cth).

**"Rental Equipment"** means Equipment or any other goods that are made available by Blacksmith Jack's for use by the Customer and in respect of which the Customer may be charged on a rental basis, including where applicable the Bulk Vessel Rental Equipment.

**"Rental Term"** means either:

- (a) in the case of cash on delivery Customers, from the date of delivery for the period which corresponds to the date of the upfront payment made by the Customer in accordance with clause 3.6, being either 3 months, 6 months or 12 months; or
- (b) in all other cases, the period commencing from the date of delivery until the date on which the Rental Equipment is returned to Blacksmith Jack's.

**"Returnable Items"** has the meaning given in clause 12.3(a).

**"Services"** refers to all services provided by Blacksmith Jack's to the Customer under the Contract and includes the delivery, installation and maintenance of Goods or Rental Equipment.

**"supply"** includes:

- (a) in respect of the Goods: supply (inclusive of re-supply) by way of sale, loan or rent;
- (b) in respect of Rental Equipment: supply by way of loan or rental; and
- (c) in respect of the Services: rendered.

**"Vulnerable Goods"** means cryogenic liquids and dry ice.

1.2 Person includes corporation, firm and unincorporated association, sole trader, registered business and partners.

1.3 Words importing the singular number included the plural number and vice versa. Words importing one gender include all other genders.

1.4 Headings, sub-headings and captions do not affect the construction or interpretation of the Contract.

1.5 The words "include", "includes" and "including" are not to be construed as words of limitation.

1.6 A reference to any document, instrument or agreement, including these Standard Terms and Conditions and the Contract, includes a reference to it as amended, novated, supplemented, varied or replaced from time to time.

1.7 A reference to any act, statute, code, regulation, order, ordinance, by-law or other legislation or subordinated or delegated legislation or provision thereof includes any modification, substitution or re-enactment thereof.

1.8 An agreement, representation or warranty by or in favour of two or more persons bind or is for the benefit of (as the case may be) them jointly and severally.

## 2 OFFER AND ACCEPTANCE FOR THE SUPPLY OF GOODS AND/OR SERVICES

2.1 Where the Customer submits an order for Goods, Rental Equipment and/or Services and Blacksmith Jack's accepts such order, these Standard Terms and Conditions shall apply to the supply of Goods, Rental Equipment and/or Services by Blacksmith Jack's to the Customer.

2.2 By accepting the Goods, Rental Equipment and/or Services on delivery the Customer shall be deemed to have accepted these

Standard Terms and Conditions, to the exclusion of any other terms and conditions (whether written or oral), except as otherwise set out in the Contract or in relation to any Non-Excludable Rights.

2.3 No additions or variations to these Standard Terms and Conditions will be of effect unless expressly agreed to in writing by Blacksmith Jack's and the Customer.

2.4 Blacksmith Jack's reserves the right to accept in whole or in part, any order by the Customer or to decline any such order. Any order or part order not accepted by Blacksmith Jack's is deemed void.

2.5 Blacksmith Jack's may reject any order which is not in writing. Verbal orders must be confirmed in writing by the Customer within seven (7) days of the verbal order.

2.6 Subject to any Non-Excludable Rights, the Customer must advise of any Defects (including Obvious Defects) or shortages in the number of Goods or Equipment ordered within:

- (a) In the case of shortages, or Vulnerable Goods, within 2 Business Days after the date of the delivery of the Goods or Equipment;
- (b) in the case of Goods which have an Obvious Defect (but excluding Vulnerable Goods), within 30 days after the date of delivery of the Goods or Equipment;
- (c) in the case of Goods which have a Defect that is not an Obvious Defect (but excluding Vulnerable Goods), within the period following delivery or collection of the Goods or Equipment in which it would be reasonable to expect the relevant Defect to become apparent.

2.7 Whenever the Customer rents Rental Equipment from Blacksmith Jack's, it agrees that the Customer must only use Blacksmith Jack's gases and/or cryogenic liquids in respect of that Rental Equipment for the duration of the Rental Term. The Customer acknowledges that other gases or cryogenic liquids may not be compatible with the Rental Equipment, which may cause harm to Blacksmith Jack's and that the Customer's obligation under this clause is a material term of the Contract.

2.8 Other than where the Customer has a statutory right of rescission, orders accepted by Blacksmith Jack's shall not be cancelled either wholly or in part, nor may the Customer suspend deliveries thereunder without the consent in writing of Blacksmith Jack's.

## 3 PRICES FOR GOODS AND SERVICES

3.1 Blacksmith Jack's agrees to supply and the Customer agrees to pay the Price for the Goods and/or Services, which will be:

- (a) if Prices are set out in the Contract, as specified in the Contract; or
- (b) in all other cases, the Blacksmith Jack's List Prices for those Goods and/or Services current as at the date of the placement of order.

3.2 Unless otherwise provided in the Contract (which for the avoidance of doubt will take precedence over clause 3.2 and 3.7 of these Standard Terms and Conditions), Blacksmith Jack's reserves the right to vary the Prices for Goods, Rental Equipment and Services by written notice to the Customer. Such variation will:

- (a) in respect of Goods, Rental Equipment or Services not yet ordered, apply with immediate effect to all subsequent orders;

- (b) subject to clause 3.3, apply with immediate effect to all Rental Equipment in the Customer's possession; and
- (c) not apply to Goods or Services already provided but not yet invoiced.

3.3 In relation to clause 3.2(b), if the Customer does not object in writing to the Price variation within 30 days of the Price variation being notified, the Customer will be taken to have consented to that variation. Where the Customer objects in writing to the variation within 30 days of receipt of written notice by Blacksmith Jack's, the Price for Rental Equipment will remain unchanged and Blacksmith Jack's may (but is not obliged to) terminate any rental arrangements with the Customer that are the subject of the proposed Price change on 60 days' written notice to the Buyer.

3.4 The Customer acknowledges that the Prices are determined by Blacksmith Jack's in its discretion, and may take into account production costs, purchase costs, importation costs, exchange rates, freight, storage, handling and tax and duty costs, market conditions, the Customer's estimated annual consumption of the relevant item, insurance and other costs incurred by Blacksmith Jack's in supplying the Customer Goods and/or Services.

3.5 The Price is exclusive of GST and other taxes or levies, except as otherwise stated in writing by Blacksmith Jack's.

3.6 Where the Price is stated in writing by Blacksmith Jack's to be inclusive of statutory charges and tax, any variation in statutory charges or tax between the date the Price is quoted and the date of delivery of the Goods and/or Services, which alters Blacksmith Jack's liability for such statutory charges or taxes, shall be to the Customer's account and the Price shall be deemed to be varied accordingly.

3.7 No variation to the Price as allowed for in this clause 3 will entitle the Customer to terminate the Contract.

#### 4 TERMS AND CONDITIONS OF PAYMENT

4.1 Payment due under these Standard Terms and Conditions shall be made by the Customer within thirty (30) days of the date of Blacksmith Jack's relevant invoice by way of electronic funds transfer, credit card, bank cheque or money order. Payment shall not be treated as having been made until monies have been cleared. If these methods are not used, or if any payment is dishonoured or defaulted on (other than as a result of Blacksmith Jack's error), Blacksmith Jack's may charge the Customer for any direct costs or expenses that Blacksmith Jack's incurs as a result, such as extra processing fees or debt collection costs.

4.2 If the Customer fails to comply with Blacksmith Jack's terms of payment in clause 4.1, Blacksmith Jack's may, without prejudice to any other remedy:

- (a) until payment is made:
  - (i) suspend supply of further Goods, Rental Equipment and/or Services to the Customer without notice to the Customer; and
  - (ii) charge interest on all monies owing to Blacksmith Jack's at an annual rate of three percent above the then current Bank Bill Swap Reference Rate as quoted in the Australian Financial Review at the date the amount is due and payable or an equivalent rate determined by Blacksmith Jack's (acting reasonably) if this rate ceases to be published, is updated, suspended or discontinued; and
- (b) review the existing payment terms without notice to the Customer.

4.3 Interest under clause 4.2(a)(ii) shall be calculated on a daily basis from the date it falls due until the date it is paid. Any payment

made by the Customer shall be credited first against any interest that has accrued.

4.4 A Customer may be required to supply additional information as required to allow a 30 day payment facility referred to in clause 4.1 to exist.

#### 5 GST

5.1 If a supply of the Goods and/or Services under these Standard Terms and Conditions is subject to GST and the Price is not expressed to be GST inclusive, the Customer must pay to Blacksmith Jack's at the same time as the Price for the Goods and/or Services is payable an additional amount equal to the amount of the Price payable multiplied by the applicable GST rate.

5.2 Where an adjustment event occurs in relation to a supply made by Blacksmith Jack's under or in connection with the Contract, Blacksmith Jack's will issue an adjustment note to the Customer in respect of that supply within 14 days after becoming aware of the relevant adjustment. Where Blacksmith Jack's becomes entitled to receive the amount of a variation from the Customer, the amount must be paid by the Customer within 14 days of Blacksmith Jack's providing the Customer with a valid adjustment note.

5.3 If a Party is required under the Contract to reimburse or pay to the other Party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that Party, then for the purpose of calculating the amount of the reimbursement or payment, the cost, expense or other amount paid or incurred will be reduced by the amount of any input tax credits to which the recipient of the payment is entitled in respect of that cost, expense or other amount.

5.4 Unless clearly indicated to the contrary, terms in section 20 which are defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause 5.

#### 6 CONDITIONS REGARDING DELIVERY OF GOODS AND RENDERING OF SERVICES

6.1 Blacksmith Jack's will, at the Customer's request, deliver or arrange delivery of all Goods and Rental Equipment to the Customer and the Customer shall be responsible for all delivery charges for Goods and Rental Equipment delivered to the Customer's premises or premises designated by the Customer.

6.2 Dates for delivery of Goods or Rental Equipment or for the rendering of Services are estimates only and Blacksmith Jack's shall not be liable to the Customer for any delays in delivery.

6.3 If the Customer (or its representative) is not present or not available at the Customer's premises during delivery, Blacksmith Jack's remains entitled to deliver the relevant Goods or Rental Equipment at the Customer's premises, and risk in such Goods or Rental Equipment will pass in accordance with clause 8.1. Where, in order to deliver or collect Goods or Rental Equipment or render the Services, Blacksmith Jack's or its carrier enters the Customer's premises, the Customer shall provide full and safe access to Blacksmith Jack's or its carrier and shall be liable for and indemnify Blacksmith Jack's against all losses, damage to property and injury to, or death of, persons, occurring directly or indirectly as a result of the failure by the Customer to provide full and safe access, except to the extent such loss, damage or death is caused by Blacksmith Jack's or its carrier or personnel.

6.4 The Customer is responsible for providing adequate labour and/or materials and handling equipment for the loading and unloading of Goods or Rental Equipment at its premises.

6.5 If at the Customer's request or through the Customer's failure to give appropriate forwarding instructions, Goods are not dispatched from Blacksmith Jack's premises within 14 days of Blacksmith Jack's notification that the Goods are ready for dispatch, Blacksmith Jack's will be entitled to invoice and receive payment for the Goods as though the Customer had taken delivery of the Goods.

6.6 Where in the circumstances envisaged in clause 6.5 Blacksmith Jack's reasonably sees fit, or the Customer requests, that the Goods be stored, then the Customer will be responsible for paying Blacksmith Jack's reasonable storage fees.

6.7 Unless otherwise established by written evidence to the contrary, Blacksmith Jack's records and documentation (including, but not limited to Blacksmith Jack's delivery logs or dockets, and Blacksmith Jack's electronic cylinder tracking database records) will be conclusive evidence of the:

- (a) date of delivery of any Goods, Rental Equipment or Services; and
- (b) quantity and description of any Goods, Rental Equipment or Services delivered, (together, **Delivery Records**), irrespective of whether any Delivery Record is provided to the Customer at the time of delivery.

6.8 Blacksmith Jack's shall be entitled to make zero contact delivery in the circumstances of a declared worldwide or national epidemic or pandemic. As proof of delivery, the Customer gives Blacksmith Jack's authority to sign acceptance of delivery on the Customer's behalf subject to Blacksmith Jack's recording the Customer representative's name and the date and time of delivery. This process shall apply for both delivery and collection of Rental Equipment for as long as the pandemic or epidemic continues or until Blacksmith Jack's notifies the Customer otherwise.

## 7 CONDITIONS REGARDING RETURN OF GOODS

7.1 Return of Goods (other than in situations where Blacksmith Jack's is required to accept a return of goods under the Australian Consumer Law) must be approved by Blacksmith Jack's, which approval may be withheld by Blacksmith Jack's in its absolute discretion (in particular, where the Customer has opened the Equipment in which the Goods are contained).

7.2 Subject to any Non-Excludable Rights under applicable legislation, Goods will not be accepted by Blacksmith Jack's as suitable for return unless the Customer:

- (a) supplies the invoice number and date;
- (b) returns the Goods in their original unmarked and undamaged condition and with all the documentation such as instruction sheets; and
- (c) pays all transportation costs, and any reasonable handling fee imposed by Blacksmith Jack's, applicable for the return of the Goods.

7.3 Should Blacksmith Jack's agree to collect the Goods from the Customer, it shall be the Customer's responsibility to make sure that the Goods are available for collection at an easily accessible and safe location and that they are ready for loading on arrival of Blacksmith Jack's to collect them.

7.4 In the case of Goods being returned by the Customer to Blacksmith Jack's, it shall be the Customer's responsibility to ensure that they are returned in a safe condition (complying with all relevant legislation) as regards the risk to persons handling them and to persons in the vicinity and as regards the risk of damage to the Goods themselves.

7.5 Blacksmith Jack's disclaims liability for any damage to or loss of Goods returned which occurs whilst in transit to or from Blacksmith Jack's other than where Blacksmith Jack's delivers the Goods or collects them for return. Goods not accepted as suitable for return may be returned to the Customer together with a charge for outward freight where applicable.

7.6 In the event of replacement of any Goods or part thereof without charge for replacement Goods, the Goods replaced or part thereof replaced become the property of Blacksmith Jack's.

7.7 The Customer warrants that it is not party to any binding exclusive supply arrangement with another supplier for the Goods or Services to be supplied to the Customer by Blacksmith Jack's pursuant to these Standard Terms and Conditions or any Contract.

## 8 RISK, TITLE AND PPSA

8.1 Risk shall pass to the Customer on delivery or collection of the Goods or Rental Equipment.

8.2 Title to the Goods is only transferred to the Customer when the Customer has paid all sums owing to Blacksmith Jack's in respect of those Goods. Rental Equipment remains the property of Blacksmith Jack's at all times.

8.3 Until all payments for the Goods have been made the Customer holds the Goods as bailee for Blacksmith Jack's and shall safely and securely store the Goods separately from other Goods on the premises of the Customer or in some other way render them capable of separate identification.

8.4 Each Party consents to the other perfecting any security interest under these Standard Terms and Conditions which arises by operation of the PPSA in any property by registration under the PPSA and agrees to do anything reasonably requested by the other Party to enable it to do so.

8.5 The Parties contract out of the following provisions of the PPSA which, under section 115(1) of that Act, they are permitted to contract out of:

- (a) sections 95 (notice of removal of accession) and section 130 (notice of disposal) to the extent that they require the secured party to give a notice to the grantor;
- (b) section 96 (when a person with an interest in the whole may retain an accession);
- (c) subsection 121(4) (enforcement of liquid assets—notice to grantor);
- (d) section 129 (disposal by purchase)
- (e) paragraph 132(3)(d) (contents of statement of account after disposal);
- (f) subsection 132(4) (statement of account if no disposal);
- (g) section 142 (redemption of collateral); and
- (h) section 143 (reinstatement of security agreement).

8.6 Each Party waives its right to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive.

8.7 The Parties agree that no one will disclose, or authorise the disclosure of, any information of the kind described in section 275(1) of the PPSA to any other person unless allowed or required by law.

## 9 DETAILS ON DRAWINGS AND SPECIFICATIONS

9.1 The terms of the Contract and all technical information supplied by Blacksmith Jack's to the Customer must be treated by the Customer as confidential and the Customer must not divulge such

information to third persons without Blacksmith Jack's' written consent. The Customer must not infringe any copyright in any technical information supplied by Blacksmith Jack's.

9.2 All technical information (including catalogues, illustrations, drawings, specifications, and the particulars of weight and dimensions) supplied by Blacksmith Jack's to the Customer, is approximate only and intended to be a general guide only and, to the extent permitted by law, Blacksmith Jack's gives no warranty and makes no representation in respect to the correctness, compliance, adequacy or otherwise of that technical information. To the extent permitted by law, and unless otherwise agreed in a Contract, the Customer agrees that it uses that technical information at its own risk. This clause does not apply to Commissioned Technical Report, purchased by the Customer which may be relied on by the Customer in the manner set out in that document.

9.3 To the extent permitted by law, the Customer indemnifies Blacksmith Jack's against all proceedings, claims, actions, costs loss and damage arising from any breach of clause 9.1, except to the extent such loss and damage is caused by Blacksmith Jack's.

9.4 The Customer agrees that it is responsible for obtaining for its personnel all necessary training in the safe and lawful use, storage and handling of the Goods and Rental Equipment.

## 10 FORCE MAJEURE

10.1 Blacksmith Jack's shall be excused from its obligations under the Contract to the extent that its ability to perform is prevented, restricted or affected by a Force Majeure Event.

10.2 On the occurrence of a Force Majeure Event, Blacksmith Jack's may in its absolute discretion give prompt notice of the Force Majeure Event to the Customer.

10.3 Despite any obligation on Blacksmith Jack's either at law or under the Contract, the Customer agrees that Blacksmith Jack's will be deemed to be prevented from performing its obligations under the Contract where there is a Force Majeure Event if it is only able to perform by incurring increased or additional costs. Despite this, Blacksmith Jack's may agree to supply Goods and/or Services to the Customer from an alternative source subject to Blacksmith Jack's and the Customer agreeing the price payable for those Goods and/or Services.

10.4 If Blacksmith Jack's is relieved from performance under clause 10.1 by reason of a Force Majeure Event, the Customer may, after notifying Blacksmith Jack's in writing, acquire refills from an alternative source up to the time when Blacksmith Jack's is able to resume refilling of the Equipment.

## 11 INSURANCE AND LIABILITY

11.1 During the term of any Contract, Blacksmith Jack's will maintain the following insurances: product and public liability insurance to a limit of \$10 million; and workers compensation insurance as required by law.

11.2 Except as expressly set out in these Standard Terms and Conditions and the Australian Consumer Law, Blacksmith Jack's makes no warranties or other representations under these Standard Terms and Conditions.

11.3 Where Blacksmith Jack's sells Goods to the Customer, and the Customer purchases them as a Consumer, then the Australian Consumer Law provides certain rights and statutory guarantees in

relation to the goods. These guarantees cannot be modified nor excluded by any contract. Nothing in these Standard Terms and Conditions purports to modify or exclude the conditions, warranties, guarantees and undertakings, and other legal rights, under the Australian Consumer Law and other laws which cannot be modified or excluded (**Non-Excludable Rights**). These Standard Terms and Conditions, including this clause 11 is subject to any Non-Excludable Rights the Customer may have.

11.4 To the extent permitted by law, the liability, if any, of Blacksmith Jack's arising from the breach of any implied conditions or warranties, or failure to comply with a statutory guarantee under the Australian Consumer Law, in relation to the supply of goods or services other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, shall at Blacksmith Jack's' option be limited to:

- (a) in the case of Goods or Rental Equipment:
  - (i) the replacement of the Goods or Rental Equipment or the supply of equivalent goods;
  - (ii) the repair of the Goods or Rental Equipment;
  - (iii) the reimbursement of the cost of the repair of the Goods or Rental Equipment; and
  - (iv) the payment of the cost for the repair of the Goods or Rental Equipment; and
- (b) in the case of Services:
  - (i) the re-supply of the Services; or
  - (ii) the reimbursement of the cost of having the Services supplied again.

11.5 To the extent permitted by law and subject to any specific exceptions in clause 11.8, neither Party is liable to the other under or in connection with these Standard Terms and Conditions or a Contract, whether such liability arises in contract, breach of warranty, indemnity, tort (including without limitation negligence), strict liability or otherwise, for any kind of loss of opportunity, loss of revenue, loss of production, loss of profit or anticipated profit, loss of contract, loss of goodwill or loss arising from business interruption, or indirect or consequential loss or damage incurred or suffered by a Party, or any other person, even if those damages or losses may reasonably be supposed to have been in the contemplation of the Parties at the time they entered into this Contract, excluding storage fees and any other fees or charges payable under the Contract.

11.6 Subject to clauses 11.3 to 11.5, and clauses 11.7 and 11.8, Blacksmith Jack's' liability to the Customer in respect of Goods, Rental Equipment or Services supplied to the Customer in a given calendar year in connection with (i) these Standard Terms and Conditions; or (ii) any Contract, in each case howsoever arising, whether in contract, in tort (including but not limited to negligence), in equity, under any warranties or indemnities, by operation of statute or otherwise, will, to the extent permitted by law, be limited as follows:

- (a) for liability arising in connection with events or circumstances in respect of which Blacksmith Jack's is indemnified under a policy of insurance required to be taken out under these Standard Terms and Conditions, Blacksmith Jack's' liability will be limited to the amount which is recovered by Blacksmith Jack's under that policy (or should have been recovered had it complied with the relevant policy) and in all circumstances will not exceed the amount that is the specified limit for that policy of insurance required under these Standard Terms and Conditions;
- (b) for all liability in respect of which Blacksmith Jack's is not indemnified under a policy of insurance required to be taken out under these Standard Terms and Conditions, Blacksmith Jack's' liability will be limited to the aggregate of all Prices paid by the Customer to Blacksmith Jack's in respect of the same calendar year.

11.7 At all times, a Party's liability under a Contract or otherwise, shall be reduced proportionately to the extent that any act or omission of the other Party, its personnel or any other third party caused or contributed to such loss or liability.

11.8 The limitations of liability in clauses 11.5 and 11.6 will not apply or operate:

- (a) to any loss, damage or liability arising from:
  - (i) a Party's fraud;
  - (ii) a breach of confidentiality or breach of a third party's intellectual property rights; or
- (b) to exclude any liability of the Customer to Blacksmith Jack's for the balance of any rent that would have been payable or profit that would have been derived by Blacksmith Jack's, had the Contract not been terminated early as a result of the Customer's default.

## 12 TERMINATION AND REMEDIES FOR BREACH

12.1 If:

- (a) any payment by the Customer is outstanding for more than thirty (30) days after the due date;
- (b) the Customer breaches any material term of the Contract, which in the reasonable opinion of Blacksmith Jack's:
  - (i) cannot be remedied; or
  - (ii) can be remedied, but is not remedied by the Customer within 14 days after Blacksmith Jack's gives notice of the breach;
- (c) the Customer is or becomes Insolvent;

without prejudice to any other rights or remedies Blacksmith Jack's has under these Standard Terms and Conditions, at law, in equity or by statute Blacksmith Jack's may immediately terminate the Contract by notice in writing to the Customer.

12.2 If:

- (a) Blacksmith Jack's breaches any material term of the Contract, which in the reasonable opinion of Customer:
  - (i) cannot be remedied; or
  - (ii) can be remedied, but is not remedied by Blacksmith Jack's within 14 days after Customer gives notice of the breach;
- (b) Blacksmith Jack's is or becomes Insolvent;

without prejudice to any other rights or remedies Customer has under these Standard Terms and Conditions, at law, in equity or by statute Customer may immediately terminate the Contract by notice in writing to Blacksmith Jack's.

12.3 If the Contract expires or is terminated for any reason:

- (a) the Customer must within 14 days after the receiving a notice from Blacksmith Jack's, deliver up any Rental Equipment and other Equipment in respect of which title has not passed to the Customer (Returnable Items) failing which Blacksmith Jack's is irrevocably authorised to lawfully enter at any time by its servants or agents the place where the Returnable Items are situated and to repossess the Returnable Items, and to remove the Returnable Items from any vessel, vehicle or other place whether or not they have at any such time become fixed to any vessel, vehicle, thing or place and for this purpose Blacksmith Jack's is hereby appointed the Customer's agent. The Customer agrees to indemnify Blacksmith Jack's and keep Blacksmith Jack's indemnified against all costs reasonably incurred by Blacksmith Jack's in removing the Returnable Items and against all claims against Blacksmith Jack's arising from such removal, except to the extent such costs are incurred as a result of the negligence of Blacksmith Jack's;

- (b) the Customer must continue to pay rental on any Rental Equipment that is not returned in accordance with clause 12.3(a) until that equipment is returned or retrieved by Blacksmith Jack's under clause 12.3(a); and
- (c) the Customer must pay to Blacksmith Jack's, Blacksmith Jack's' reasonable charges for removing any Returnable Items (except where the Contract has been terminated by the Customer under clause 12.2).

12.4 Clauses 5, 8, 9, 11, 12, 13.7, 13.8, 17, 18, 20, 21.2, 23, 24 and 26 will survive termination or expiration of any Contract.

## 13 RENTAL EQUIPMENT

13.1 The Customer shall:

- (a) pay all rental charges levied in respect of the period in which Rental Equipment is provided to Customer;
- (b) handle and use all Rental Equipment in a skilful, safe and proper manner and in accordance with the reasonable instructions provided from time to time by Blacksmith Jack's;
- (c) be solely responsible for the safe custody of the Rental Equipment;
- (d) not remove, deface or alter any Blacksmith Jack's identification mark, trade marks or signs fixed to, painted on or adjacent to the Rental Equipment;
- (e) not attempt to alter the Rental Equipment, or use the Rental Equipment for any purpose other than that for which it was rented;
- (f) not draw gas from the Rental Equipment for the purposes of re-supply;
- (g) not sell, lease, encumber or otherwise part with possession or control of the Rental Equipment;
- (h) not without prior written consent of Blacksmith Jack's repair, move, alter, tamper or interfere in any way with the Rental Equipment other than adjusting it in accordance with the instructions provided by Blacksmith Jack's;
- (i) grant Blacksmith Jack's reasonable access to the Rental Equipment;
- (j) pay all taxes, rents, charges and impositions at any time payable in relation to the premises where the Rental Equipment is installed;
- (k) insure the Rental Equipment for its full replacement value with a reputable insurance company while it is in the Customer's possession;
- (l) indemnify Blacksmith Jack's up to the current replacement value of the Rental Equipment for and against all loss or damage to the Rental Equipment, except where the loss or damage is due to fair wear and tear or is otherwise caused by Blacksmith Jack's; and
- (n) indemnify Blacksmith Jack's against all actions, proceedings, claims, damages, losses, expenses and costs arising from third parties directly or indirectly in relation to the Customer's use of the Rental Equipment, except to the extent caused by Blacksmith Jack's' wilful act or omission, fraud, negligence or breach of the Contract.

13.2 If for any reason the Rental Equipment needs to be repaired, the Customer shall promptly return it to Blacksmith Jack's. If the need for repair is found by Blacksmith Jack's to arise through reasonable wear and tear to the Rental Equipment, Blacksmith Jack's may elect to either terminate the rental or continue the rental by repairing or replacing the Rental Equipment.

13.3 If Blacksmith Jack's elects to terminate the rental under clause 13.2, the Customer will receive the balance, after deduction of any undisputed amounts owing by the Customer to Blacksmith Jack's in relation to the Contract, of pre-paid rent and the Customer's reasonable expense of returning the Rental Equipment to Blacksmith Jack's. If Blacksmith Jack's elects to repair or replace the Rental Equipment and continue the rental, Blacksmith Jack's

shall credit the Customer's account in respect of any prepaid rent for the period during which the Rental Equipment was not able to be used by the Customer.

13.4 Blacksmith Jack's may require the Customer to provide a deposit prior to the rental of the Rental Equipment. Any such deposit shall be refunded to the Customer on return of the Rental Equipment in good order and condition (reasonable wear and tear excepted). However, Blacksmith Jack's reserves the right to deduct from such refund, prior to payment thereof, a sum to cover all undisputed amounts owing to Blacksmith Jack's by the Customer in relation to the Contract.

13.5 The Customer must pay all costs incurred by or on behalf of Blacksmith Jack's in connection with any request from the Customer for:

- (a) a change of location of the Rental Equipment; or
- (b) the replacement of particular Rental Equipment for goods of a different size, type or capacity (except to the extent that Blacksmith Jack's has incorrectly provided Rental Equipment other than that requested by the Customer in the first instance).

13.6 Blacksmith Jack's is not liable to the Customer for any loss of any gas from the Rental Equipment unless the loss results directly from a defect in the Rental Equipment which has not been caused or contributed to by any act or default of the Customer, its officers, employees and agents.

13.7 Returnable Items are not transferable and must not be:

- (a) refilled by a source other than Blacksmith Jack's or depots, distributors or agents authorised by Blacksmith Jack's; or
- (b) sent for refilling to any place other than Blacksmith Jack's' premises or to depots, distributors or agents authorised by Blacksmith Jack's.

except where otherwise expressly permitted under the Contract.

13.8 Subject to any Non-Excludable Rights, Blacksmith Jack's reserves the right to refuse a refund or credit on any/all Containers and Cylinders returned once the "gas seal" is broken.

## 14 INSTALLATION AND MAINTENANCE OF RENTAL EQUIPMENT

14.1 Where the Customer requires Blacksmith Jack's to install Rental Equipment:

- (a) it shall be the Customer's responsibility to provide Blacksmith Jack's with adequate information to enable it to proceed with the installation; and
- (b) Blacksmith Jack's will provide a quotation to the Customer in respect of delivery and installation costs. Any instruction from the Customer to proceed shall be regarded as acceptance of this quotation. If, through the delay, fault, negligence or action of the Customer, Blacksmith Jack's incurs installation expenses exceeding those provided for in the relevant quotation, the Customer shall immediately pay Blacksmith Jack's an amount covering such additional costs and expenses.

14.2 The Customer shall provide at its cost:

- (a) a concrete apron, as requested by Blacksmith Jack's, in front of the storage tank (liquid Oxygen only);
- (b) a suitable concrete slab on which the provided Equipment may be placed;
- (c) convenient access to the Rental Equipment for all Blacksmith Jack's' delivery vehicles;
- (d) a wire safety fence and/or barrier wall, as per requirements of any statute or any relevant standard of the Standard Associations of Australia;
- (e) reticulation pipeline, standby manifold and alarm system, and

- (f) electrical power and water supply as requested.

14.3 Blacksmith Jack's will maintain the Rental Equipment in good order and repair (other than where repairs are required due to the fault, negligence or misconduct of the Customer) and ensure that it is suitable for supply of the relevant gas to the Customer. The Customer shall provide Blacksmith Jack's (or its nominated contractor) with appropriate access to the Rental Equipment for this purpose. Where Blacksmith Jack's (or its nominated contractor) is required to conduct any repairs, tests, or maintenance on the Rental Equipment, Blacksmith Jack's may temporarily remove the whole or part of the Rental Equipment for such purpose. Blacksmith Jack's shall endeavour to provide the Customer with equivalent Rental Equipment in such circumstances. The Customer shall be entitled to a credit of rental fees for the period during which the Rental Equipment (or a temporary replacement) was unavailable, except where repairs are required due to the fault, negligence or misconduct of the Customer.

14.4 If Rental Equipment is lost or damaged beyond repair, as reasonably determined by Blacksmith Jack's, whilst in the possession of the Customer, the Customer shall pay to Blacksmith Jack's the reasonable replacement cost of such Rental Equipment within 30 days of invoice from Blacksmith Jack's.

## 15 INVOICING AND PAYMENT FOR RENTAL EQUIPMENT

15.1 Rental Equipment is not regarded as returned until received by Blacksmith Jack's or its authorised depots, distributors or agents at their premises or upon a vehicle of Blacksmith Jack's or its agents and a receipt of Blacksmith Jack's is given for the same. No document purporting to be a receipt for any Rental Equipment shall be valid unless it is on Blacksmith Jack's' printed form of receipt.

15.2 The Customer must verify the total quantity of Rental Equipment specified in each Blacksmith Jack's invoice and provide prompt notification to Blacksmith Jack's if it disagrees with the quantity stated on the invoice.

15.3 For the purposes of confirming the Customer's holdings of Rental Equipment at any given time, Blacksmith Jack's may, in its absolute discretion, have reference to:

- (a) Blacksmith Jack's' records of the Customer's scanned cylinder holdings;
- (b) Blacksmith Jack's' records of the Customer's invoiced cylinder holdings; or
- (c) such other records as Blacksmith Jack's reasonably determines from time to time are appropriate for recording Customer's cylinder holdings (including any physical audit undertaken by Blacksmith Jack's at the Customer's premises).

## 16 TESTING OF NON-BLACKSMITH JACK'S CYLINDERS

16.1 Where the Customer requests Blacksmith Jack's to refill cylinders not owned by Blacksmith Jack's, Blacksmith Jack's may at the Customer's expense inspect and test such cylinders prior to each refill in order to determine compliance of the cylinders with all relevant standards of the Standards Association of Australia and statutes, regulations or orders. Blacksmith Jack's may refuse to refill a cylinder if in Blacksmith Jack's' reasonable opinion it does not comply with any such standards, statutes, regulations or orders.

## 17 GOVERNING LAW AND JURISDICTION

17.1 These Standard Terms and Conditions and any Contract shall be governed by and construed in accordance with the laws of the State of New South Wales.

## 18 LIENS

18.1 Additional to any lien to which Blacksmith Jack's may be entitled, Blacksmith Jack's shall, in the event Insolvency of the Customer, be thereupon entitled to a general lien on all property whatsoever owned by the Customer and in Blacksmith Jack's possession at the time, such lien to cover the unpaid Price of any Goods, Rental Equipment and/or Services supplied by Blacksmith Jack's to the Customer.

## 19 LICENCES AND PERMITS

19.1 The Customer must ensure that, in respect of all Goods and/or Services supplied by Blacksmith Jack's to the Customer, all licences and permits needed by the Customer under relevant statute, ordinance or related rule or regulations are obtained.

## 20 NOTICES

20.1 Notices under these Standard Terms and Conditions may be given via (i) email to the nominated representative of the other Party; (ii) prepaid post; or (iii) hand delivery.

20.2 Notices take effect when taken to be received, being:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, seven calendar days after the date of posting (or 14 calendar days after the date of posting if posted to or from a place outside Australia);
- (c) if sent by email, at the time recorded on the device from which the sender sent the email (unless the sender receives an automated message that the email has not been delivered).

## 21 GENERAL

21.1 Neither Party may assign any of its rights under the Contract without the prior written consent of the other Party (such consent not to be unreasonably withheld). Blacksmith Jack's may assign the Contract to one of its related bodies corporate or in connection with a merger, acquisition, reorganisation or internal restructure or sale of all or substantially all of its assets, or other operation of law, without any consent of the Customer, provided that such assignment would not be detrimental to the Customer. The terms of the Contract shall be binding upon the Parties and their respective successors and permitted assigns.

21.2 Failure by a Party to insist upon strict performance by the other Party of any Standard Terms and Conditions contained herein shall not be taken to be a waiver thereof or of any rights of such Party in relation thereto and in any event shall not be taken to be a waiver of the same terms and conditions on any subsequent occasion.

21.3 Blacksmith Jack's may from time to time vary these Standard Terms and Conditions at its sole discretion without notice and with immediate effect once posted on the Blacksmith Jack's website, provided that any variation to these Standard Terms and Conditions will not apply to:

- (a) orders, rental or transactions that remain outstanding prior to the date of such variation; or
- (b) any contract for a specified term that incorporates the version of these Standard Terms and Conditions that was applicable on the Blacksmith Jack's website as at the date of that contract, which version will continue to apply to such contract.

## 22 SEVERABILITY

Blacksmith Jack's and the Customer acknowledge and agree that:

- (a) all the provisions of these Standard Terms and Conditions and the Contract are reasonable in all the circumstances and that each provision is and will be deemed to be severable and independent; and
- (b) If all or any part of any provision is judged invalid or unenforceable in all the circumstances, it will be deemed to be deleted and will not affect the validity or enforceability of the remaining provisions.

## 23 INDEMNITIES

23.1 The indemnities in these Standard Terms and Conditions are continuing obligations, independent from the other obligations of the Parties and continue after the Contract ends. It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity under these Standard Terms and Conditions.

## 24 CONFIDENTIALITY

24.1 Neither Party may advertise or issue any information, publication, document or article (including photographs or film) for publication or media releases or other publicity relating to the Contract without the prior written approval of the other Party.

24.2 Except as permitted under clause 0, neither Party may disclose to any person the Confidential Information of the other Party.

24.3 A Party (Discloser) may disclose Confidential Information of the other Party (Recipient):

- (a) where such disclosure is required to enable the Discloser to exercise its rights under the Contract;
- (b) to those of its Related Bodies Corporate, employees, officers and agents that need to know the Confidential Information;
- (c) which is required to be disclosed by law, provided that the Discloser has given the Recipient prior notice where practicable; and to professional advisers of the Discloser provided such persons are bound by obligations of confidentiality.

24.4 The Discloser holds the benefit of this clause 24 for itself and for each of its Related Bodies Corporate.

## 25 PRICE ADJUSTMENT FOR CHANGE OF LAW

25.1 If at any time during the Supply a Change of Law occurs which results in an increase or decrease in the costs incurred by Blacksmith Jack's in supplying the Goods under the Contract, Blacksmith Jack's may, by notice in writing to the Customer, increase or decrease the applicable Price by an amount necessary to offset the increase or decrease in the costs incurred by the Blacksmith Jack's in supplying the Goods as a result of the Change of Law. Any notice issued by the Blacksmith Jack's under this clause 25.1 will reasonably contain such information as is necessary to demonstrate:

25.1 (a) The causal relationship between the Change of Law and the increase or decrease in the costs referred to; and

25.1 (b) The nature and extent of any increases or decreases in the relevant Price necessary to offset the increased or decreased costs referred to and details of all calculations and all other information and documents in support of the increase and decreased and will be accompanied by copies of those documents.

25.2 Any increase or decrease to the Price under clause 25.1 will take effect from the date on which Change of Law takes effect.

## 26 DISPUTE RESOLUTION

26.1 This clause applies to any dispute arising out of or in connection with a Contract (a Dispute).

26.2 If a Party considers a Dispute has arisen in respect of, or out of, the Contract, the Party must notify the other Party specifying the nature of the Dispute. The Parties must then use reasonable endeavours and negotiate in good faith to resolve the Dispute.

26.3 If the Parties have not resolved the Dispute within 20 Business Days after notice is given in accordance with clause 26.2, the Parties must refer the Dispute to the general manager or chief executive officer of each Party or their nominee/delegate.

26.4 If within 60 days after notice is given in accordance with clause 26.2, the Dispute has still not been resolved either Party may commence court proceedings to resolve the Dispute. A Party may not otherwise commence proceedings in respect of the Dispute.

26.5 Despite the existence of a Dispute, the parties must continue to perform their respective obligations under the Contract, except where or unless the Contract has been terminated.

26.6 This section 26 does not apply where a Party:

- (a) seeks urgent court intervention (injunctive relief);
- (b) seeks recovery of undisputed amounts payable under the Contract; or terminates the Contract lawfully in accordance with its term.