

# Blackwoods

## APPLICATION FOR A COMMERCIAL CREDIT ACCOUNT

(Incorporating Terms and Conditions of Quotation and Sale)

### NEW ACCOUNT APPLICATIONS:

Locked Bag 9,  
Wetherill Park, NSW, 2164

Telephone: (07) 3712 6200  
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J. Blackwoods & Son Pty Limited A.B.N 43 000 010 300

OFFICE USE ONLY	
MANDATORY FIELDS	
APPLICATION SUBMITTED BY:	
BRANCH:	CUSTOMER CLASSIFICATION:
ANZSIC CODES:	M1 <input type="checkbox"/> M2 <input type="checkbox"/> M3 <input type="checkbox"/> M4 <input type="checkbox"/> M5 <input type="checkbox"/>

# THIRTY DAY COMMERCIAL CREDIT ACCOUNT APPLICATION

Please tick your applicable business structure:-

PRIVATE (Pty) COMPANY

PUBLIC COMPANY

PARTNERSHIP

SOLE TRADER

YOUR TRADING NAME: .....

COMPANY NAME (IF APPLICABLE): .....

SUBSIDIARY/DIVISION OF (IF APPLICABLE): .....

NATURE OF BUSINESS: ..... NO OF EMPLOYEES : .....

POSTAL ADDRESS: .....

DELIVERY ADDRESS: .....

ACCOUNTS CONTACT: (MR/MRS/MS) .....

EMAIL : .....TELEPHONE:( ).....

PURCHASING CONTACT: (MR/MRS/MS).....

EMAIL : .....TELEPHONE:( ).....

AUSTRALIAN BUSINESS NUMBER (ABN - for Tax Purposes): .....

INVOICE E-MAIL ADDRESS (generic preferred): .....

STATEMENT E-MAIL ADDRESS (generic preferred): .....

IN WHAT YEAR DID THE ABOVE NAMED BUSINESS COMMENCE OPERATIONS? .....

ANTICIPATED MONTHLY SPEND: \$ .....

PREFERRED BRANCH TO DO BUSINESS WITH: .....

**NAME AND ADDRESSES OF DIRECTORS/PARTNERS/SOLE TRADER**

CHRISTIAN NAME	SURNAME	HOME ADDRESS

**TRADE REFERENCES (Please do not list businesses providing services):**

NAME OF SUPPLIER	ADDRESS/SUBURB ONLY	TELEPHONE NUMBER	AVERAGE MONTHLY PURCHASES
			\$
			\$
			\$

I/We consent to all sellers (as named in Terms and Conditions of Quotation and Sale)(the Seller):

- (a) making such enquiries as the Seller deems necessary including but not limited to obtaining reports from persons nominated as trade credit referees, bankers and financiers, credit providers, mortgage and trade insurers and credit reporting agencies ("the Information Sources");
- (b) obtaining from the Information Sources such information as is required by the Seller;
- (c) disclosing the content of any report from an Information Source in whole or in part to any credit reporting agency for the purpose of allowing that credit reporting agency to create or add to any credit information file or data base in relation to me/us.

I/We acknowledge having received a copy of the Seller's Terms and Conditions of Quotation and Sale — 2012 and agree that they will govern the supply of products to me/us to the exclusion of all other terms and conditions. I/We further acknowledge that the Seller's Terms and Conditions of Quotation and Sale may be amended at any time by written notice to me/us.

**I/We understand goods sold to us must be paid for within thirty (30) days from the month in which we are invoiced.**

**Privacy Act**

The seller is committed to protecting the privacy of the personal information that you provide to us and we only collect personal information from you which is necessary for us to enable us to assess and process your application for a Commercial Credit Account and/or provide assistance to you. If you do not provide us with this information, we may not be able to assess and process your application. Wherever practicable, we will ask you for the information directly. However, we may need to contact other people and organisations, such as credit reference agencies or referees to collect information about you. We may also disclose your personal information to our relevant staff and to our agents, contractors and third party suppliers engaged by us to deliver our services. We must rely on you to provide information to us that is current and accurate and we will give you the opportunity to access the personal information we hold about you and, where necessary, correct any errors in this information (some restrictions and costs may apply). If you are forwarding information to us on behalf of your organisation (noting the personal information of the/other Directors/Proprietors/Partners) we seek assurance from you that the information you forward to us has been collected with the knowledge and consent of the person(s) whose personal information has been provided.

.....  
SIGNATURE OF AUTHORISED PERSON

.....  
POSITION HELD BY SIGNATORY

.....  
NAME IN BLOCK LETTERS

.....  
DATE

# Standard Terms and Conditions of Quotation and Sale

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In these terms and conditions, unless the context otherwise requires:

- (a) "Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of State Fair Trading legislation.
- (b) "Buyer" means the Person named in the relevant Sales Invoice or Quotation.
- (c) "Business Day" means a day other than a weekend or public holiday in the place which the goods are delivered.
- (d) "Consumer" means: (i) a person acquiring Goods of a kind ordinarily acquired for personal, domestic or household use or consumption; or (ii) a person acquiring Goods at a price not exceeding \$40,000; or (iii) the Goods consisted of a vehicle or trailer acquired for use principally in the transport of goods on public roads, But excludes a person acquiring the Goods, or holding himself or herself out as acquiring the Goods for the purpose of: (i) re-supply; or (ii) using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.
- (e) "Excluded Loss" means: (i) in the case of loss or damage resulting from a breach of contract (including any contractual duty of care) loss of revenue; loss of profit; loss or denial of opportunity; loss of access to markets; loss of goodwill; loss of business reputation; loss arising from late delivery or failure to deliver goods; loss arising from any business interruption; increased overhead costs and any indirect, remote or unforeseeable loss occasioned by that breach, whether or not in the reasonable contemplation of the Buyer and the Seller at the time of the Quotation, Sales Invoice or any delivery of goods as being a probable result of the relevant breach; and (ii) in the case of loss or damage arising from any tort (including negligence) which does not also constitute a breach of contract - indirect, remote or unforeseeable loss and, in the case of pure economic loss, loss not flowing directly from the commission of the tort.
- (f) "Exclusive Goods" means any goods which are, at the Buyer's request, embellished, embroidered, printed, machined, cut-to-size or specifically ordered for the Buyer.
- (g) "GST" means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge.
- (h) "GST Amount" means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST.
- (i) "GST Law" has the meaning given to that term in A New Tax System (Goods and Services) Act 1999, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
- (j) "Payment" means any amount payable under or in connection with a Quotation or Sales Invoice including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration.
- (k) "Person" includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.
- (l) "PPSA" means Personal Property Securities Act 2009 (Cth).
- (m) "Purchase Price" means the price for the goods set out in the relevant Quotation or Sales Invoice.
- (n) "Quotation" means the form of quotation submitted by a Seller to the Buyer in which these terms and conditions are deemed to be incorporated.
- (o) "Sales Invoice" means the sales invoice issued by a Seller to the Buyer in which these terms and conditions are or are deemed to be incorporated.
- (p) "Seller" in relation to any Quotation or Sales Invoice means: (i) except as set out in (ii) below, J. BLACKWOOD & SON PTY LIMITED ABN 43 000 010 300 (also trading as Blackwoods, Bakers Construction & Industrial Supplies, Total Fasteners); (ii) if in a Quotation or Sales Invoice a company referred to in (i) above is expressed to be acting as agent for a Person named in the Sales Invoice or Quotation then the Seller is that Person and the Buyer acknowledges that the Seller as named above acts only as the agent of that Person.
- (q) "Tax Invoice" has the meaning given to that term by the GST Law.
- (r) "Taxable Supply" has the meaning given to that term by the GST Law.

### 1.2 Interpretation

- (a) Any special conditions specified on a Quotation or Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions.
- (b) Words importing the singular shall include the plural (and vice versa).
- (c) If any provision of these terms and conditions is invalid and does not go to the essence of this agreement, these terms and conditions should be read as if that provision has been severed.

## **2. GOVERNING TERMS AND CONDITIONS**

These are the only terms and conditions which are binding upon a Seller with the exception of those otherwise agreed in writing by the Seller which are imposed by a statute such as the Competition and Consumer Act 2010 (Cth) and which cannot be excluded. Any direction by the Buyer either verbal or written to procure goods or services from the Seller will be deemed as acceptance by the Buyer of these terms and conditions, despite any provisions to the contrary in the direction or any purchase order issued by the Buyer.

## **3. TERMS OF PAYMENT**

Payment to the Seller for goods delivered and accepted is due within 30 calendar days of the end of the month in which the Buyer is invoiced for the goods. If the Buyer fails to make payment in accordance with this clause, all amounts owing by the Buyer to the Seller named in the Sales Invoice or any other Seller on any account shall immediately become due and payable. Each outstanding amount shall bear interest of the rate of 10% per annum calculated on a daily basis from the day it falls due until the day it is paid.

## **4. INSPECTION AND ACCEPTANCE**

The Buyer shall inspect all goods upon delivery and shall within two (2) Business Days of delivery give notice to the Seller named in the relevant Sales Invoice or of any matter or thing by which the Buyer alleges that the goods are not in accordance with the Buyer's order. Failing such notice, subject to any non-excludable condition implied by law, such as those in the Competition and Consumer Act 2010 (Cth), the goods shall be deemed to have been delivered to and accepted by the Buyer.

## **5. RETURNS**

Return of goods (other than in situations where the Seller is required to accept a return of goods under the Australian Consumer Law) must be approved by the Seller named in the relevant Sales Invoice. These authorised returns must be freight prepaid and will only be accepted if they are in a saleable condition and (unless otherwise agreed with the Seller) the goods are returned within 14 days of supply. The Seller reserves the right to charge a handling fee of \$10 or 10% of the price of the goods returned (whichever is greater) under this provision. The Seller will not accept the return of goods specifically purchased, manufactured, machined or cut to size or to the Buyer's specification other than in situations where the Seller is required to accept a return of such goods under the Australian Consumer Law.

## **6. QUOTATIONS**

(a) Unless previously withdrawn, a quotation is valid for 30 days or such other period as stated in it. A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the Buyer's order has been accepted in writing by the Seller which provided the Quotation.

(b) No Seller shall be bound by any conditions attaching to the Buyer's order or acceptance of a Quotation and, unless such conditions are expressly accepted by the relevant Seller in writing, the Buyer acknowledges that such conditions are expressly negated.

(c) Every Quotation is subject to and conditional upon obtaining any necessary import, export or other licence.

## **7. GST**

The parties agree that:

(a) the Purchase Price is inclusive of GST;

(b) all other Payments have been calculated without regard to GST;

(c) each party will comply with its obligations under the Competition and Consumer Act 2010 (Cth) when calculating the amount of any Payment and the amount of any relevant Payments will be adjusted accordingly;

(d) if the whole or any part of any Payment is the consideration for a Taxable Supply (other than for payment of the Purchase Price) for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing.

(e) any reference to a cost or expense in this Agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit; and the payee will provide to the payer a Tax Invoice.

## **8. PASSING OF PROPERTY AND RISK**

(a) Goods supplied by a Seller to the Buyer shall be at the Buyer's risk immediately upon delivery to the Buyer, into the Buyer's custody or at the Buyer's direction (whichever happens first). The Buyer shall insure the goods from the time of that delivery at its cost against such risks as it thinks appropriate, shall note the interest of the Seller named in the relevant Sales Invoice on the insurance policy and shall produce a certificate to this effect to that Seller upon request.

(b) Property in the goods supplied by a Seller to the Buyer under these terms and conditions shall not pass to the Buyer until those goods and other goods have been paid for in full.

(c) Until the goods have been paid for in full: (i) the Buyer shall store the goods in a manner which shows clearly that they are the property of the Seller which supplied them; and (ii) the Buyer may sell the goods, in the ordinary course of its business, as agent for the Seller and shall account to the Seller for the proceeds of sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account.

(d) The Buyer irrevocably authorises each Seller at any time to enter onto any premises upon which: (i) the Seller's goods are stored

to enable the Seller to: - inspect the goods; and/or - if the Buyer has breached these terms and conditions, reclaim the goods; (ii) the Buyer's records pertaining to the goods are held to inspect and copy such records.

(e) The Buyer and each Seller agree that the provisions of this clause apply notwithstanding any arrangement under which that Seller grants credit to the Buyer.

(f) Each party consents to the other perfecting any security interest under this agreement 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.

(g) The parties contract out of each provision of the PPSA which, under section 115(1) of that Act, they are permitted to contract out of, other than: (i) sections 117 and 118 (relationship with land laws); and (ii) sections 134(1) and 135 (retention of collateral).

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

(i) Each party waives its rights to receive anything from any other party under section 275 of the PPSA and agrees not to make any request of any other party under that section.

## **9. SUPPLY**

Each Seller reserves the right to immediately suspend, cancel or discontinue the supply of goods to the Buyer without further notice to the Buyer where:

(a) the Seller reasonably suspects that the Buyer is in breach of these terms and conditions; or

(b) the Buyer is otherwise in breach of its payment obligations to the Seller,

and the Seller will not incur any liability to the Buyer in respect of such suspended, cancelled or discontinued supply.

## **10. PART DELIVERIES**

Each Seller reserves the right to make part deliveries of any order, and each part delivery shall constitute a separate sale of goods upon these terms and conditions. A part delivery of an order shall not invalidate the balance of an order.

## **11. INSTALLATION**

A Seller's Quotation or Sale Invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Buyer unless otherwise specified in writing by the relevant Seller.

## **12. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS**

(a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a Quotation, descriptive literature or a catalogue approximate the goods offered but may be subject to alteration by the manufacturer or supplier without notice.

(b) To the extent permitted by statute, any performance data provided by the Seller, a supplier or a manufacturer is an estimate only and should be construed accordingly.

(c) Unless agreed to the contrary in writing, each Seller reserves the right to offer an alternative brand or substitute product that has characteristics that are materially consistent with the goods offered when necessary. Substitution will not be given effect to until approval is received from the Buyer.

## **13. SHIPMENT AND DELIVERY**

(a) Upon acceptance of an order by a Seller that Seller will seek confirmation of the period of shipment or delivery. If any variation has occurred in the quoted period, that Seller will notify the Buyer. Unless the Buyer objects in writing within 7 days of that notification to the Buyer, the period of shipment or delivery notified to the Buyer will be the contractual period for shipment or delivery.

(b) Each Seller may impose a delivery charge on all deliveries (subject to such charge being notified to the Buyer in advance) with the exception of back order deliveries which are part of an original order that has been partly fulfilled.

## **14. MANUFACTURERS' CHANGES**

Where a Seller is acting as agent for a manufacturer or supplier, to the extent permitted by statute, the Seller (as defined in clause 1.1(q)(i)) shall not be liable for any alteration or variation in the goods made by this manufacturer or the supplier.

## **15. CURRENCY**

Where goods are imported into Australia, any adverse variation in the price arising from fluctuation in exchange rates between the date of the Buyer's order and the date of payment by the relevant Seller will be to the Buyer's account.

## **16. CONTINGENCIES**

Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Quotation or Sales Invoice but which is subsequently levied upon a Seller in relation to a Quotation or Sales Invoice as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Buyer's account.

## **17. CHARGES BEYOND POINT OF DELIVERY QUOTED**

Unless otherwise agreed in writing, if a Seller prepays freight, insurance, custom and import duties (if any), landing and delivery charges and all other charges in connection with shipment and delivery of the goods, then any such charges shall be to the Buyer's account. Each Seller reserves the right to nominate the means of delivery.

## **18. FORCE MAJEURE**

If the performance or observance of any obligations of any Seller is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of the Seller, the Seller may, in its absolute discretion give prompt notice of that cause to the Buyer. On delivery of that notice the Seller is excused from such performance or observance to the extent of the relevant prevention, restriction or effect.

## **19. BUYER'S CANCELLATION**

Unless otherwise agreed in writing, the Buyer shall have no right to cancel an order which has been accepted by a Seller. If a right of cancellation is expressly reserved to the Buyer, such right of cancellation must be exercised by notice in writing from the Buyer to the Seller with which the order has been placed not later than 7 days prior to the estimated date of shipment by the manufacturer or that Seller as the case may be. Unless otherwise agreed between the Buyer and Seller, upon cancellation prior to shipment any deposit paid by the Buyer shall be forfeited to the manufacturer or Seller (as the case may be). Despite the cancellation of any order for any reason, the Buyer must still purchase from the Seller any goods ordered by the Buyer which constitute Exclusive Goods (whether in store, in transit or being manufactured) which were procured or ordered by the Seller before such cancellation, unless otherwise agreed in writing by the Seller.

## **20. WARRANTY AND LIABILITY OF SELLER**

(a) The Seller makes no express warranties under this Agreement. Manufacturers of goods may, from time to time, provide a voluntary warranty directly to the Buyer in relation to goods supplied to the Buyer. The Buyer must address issues relating to a manufacturer's warranty with the manufacturer on the terms of that warranty.

(b) Buyer shall immediately notify the Seller in writing of any defect in the goods supplied by the Seller. The Buyer shall not carry out any remedial work to allegedly defective goods without first obtaining the written consent of that Seller to do so. The provisions of this clause 20(b) do not constitute a warranty in relation to the quality or fitness of the goods, or require the Seller to repair or replace goods, or offer a refund in relation to goods, in circumstances other those set out in Australian Consumer Law (to the extent that the Australian Consumer Law applies to the goods).

(c) The Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law guarantee certain conditions, warranties and undertakings, and give you other legal rights, in relation to the quality and fitness for purpose of consumer goods sold in Australia. These guarantees cannot be modified nor excluded by any contract. Nothing in these 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. Except as expressly set out in this Agreement and the Australian Consumer Law, the Seller makes no warranties or other representations under this Agreement. The Seller's liability in respect of these warranties, representations, undertakings and guarantees is limited to the fullest extent permitted by law.

(d) Without limiting clause 20(c), where the Seller sells goods to the Buyer, and the Buyer purchases them as a Consumer, then the Australian Consumer Law provides certain guarantees in relation to the goods. The rights of the Buyer buying goods as a Consumer include those set out in clause 20(e) below.

(e) Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

(f) To the extent permitted by statute, the liability, if any, of the Seller 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 other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, shall at the Seller's option be limited to: (i) the replacement of the goods or resupply of the goods by the Seller, or the cost of replacement or resupply of the goods; or (ii) the repair of the goods, or the cost of repair of the goods.

(g) Subject to clause 20(c), the Seller shall not in any circumstances be liable to the Buyer under or in connection with this Agreement, or in negligence or any other tort or otherwise howsoever, as a result of any act or omission in the course of or in connection with the performance of this Agreement, for or in respect of any Excluded Loss.

(h) The Seller makes no express warranties in relation to the suitability for any purpose of goods or materials supplied by a Seller.

(i) To the extent permitted by statute, all warranties, conditions and guarantees (whether express, implied or applied, and whether given by the Seller, the manufacturer or a third party) and any obligation of the Seller to repair or replace any goods are void in respect of any goods which the Buyer tampers with or alters.

## **21. ALTERATION TO CONDITIONS**

A Seller may, at any time and from time to time, alter these terms and conditions, provided that any variation to these standard terms and conditions will not apply to any:

(a) orders placed not yet fulfilled prior to the date of such variation taking effect; or

(b) contract for a specified term that incorporates a version of these standard terms and conditions released prior to the variation.

## **22. VIENNA SALES CONVENTION**

To the fullest extent permitted by law, the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to the contract comprised by these terms and conditions nor do any of the terms and conditions express or implied by the Vienna Sales Convention form part of the contract.

## **23. GOVERNING LAW**

These terms and conditions and any contract including them shall be governed by and construed in accordance with the laws of the State of New South Wales and the Seller and the Buyer submit to the non-exclusive jurisdiction of the Courts of New South Wales.

## **BLACKWOODS ADDITIONAL CONDITIONS OF QUOTATION AND SALE OF INDUSTRIAL GAS PRODUCTS OR RENTAL EQUIPMENT**

## **24. APPLICATION, DEFINITIONS AND INTERPRETATION**

These additional standard terms and conditions (Additional Terms) apply to all supplies of industrial gas products (and associated rental equipment or services) by the Seller. Unless otherwise noted, these Additional Terms apply in addition to, not to the exclusion of, the Blackwoods Standard Conditions of Quotation and Sale (Blackwoods Standard Terms).

In addition to the terms already defined in the Blackwoods Standard Terms, the following terms are given the meanings set out below, unless the context otherwise requires:

“date of delivery” means: (a) in respect of Goods: the date upon which the Goods are supplied to Buyer; and (b) in respect of Services: the date the Services are rendered;

“Goods” refers to all goods supplied by or rented from Seller including all forms of gas and Rental Equipment;

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;

“Rental Equipment” means any 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 that is made available by Seller for use by Buyer and in respect of which Buyer may be charged on a rental basis;

“Services” refers to all services provided by Seller to Buyer and includes the delivery, installation and maintenance of Goods;

“supply” includes: (a) in respect of the Goods: supply (inclusive of re-supply) by way of sale, loan or rent; and (b) in respect of the Services: render.

## **25. VARIATION TO GAS PRICES OR RENTAL CHARGES**

25.1 Seller reserves the right at its sole discretion by prior written notice to the Buyer to vary rental charges (and the Buyer acknowledges that such written notice may take the form of a published variation on the Seller’s website). If the Buyer does not object in writing to that variation prior to the variation taking effect, the Buyer will be taken to have consented to that variation. Where the Buyer objects in writing to the variation within 14 days of receipt or publication of written notice by the Seller to that effect, the applicable rental rates will remain unamended and the Seller may (but is not obliged to) terminate any rental arrangements with the Buyer that are the subject of the proposed rental charge increase on 60 days’ written notice to the Buyer.

such variation will entitle the Buyer to terminate the arrangements the subject of these terms and conditions.

## **26. PROVISION OF SAFE ACCESS TO BUYER PREMISES**

26.1 Where, in order to supply or collect Goods or render the Services, Seller or its carrier enters the Buyer’s premises, Buyer shall provide full and safe access to Seller or its carrier and shall be liable for and indemnify Seller 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 Buyer to provide full and safe access.

26.2 Buyer is responsible for providing adequate labour and/or materials and handling equipment for the loading and unloading of Goods at its premises.

## **27. ADDITIONAL CONDITIONS REGARDING RETURN OF GOODS**

27.1 In addition to clause 5 of the Blackwoods Standard Terms, and subject to any non-excludable rights under applicable legislation, Goods will not be accepted by Seller as suitable for credit unless Buyer: (a) supplies the invoice number and date; (b) returns the Goods in their original unmarked condition and in the same undamaged packing material and with all the documentation such as instruction sheets; and (c) pays all transportation costs applicable to the return of the Goods (including any additional handling fee charged by Blackwoods).

Seller may require Buyer to pay a replacement fee (as reasonably determined by Seller) in respect of Goods not accepted by Seller as suitable for return, or which are otherwise not returned due to being lost.

27.2 Where Buyer elects to return Goods to Seller, Buyer must ensure that the Goods 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.

27.3 Other than in situations where the Seller is required to provide a refund under the Australian Consumer Law), no refunds or credit will be given where Goods have been altered, damaged or lost while in Buyer's custody.

## **28. LIABILITY**

28.1 To the extent permitted by statute, the liability, if any, of Seller 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 other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, shall at Seller's option be limited to:

- (a) in the case of Goods: (i) the replacement of the faulty Goods or the supply of equivalent goods; (ii) the repair of the Goods; (iii) the reimbursement of the cost of the repair of the Goods; and (iv) the payment of the cost for the repair of the Goods; 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.

## **29. TERMINATION AND REMEDIES FOR BREACH**

29.1 Seller may immediately terminate the supply of Goods or Services by notice in writing to Buyer if:

- (a) any payment owed by Buyer is outstanding for more than seven (7) days after the due date;
- (b) the Rental Equipment is refilled by a source other than by Seller, or Buyer refuses to accept refills from Seller;
- (c) Buyer breaches any of the Blackwoods Standard Terms or these Additional Terms; or
- (c) Buyer is or becomes Insolvent.

29.2 Upon termination, all Rental Equipment held by Buyer is required to be returned to Seller (and Buyer must pay to Seller the value of all Rental Equipment not returned). If Buyer does not return the Rental Equipment or make payment within seven (7) days of termination, Seller may enter any premises where the Rental Equipment is located and take possession (together with any gas remaining therein). Seller shall not reimburse Buyer for any unused gas in this scenario. Buyer shall allow Seller full and free access to the Rental Equipment for the purpose of retaking possession.

## **30. TERMINATION AND REMEDIES FOR BREACH**

30.1 Buyer must:

- (a) pay all rental charges levied in respect of the period in which Rental Equipment is provided to Buyer;
- (b) handle and use the Rental Equipment in a skilful and proper manner and in accordance with the working instructions as provided from time to time by Seller;
- (c) not attempt to alter the Rental Equipment, or use the Rental Equipment for any purpose other than that for which it was rented;
- (d) during the time of rental, at its own expense, service, clean and maintain the Rental Equipment so that they remain in good repair and condition (reasonable wear and tear excepted);
- (e) immediately notify Seller of any fault in the Rental Equipment;
- (f) be solely responsible for the safe custody of the Rental Equipment, and pay any amount required by Seller to replace lost or stolen items of Rental Equipment;
- (g) not remove, deface or alter any Seller identification mark, trade marks or signs fixed to, painted on or adjacent to the Rental Equipment;
- (h) not draw off gas from the Rental Equipment for the purposes of resupply;
- (i) ensure that it obtains and maintains all licences and permits required under any relevant statute, ordinance or related rule or regulation to hold, use or store any Rental Equipment (or gas contained therein);
- (j) indemnify Seller for and against all loss or damage or cost of repairs to the Rental Equipment from any cause (other than fair wear and tear); and
- (k) indemnify Seller against all actions, proceedings, claims, damages, losses, expenses and costs arising directly or indirectly out of the negligent or incorrect possession, use, storage or handling of the Rental Equipment by Buyer or any other person not under the control or direction of the Seller.

30.2 Buyer must pay or reimburse Seller for all costs associated with any inspections of the Rental Equipment while on Buyer's premises that are required to be carried out by law or to comply with applicable industry standards. Buyer shall grant Seller full and free access to the Rental Equipment and shall bear the responsibility for and indemnify Seller against any loss, damage or injury occurring as a result of Seller not being granted such access.

30.3 Seller is not liable to Buyer 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 Buyer, its officers, employees and agents. The liability of Seller to Buyer for any loss of gas will not exceed the replacement value of gas that was lost.



30.4 Buyer must pay all costs incurred by or on behalf of Seller in connection with any request from Buyer for: (a) a change of location of the Rental Equipment; or (b) the replacement of particular item of Rental Equipment for goods of a different size, type or capacity.

30.5 Buyer must permit Seller to enter premises in possession of Rental Equipment to conduct an audit if deemed necessary by Seller.

30.6 Notwithstanding clause 8 of the Blackwoods Standard Terms, Rental Equipment remains at all times the property of Seller. Buyer shall not sell, offer for sale, mortgage, charge, or create any lien or other encumbrance over any Rental Equipment and will keep the same in its own possession. The title to any gas which is stored in the Rental Equipment shall remain vested in Seller until such time as the gas is drawn off for use by Buyer.

30.7 Rental Equipment is not transferable and must not be used for any purpose other than to store or handle gas sold by Seller. Rental Equipment must not be delivered or sent for recharging to any place other than Seller's premises or to depot or agents authorised by Seller. Buyer shall not without Seller's written approval decant gas from Rental Equipment and cylinders to/or from any other cylinder/ vessel/container.

30.8 On receipt of each invoice, Buyer is required to verify the total quantity of Rental Equipment that is shown on the invoice. Where there is any discrepancy, written notification plus original documentation identifying the discrepancy must be forwarded to Seller within fourteen (14) days of the date of the invoice, failing which the quantity of Rental Equipment stated on the invoice shall be conclusive and Buyer will be liable to Seller in respect thereof.

30.9 Seller may at any time, in its absolute discretion, reconcile the current Rental Equipment holdings of Buyer by reference to: (a) Seller's records of Buyer's scanned cylinder holdings; (b) Seller records of Buyer's invoiced cylinder holdings; or (c) such other records as Seller reasonably determines from time to time are appropriate for recording Buyer's cylinder holdings.

Seller reserves the right to amend the amount of any rental charge payable by Buyer to reflect any increase in the Buyer's Rental Equipment holding that is discovered from any such reconciliation.