

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF PRODUCTS AND GAS CYLINDERS**1. Definitions**

“**Additional Terms**” is defined at Condition 2.3.

“**Confirmation**” is defined at Condition 3.3.

“**Customer**” means a person (being any individual, corporation, partnership, trust, unincorporated organization or other legal entity) placing an Order and the party contracting with the Supplier under the resulting Supply Contract.

“**Cylinder Fees**” is defined at Condition 4.1.

“**Delivery**” means the physical delivery of Products and/or Gas Cylinders and (if applicable) Non-Standard Products to the Customer and delivery to any third party appointed by the Customer for receipt of such items or, where no such third party is appointed, acceptance by a vessel, its master, its owners or any other party who accepts delivery at the location where the items are agreed to be delivered, shall be deemed to be delivery to and acceptance by the Customer.

“**Deposit Fee**” means the deposit payable by the Customer for Gas Cylinders pursuant to any Supply Contract.

“**Free Delivery Port**” means a port specified as a “free delivery port” within the WSS Price List.

“**Gas Cylinder(s)**” means “Wilhelmsen” or “Unitor” branded gas cylinders supplied by the WSS Group.

“**Gas Cylinder Services**” means the supply and exchange of Gas Cylinders under a Supply Contract.

“**Non-Standard Products**” means an item requested by the Customer which is not listed in the Product Catalogue or the WSS Price List.

“**Order**” means a request by the Customer for the supply of Products and/or Gas Cylinder Services and (if applicable) Non-Standard Products from a member of the WSS Group.

“**Products**” means the products from time to time included in the Product Catalogue and the WSS Price List.

“**Product Catalogue**” means the catalogue of products published online at <http://wssproducts.wilhelmsen.com/>, as may be amended by WSS from time to time.

“**Product Price**” is defined at Condition 4.1.

“**Product Specifications**” means, in respect of a Product or Gas Cylinders, the description and “technical data” set out in the Product Catalogue.

“**Supplier**” means the WSS entity (being a member of the WSS Group) that is the contracting party for the supply of Products and/or Gas Cylinder Services and (if applicable) Non-Standard Products under a Supply Contract with the Customer, as identified in the applicable Confirmation as the “Selling Company”.

“**Supply Contract**” is defined at Condition 2.4.

“**WSS**” means Wilhelmsen Ships Service AS.

“**WSS Group**” means WSS together with the affiliates and subsidiaries of WSS.

“**WSS Price List**” means the list of prices for the Products and Gas Cylinder Services as published online at <https://www.wilhelmsen.com/marine-products/price-list/>, as may be amended by WSS from time to time.

2. Applicable Terms

2.1 These terms and conditions (“**Conditions**”) shall be deemed to be incorporated into all contracts for the sale and supply of Products and/or Gas Cylinder Services and (if applicable) Non-Standard Products from the WSS Group, whether the contract is concluded directly or through an agent.

2.2 The Customer agrees that, subject to the following, these Conditions apply to all supplies of Products, Non-Standard Products and Gas Cylinder Services to the exclusion of all other terms and conditions, including, but not limited to, the Customer’s general purchase conditions, other standard conditions of purchase or any terms included in any online registration.

2.3 The parties may agree in writing that additional terms and conditions will be applicable to particular supplies of Products, Non-Standard Products and/or Gas Cylinder Services to the Customer (“**Additional Terms**”).

2.4 The Conditions together with any Additional Terms and the Confirmation issued to the Customer in accordance with Condition 3 shall, in respect of each Order placed by the Customer, form a separate binding contract between the Supplier and the Customer for the supply of the Products, Non-Standard Products and Gas Cylinder Services as set out in the Confirmation (each a “**Supply Contract**”). The Customer expressly acknowledges and accepts that in entering into a Supply Contract there is an intention to create legally binding obligations between the Customer and the Supplier only and no member of the WSS Group who is not the Supplier under a Supply Contract shall in any circumstances have any liability to the Customer arising out of or in connection with such Supply Contract.

2.5 In the event of any conflict or ambiguity between the terms of the documents constituting a Supply Contract, the

following order of priority shall apply: (i) Additional Terms shall prevail; and then (ii) Conditions; and then (iii) the Confirmation.

2.6 It is expressly agreed and acknowledged that any instruction by a Customer to the WSS Group to supply Products, Non-Standard Products or Gas Cylinder Services shall constitute acceptance by the Customer of these Conditions, including for the avoidance of doubt this Clause 2, as applicable to such supply of Products, Non-Standard Products and/or Gas Cylinder Services by any member of the WSS Group to the Customer.

3. Placement of Orders

3.1 Each Order shall be deemed to be a separate and individual offer by the Customer to purchase the Products and/or Gas Cylinder Services and (if applicable) Non-Standard Products set out in the Order from any member of the WSS Group, subject to these Conditions and any Additional Terms applicable to the Customer.

3.2 The WSS Group shall in no circumstances be under any obligation to accept any Order and shall be free to accept (on behalf of the Supplier) or decline each Order at its absolute discretion.

3.3 If an Order is accepted, a confirmation shall be issued specifying the identity of Supplier and either confirming that the Supplier can fulfil the Order completely or that it will only fulfil part of the Order (each a "**Confirmation**").

3.4 The Customer shall notify WSS of any errors, deficiencies or inaccuracies in a Confirmation within three (3) business days from receipt of the Confirmation (or within two (2) hours of receipt of the Confirmation in the event that Delivery is scheduled to take place less than five (5) days from the date of the Confirmation) and WSS shall, if necessary, issue a corrected Confirmation. For the avoidance of doubt, WSS shall not be responsible for any errors, deficiencies or inaccuracies in a Confirmation that are not notified to WSS in accordance with this Clause 3.4.

3.5 Save in respect of any corrections to be made pursuant to Clause 3.4, a Confirmation shall be deemed expressly agreed between the parties following receipt by the Customer.

3.6 Notwithstanding any other provision of these Conditions, in the event that a Confirmation provides for only partial fulfilment of an Order, the Customer shall have the option to cancel the Order without liability by written notification within three (3) business days of receipt of such Confirmation (or within two (2) hours of receipt of the Confirmation in the event that Delivery is scheduled to take place less than five (5) days from the date of the Confirmation), provided always that such option shall not be available to the Customer if the items omitted from the Confirmation are Non-Standard Products.

3.7 Save as aforesaid, the Customer shall be entitled to amend or cancel an Order (in whole or in part) at any time prior

to Delivery provided always that the Customer shall be responsible in full for all costs reasonably incurred by the Supplier in connection with such amended or cancelled Order.

3.8 If an Order is placed by an agent on behalf of a Customer, then by placing the Order such agent accepts and agrees (and to the extent necessary shall be deemed) to be a party to the resulting Supply Contract and shall be jointly and severally liable with the Customer for the payment of all amounts due and the performance of all obligations of the Customer under such Supply Contract.

4. Pricing

4.1 The purchase price payable by the Customer for Products and Gas Cylinder Services shall, subject to any Additional Terms, be as stated in the WSS Price List (respectively the "**Product Prices**" and "**Cylinder Fees**").

4.2 The price for Non-Standard Products shall be agreed with the Customer in advance and stated in the Confirmation.

4.3 The applicable Product Prices and Cylinder Fees under a Supply Contract shall, subject to Condition 4.4(i) below, be calculated in accordance with WSS Price List in force at the time of the Confirmation.

4.4 The Deposit Fee shall, subject to the terms of the Supply Contract, be refunded to the Customer following return of the Gas Cylinder(s), provided always that:

- (i) notwithstanding Clause 4.3, if the Deposit Fee listed in the WSS Price List increases during the term of a Supply Contract for Gas Cylinder Services, the Supplier shall be entitled to invoice and the Customer shall be obliged to pay the difference between (i) the Deposit Fee paid by the Customer on Delivery of the Gas Cylinder(s) supplied under the Supply Contract and (ii) the Deposit Fee applicable at the time of return/collection of such Gas Cylinder(s); and
- (ii) the Supplier's refund obligations in respect of each Gas Cylinder shall cease and the corresponding Customer account shall be deemed closed and finally settled on the date falling twelve (12) months from the date on which such Gas Cylinder is returned (without exchange) in accordance with the terms of the Supply Contract.

4.5 The Product Prices and Cylinder Fees do not include VAT (or similar sales taxes) and are exclusive of any delivery charges and other expenses which the Supplier may be entitled to charge in accordance with the terms of the Supply Contract. For the avoidance of doubt, delivery charges and any other additional expenses as stated in a Confirmation shall be indicative only and the final amounts shall be calculated in accordance with Condition 6 and invoiced to the Customer in accordance with Condition 5.

5. Invoicing and Payment

5.1 The Supplier, or its nominated affiliate, shall be entitled to invoice for Products and any Non-Standard Products following Delivery.

5.2 The Supplier, or its nominated affiliate, shall be entitled to invoice for the Deposit Fee in respect of Gas Cylinders following Delivery, and shall invoice all further Cylinder Fees as per the Additional Terms or as otherwise agreed in advance with the Customer.

5.3 Subject to Condition 6.5, all taxes, fees, customs duties, surcharges and the like applicable to the supply or use of the Products, Gas Cylinders and any Non-Standard Products shall be the sole responsibility of the Customer, and where the Supplier incurs expenses or is subject to any claims in relation to such payments, the Customer shall refund any amounts paid by the Supplier on an indemnity basis.

5.4 The Customer shall pay all amounts due in full, free of bank charges, as specified in the invoice within thirty (30) days from the invoice date.

5.5 All sums shall be paid by the Customer without any deduction or withholding other than as required by mandatory law. Where any deduction or withholding is required by mandatory law the Customer shall increase the amount payable to the Supplier to gross up the amount that the Supplier would have received if no deduction or withholding had been made.

5.6 In the event of late payment, the Supplier shall be entitled to interest on all sums outstanding at a rate of 8% per annum above the 6-Month LIBOR rate. Such interest shall accrue on a daily basis from the date on which payment was finally due up to and including the date on which payment is received in full to the Supplier.

5.7 Without prejudice to any other rights and remedies of the Supplier, if the Customer is in default of its payment obligations under a Supply Contract or if the Customer becomes subject to any of the events listed at Condition 16.1, the following provisions shall apply:

- (i) The Supplier shall be entitled to suspend Delivery of further Products, Non-Standard Products and/or Gas Cylinders under the Supply Contract pending payment in full of all outstanding amounts owed by the Customer.
- (ii) Any other member of the WSS Group shall be entitled to suspend performance under any other active Supply Contract(s) with the Customer pending payment in full of all outstanding amounts owed by the Customer to the Supplier and the Customer agrees that such act of suspension shall not constitute breach or default by the suspending party under the relevant Supply Contract. For the avoidance of doubt, this Condition is intended to confer benefits on any member of the WSS Group as a third party who is a Supplier under Supply Contracts with the

Customer other than the Supply Contract under which Customer is in default of its obligations.

- (iii) The Supplier shall, without any court order or other process of law and provided title has not passed, have the right to retake possession of any Products and/or Non-Standard Products that have not been irrevocably incorporated into another product and/or Gas Cylinders, in each case wherever they are located. The Customer shall make the applicable Products, Non-Standard Products and Gas Cylinders available to the Supplier for collection and the Supplier shall be entitled to enter the premises of the Customer or any third party where the items are stored. The Customer shall be liable and shall indemnify the Supplier in full for all costs and expenses (including legal costs) incurred by the Supplier in retaking possession.
- (iv) The Supplier shall be entitled to set off any Deposit Fees, credit and bonus amounts held for the account of the Customer under any Supply Contract against any amount owed by the Customer under invoices issued by the Supplier.

6. Delivery and Additional Charges

6.1 Save as provided in Conditions 6.4-6.8, there shall be no additional delivery charges applicable for Delivery of Products and/or Gas Cylinders to a Free Delivery Port.

6.2 For Delivery of (i) Products and/or Gas Cylinders to a location that is not a Free Delivery Port and (ii) Non-Standard Products, the Customer shall be liable to reimburse the Supplier for the full cost of carriage from the location where the items are stored to the designated vessel or such other delivery point in addition to any extraordinary reasonable and documented administration costs.

6.3 Unless otherwise stated in the Confirmation, Delivery shall be made Free Alongside Ship (FAS) in accordance with the ICC Incoterms 2010.

6.4 If the parties have initially agreed for the Delivery to be made FAS and the Supplier is subsequently instructed for whatever reason to Deliver at a place other than alongside the vessel or to the agreed delivery port, such alternative Delivery shall, at the Supplier's discretion, be made by another delivery method, with any additional costs incurred by the Supplier to be borne by the Customer.

6.5 Where the relevant Incoterms require the Supplier to obtain clearances for export, such responsibility will only relate to the point of Delivery and not to further export by the Customer.

6.6 Notwithstanding anything else to the contrary in the applicable Incoterms:

- (i) title to Gas Cylinders shall only transfer in accordance with Condition 12 (which shall in all cases take precedent over any conflicting provisions of the applicable Incoterms); and

- (ii) the Customer shall reimburse and indemnify the Supplier for the actual costs and expenses of the Supplier in connection with (i) barge, boat or crane hire, (ii) rush shipment of any items not commonly requested at the place of Delivery and (iii) any additional charges incurred by WSS in connection with the activities described at (i) and/or (ii).

6.7 Overtime (being work outside of normal office hours) and waiting time of more than 120 minutes at the Delivery or collection location will be charged to and payable by the Customer.

6.8 If the Customer fails or refuses to take possession when made available by the Supplier for Delivery in accordance with the terms of the Supply Contract, the Supplier shall be entitled to recover all reasonable costs and expenses incurred as a result of such failure or refusal, including without limitation storage and insurance costs, until such time that the Customer accepts Delivery.

6.9 If there is any conflict between the relevant Incoterms and any term of a Supply Contract, the terms of the Supply Contract shall prevail.

7. Delays in Delivery

7.1 Subject to Condition 5.7, the Supplier shall use reasonable endeavours to ensure that Products, Non-Standard Products and Gas Cylinders are delivered at the time and date stated in the Confirmation or otherwise agreed between the parties. For the avoidance of doubt, if the Customer is in default of any payment obligations under the Supply Contract, the Supplier shall not be obliged to make Delivery until such default is remedied.

7.2 Without prejudice to Clause 6.8, if Delivery of any items under the Supply Contract is delayed beyond the date stated in the Confirmation (or as otherwise agreed between the parties), the Supplier shall be afforded a reasonable opportunity to complete Delivery but if the Supplier is unable to effect Delivery within a reasonable period then, provided such delay is not due to the Customer or circumstances within the Customer's control, the Customer shall have the option to cancel such delayed items by giving written notice to the Supplier.

7.3 The remedies available to the Customer pursuant to this Condition 7 shall be the Customer's sole remedy and, to the maximum extent permitted by law, the Customer shall have no further rights or claims whatsoever under the Supply Contract or otherwise in respect of any delay in Delivery.

8. Refill, Exchange, Return and Tracking of Gas Cylinders

8.1 Gas Cylinders delivered to and from the Customer under any Supply Contract will be registered and updated by the WSS Group electronic tracking system. The Supplier will provide a

report on Gas Cylinders registered to be in the Customer's possession upon request. It is however, the Customer's responsibility to ensure that it accurately tracks its inventory of Gas Cylinders and related gas levels in order to comply with its obligations under the Supply Contract (including without limitation Condition 8.2 below).

8.2 The Customer shall be solely responsible to ensure that Gas Cylinders are exchanged or returned for necessary testing, maintenance and/or certification in accordance with the applicable regulatory regime and at least every thirty (30) months (or such other period as may be required under any applicable statutory or regulatory regime or agreed between the parties) from initial delivery or the previous refilling or testing/certification (as applicable).

8.3 It is a condition of the Gas Cylinder Services that Gas Cylinders supplied to the Customer shall only be serviced and refilled by (i) the Supplier or (ii) a member of the WSS Group or a designated third party appointed by, acting on behalf of and with the express approval of the Supplier. For the avoidance of doubt, if a third party supplies gases to the Customer and/or fills a Gas Cylinder (other than on behalf of WSS Group), WSS Group shall have no liability or responsibility for such supply of those gases or filling or subsequent performance of the Gas Cylinder(s).

8.4 If a Supply Contract is entered into for supply of gas for use in Gas Cylinders, and the Customer has a previously supplied Gas Cylinder that it wishes to exchange, the Supplier shall, subject to the Customer having paid all outstanding fees to the WSS Group in relation to the empty Gas Cylinder, supply to the Customer a filled Gas Cylinder in exchange against receipt of the empty Gas Cylinder, which shall be of the same type and specification as the returned Gas Cylinder. In such cases, the Deposit Fee paid by the Customer in respect of the returned Gas Cylinder shall not be refunded but shall be transferred to the new Gas Cylinder. Any supplementary Deposit Fee due (as described in Condition 4.4(i)) shall, if applicable, be calculated and due at the time of the exchange.

8.5 Gas Cylinders may be returned to any one of the WSS Group depots (or such other location as may be agreed) or the Customer can contact the Supplier to arrange for collection.

8.6 Where the Customer only requires Gas Cylinders to be collected and not refilled, the Supplier shall be entitled to charge, and the Customer shall pay, the relevant collection fee specified in WSS Price List as at the time of collection.

8.7 For the avoidance of doubt, the Customer will not be entitled to refund of any Deposit Fee in the event that the Customer returns a gas cylinder which is not a Gas Cylinder or a Gas Cylinder which is not registered to have been last delivered to the Customer by the Supplier (or another member of the WSS Group) and therefore not considered to be in their possession, irrespective of whether the Deposit Fee was paid by another customer for such Gas Cylinder(s) or otherwise.

9. Scope of Warranty

9.1 Subject to the other terms of the Supply Contract, the Supplier warrants that the Products and Gas Cylinders supplied to the Customer shall, at the time of Delivery, be:

- (i) in material conformity with the Product Specifications; and
- (ii) free from material defects in design, materials and workmanship.

9.2 Without prejudice to Clause 9.1, the Supplier shall be at liberty, in its sole discretion, to supply alternative Products to the Customer to those stated in a Confirmation, provided that such Products have an equivalent or better functionality and that the Supplier shall only be entitled to any increase in the applicable Product Price where this is expressly agreed with the Customer in advance.

9.3 Notwithstanding any other term of the Supply Contract, the Supplier shall be entitled at any time and without prior notice to amend the WSS Price List and/or Product Specifications and/or to remove Products from the Product Catalogue and/or remove ports from its global network in each case without incurring any liability to the Customer.

9.4 The Supplier makes no representations, warranties or guarantees whatsoever with regard to any Non-Standard Products, including without limitation in respect of the quality, safety, reliability, durability and performance of such Non-Standard Products, which shall be non-cancellable, non-exchangeable and non-returnable. For the avoidance of doubt, it expressly acknowledged that any Non-Standard Products shall be sourced by the Supplier on behalf of the Customer at the Customer's sole risk.

9.5 Save as aforesaid, the Supplier makes no representations, warranties or guarantees regarding the Products and/or Gas Cylinders, and all warranties, conditions and other terms implied by statute or common law in respect of any items provided to the Customer under the Supply Contract, including but not limited to sections 13-15 of the Sale of Goods Act 1979, are to the fullest extent permitted by law excluded from the Supply Contract.

10. Breach of Warranty

10.1 The Customer shall be entitled to reject any Products or Gas Cylinders that do not comply with the warranty at Condition 9.1, provided that notice of rejection is given to the Supplier (i) in the case of a defect that is apparent on visual inspection, within five (5) business days of Delivery and (ii) in the case of a latent defect within a reasonable time of such defect becoming apparent and in any event within twelve (12) months from the date of Delivery. For the avoidance of doubt, the Customer shall in no case be entitled to reject Delivery of any Non-Standard Products.

10.2 The Customer shall be deemed to accept any Products or Gas Cylinders, and the Supplier shall not be liable for any failure to comply with the warranty at Condition 9.1, if:

- (i) the Customer fails to give valid written notice within the periods specified at Condition 10.1;
- (ii) the Customer makes any further use of such Products or Gas Cylinders after giving notice in accordance with Condition 10.1;
- (iii) the defect arises because the Customer failed to follow the Supplier's oral or written warnings, instructions or safety rules for the storage, commissioning, installation, use and/or maintenance of the items or (if there are none) good trade practice regarding the same;
- (iv) the Customer alters or repairs such Products or Gas Cylinders without the written consent of the Supplier;
- (v) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (vi) the Products differ from the Product Specifications as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

10.3 If the Customer validly rejects any Products or Gas Cylinders in accordance with this Condition 10, the Supplier shall, at its sole discretion elect to: (i) rectify the breach of warranty by repairing such affected items; (ii) deliver substitute Products or Gas Cylinders; or (iii) reduce the Product Prices and/or Cylinder Fees proportionally.

10.4 Save as expressly provided at Condition 10.3, the Customer shall, to the maximum extent permitted by law, have no further rights or claims in respect of a breach of the warranty at Condition 9.1.

10.5 Any dispute as to whether the Customer is entitled to reject Products and/or Gas Cylinders for a failure by the Supplier to comply with the requirements of the warranty at Condition 9.1 shall be resolved in accordance with Condition 21.

11. Transfer of Title / Transfer of Risk (Products and Non-Standard Products)

11.1 Products (including gases and refrigerants) and Non-Standard Products to be supplied under the Supply Contract shall be at the sole risk of the Customer from the time of Delivery.

11.2 Ownership and title to Products and Non-Standard to be supplied under the Supply Contract shall not pass to the Customer until the earlier of:

- (i) the time at which the Supplier has received payment in full of all sums due to it in respect of such Products and Non-Standard Products under the Supply Contract (including any taxes, interest, delivery and additional charges) as invoiced to the Customer; or

- (ii) in the event the Customer resells such Products or Non-Standard Products, the time at which title passes in accordance with Condition 11.3.

11.3 Subject to Conditions 11.4 and 17, the Customer may resell or use Products and Non-Standard Products in the ordinary course of its business (but not otherwise) before the Supplier receives payment. If the Customer resells before that time:

- (i) it does so as principal and not as the Supplier's agent; and
- (ii) title to those Products shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

11.4 If before title to Products and Non-Standard Products passes to the Customer the Customer becomes subject to any of the events listed at Condition 16.1, then, without limiting any other right or remedy the Supplier may have, the Customer's right to resell Products and Non-Standard Products and use them in the ordinary course of its business ceases immediately.

12. Transfer of Title / Transfer of Risk (Gas Cylinders)

12.1 Gas Cylinders shall be at the sole risk of the Customer from the time of Delivery until such time as they are returned to the Supplier in accordance with Condition 8. For the avoidance of doubt, at all times following Delivery, the Customer shall be fully responsible for, and liable to the Supplier for loss and damage to, Gas Cylinders in each case regardless of the cause.

12.2 Subject to the following terms of this Condition 12, the Supplier shall retain ownership and title to the Gas Cylinders while in the Customer's possession (including when such Gas Cylinders may be in the possession of a third party appointed by the Customer, or an agent acting on behalf of the Customer) and the Customer shall not claim or dispute ownership of the Gas Cylinder or seek to or actually exercise or create any lien or encumbrance over or in relation to the Gas Cylinders or otherwise do anything which is inconsistent with the Supplier's rights of ownership.

12.3 Title to and ownership of Gas Cylinders shall immediately pass to the Customer if the Customer:

- (i) destroys, defaces or otherwise damages the Gas Cylinder (and Gas Cylinders shall be considered "damaged" if they cannot be reused in the Supplier's gas exchange system due to any reasons other than normal wear and tear);
- (ii) loses the Gas Cylinder (and for the purposes of this Condition "loss" shall mean loss of possession of Gas Cylinders (other than to a member of the WSS Group or an approved third party) regardless of cause, and sale or scrapping of a ship with Gas Cylinders onboard shall constitute loss of all Gas Cylinders onboard such ship);
- (iii) delivers the Gas Cylinder to a third party not approved by the Supplier;

- (iv) has the Gas Cylinder serviced or refilled by a third party which is not a member of the WSS Group, unless the Supplier has consented in writing to the Gas Cylinder being serviced or refilled by that third party; or
- (v) does not return the Gas Cylinder to the Supplier for refilling or testing/certification in accordance with the requirements of Condition 8.2 or upon expiry or termination of this Supply Contract in accordance with Condition 16.4.2.

12.4 If title to a Gas Cylinder transfers to the Customer in accordance with Condition 12.3:

- (i) any obligation, contractual duty or liability on the Supplier with regard to the Gas Cylinder shall terminate immediately;
- (ii) the Customer shall (unless the cylinder has been lost or destroyed) remove or obscure or procure the removal or obscuring of the 'Unitor' and/or 'Wilhelmsen' trade names from the Gas Cylinder in a safe manner;
- (iii) any Deposit Fee paid by the Customer for the relevant Gas Cylinder shall be forfeited and the Supplier shall be entitled to retain same;
- (iv) if no Deposit Fee has yet been received by the Supplier or a further Deposit Fee would be due on return (as described in Condition 4.4) or a Deposit Fee was not applicable to the relevant Gas Cylinder exchange model at the time of Delivery, the Supplier will charge the Customer, and the Customer shall pay, a fee equal to the Deposit Fee (or shortfall in the Deposit Fee) that would have been due according to WSS Price List in effect at the date that the Supplier becomes aware of the transfer of title.

12.5 The Customer shall, referencing the Gas Cylinder type and serial number, immediately inform the Supplier in writing if title has transferred pursuant to Condition 12.4 and notify the actions taken as a consequence. Failure by the Customer to comply with the requirement to notify the Supplier shall not, for the avoidance of doubt, affect the automatic transfer of title pursuant to Condition 12.4 but the Customer shall be liable to and shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses arising from a breach of this Condition 12.5.

13. Disclaimer and Indemnification

13.1 The Customer shall comply with all warnings, instructions and safety rules provided to it by the Supplier and any member of the WSS Group from time to time and shall familiarise itself with and apply best industry practice at all times in relation to the storage, handling and use of all Products and Gas Cylinders.

13.2 Notwithstanding any pre or post sale surveys or testing, or provision of any warnings, instructions and safety rules by the Supplier or any member of the WSS Group, the Customer acknowledges that the Products sold and the Gas Cylinders

supplied are, or may be, hazardous to human health, and, subject only to Condition 9 and Condition 14.1, the Customer assumes all risk for the Products and Gas Cylinders after Delivery.

13.3 The Customer shall familiarise itself and keep itself informed with respect to possible hazards to persons or property involved in the handling and use of the Products and Gas Cylinders, and shall advise its employees, independent contractors and any others who may handle the Products and Gas Cylinders of the suspected or proven hazards of the Products and Gas Cylinders and the proper handling of the Products and Gas Cylinders, and shall require such persons to comply with any reasonable instructions from the Supplier or any member of the WSS Group relating to the safe handling, use and storage of the Products and/or Gas Cylinders, and all applicable laws and regulations.

13.4 The Customer shall be solely liable for, and shall indemnify the Supplier and all members of the WSS Group against an in each case hold them harmless from all losses, liabilities, costs and expenses whatsoever (including any claims by third parties against any member of the WSS Group and legal expenses) arising from the improper use or improper handling of the Products or Gas Cylinders and/or any breach by the Customer of this Condition 13.

14. Limitation of Liability

14.1 Nothing in these Conditions or any other provision of any Supply Contract is intended to exclude or limit the liability of a Supplier: (i) for death or personal injury caused by the Supplier's negligence; (ii) for fraud or fraudulent misrepresentation; or (iii) for any liability which cannot be limited or excluded by applicable law.

14.2 The provisions of this Condition 14 apply to the entire liability of the Supplier under and in relation to each Supply Contract (including, but not limited to, any liability for the acts or omissions of its employees, agents and sub-contractors) in respect of (i) any breach of the Supply Contract; (ii) any use made or resale by the Customer of any of the Products, Non-Standard Products and Gas Cylinders, or of any product incorporating any of the aforementioned; (iii) any representation, statement or tortious act or omission including negligence arising under or in connection with such Supply Contract; and (iv) any other claim or liability whatsoever under or in connection with such Supply Contract.

14.3 A Supplier's total liability in contract, tort (including negligence), statute, misrepresentation, restitution or otherwise, arising under or in connection with a Supplier Contract shall be limited in aggregate to the lesser of: (i) twenty-five thousand US Dollars (US\$25,000) and (ii) the value of the Supply Contract (being the combined total of Product Prices, Deposit Fees and price for Non-Standard Products payable by the Customer).

14.4 Neither the Customer nor the Supplier shall be liable to the other in contract, tort (including negligence), statute, misrepresentation, restitution or otherwise, arising under or in connection with the Supply Contract for any loss of profit or revenue, loss of business, loss of anticipated savings, or depletion of goodwill (in each case whether direct, indirect or consequential) or any indirect or consequential loss whatsoever (howsoever caused) even if that party was made aware of the possibility of such losses or damages.

14.5 The Supplier shall under no circumstance be liable for any loss or damage whatsoever and howsoever arising in relation to, or in any way connected with any Gas Cylinder if the ownership of that Gas Cylinder has transferred in accordance with the terms of the Supply Contract.

14.6 To the fullest extent permitted by law, the Customer will procure that any and all claims to be made against the Supplier and, without prejudice to Condition 2.4, any member of the WSS Group arising out of or in connection with a Supply Contract shall be made by the Customer and not by any affiliate or agent of the Customer or any other third party. For the avoidance of doubt, all claims brought against the Supplier (and, without prejudice to Condition 2.4, any member of the WSS Group) shall be subject to the exclusions and limitations of liability set out in these Conditions and the Customer shall indemnify the Supplier (and, as applicable, any member of the WSS Group) against all liabilities, costs, expenses, damages and losses (included legal expenses) arising from a breach of this Condition 14.6.

15. Force Majeure

If either party to a Supply Contract is unable to comply with its obligations due to events beyond its reasonable control (including, but not limited to, industrial disputes which are not related to that party's staff, riots, mobs, fires, floods, wars, acts of terrorism, embargo, shortage of labour, power, fuel, lack of means of transportation or general lack of other necessities, laws, regulations or orders from any governmental agency, port or vessel security control, security concerns or adverse weather conditions), that party's obligations (excluding payment obligations) shall be suspended for the duration of such events and it shall not be liable for any such non-performance. For the avoidance of doubt, nothing in this Condition 15 shall excuse the Customer from making payment in accordance with its obligations under a Supply Contract.

16. Termination

16.1 The Customer and the Supplier shall be entitled to terminate as provided at Conditions 18.3 and 19.3.

16.2 Without prejudice to any other rights and remedies of the Supplier, a Supply Contract may be terminated by the Supplier with immediate effect if the Customer:

- (i) is declared bankrupt, becomes insolvent, is unable to pay debts or enters into an arrangement with its creditors; or
- (ii) has a petition presented, an order made or a resolution passed for its liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution; or
- (iii) if an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer is appointed to the Customer and/or over all or any part of the assets of the Customer.

16.3 Without prejudice to any other rights and remedies of the Supplier, the Supplier shall be entitled to terminate the Supply Contract if the Customer (i) is in default of its payment obligations under Condition 5; and/or (ii) if the Customer acts in breach of Condition 17.

16.4 On termination or expiry of a Supply Contract:

- (i) the Customer shall immediately return or make available for collection all Products, Non-Standard Products and Gas Cylinders to which title has not passed;
- (ii) the Customer shall return all Gas Cylinders or make same available for collection (in each case in accordance with Condition 8.5) within one hundred and eighty (180) days of such termination or expiry of the Supply Contract;
- (iii) if termination was triggered by the Customer's breach, the Customer shall be liable and shall indemnify the Supplier in full for all costs and expenses (including legal costs) incurred by the Supplier in retaking possession of such Products, Non-Standard Products and/or Gas Cylinders; and
- (iv) the parties shall, if requested, return or destroy all confidential information of the other party and confirm same to the other party.

16.5 Termination or expiry of the Supply Contract shall not prejudice the Supplier or the Customer's rights, remedies, obligations or liabilities which have accrued as at termination or expiry, including the right to claim damages for any breach of the Supply Contract that existed at or prior to such termination or expiry.

16.6 Clauses 1, 2.5, 3.8, 4.4, 8.3, 8.5, 8.6, 8.7, 9, 10, 11, 12, 13, 14, 16.4, 16.5, 16.5, 17, 20, 21, 22.3, 0 and 22.8 shall survive the termination or expiry of the Supply Contract.

17. Intellectual Property Rights

17.1 Nothing in these Conditions nor any other term of a Supply Contract shall operate to transfer any intellectual property rights (including but not limited to patents, designs, trademarks and trade names (whether registered or unregistered), copyright and related rights, database rights and knowhow) in the Products and the Gas Cylinders (or any items supplied with them) nor any proprietary information or data to the Customer.

17.2 The Supplier shall grant to the Customer a non-exclusive, non-transferrable (except to subsequent purchasers of the Products) royalty free licence to use the intellectual property rights contained within the Products or Gas Cylinders (and any related item delivered with them such as instruction manuals, drawings, commissioning and handover documents) solely to use of the Products or Gas Cylinders for the purpose provided.

17.3 Notwithstanding any other term of the Supply Contract, the Customer shall not be entitled to use the name, logo or trademarks of any member of the WSS Group on any external marketing materials without the prior written consent of the Supplier.

18. Compliance with Law and Ethical Standards

18.1 Each of the Customer and the Supplier, in the performance of the Supply Contract and the business resulting therefrom, shall comply with all laws and regulations applicable to such party.

18.2 The Supplier and the Customer further agree that neither shall:

- (i) offer or agree to give any person working for or engaged by the other party any gift or other consideration, which could act as an inducement or a reward for any act or omission to act in connection with any agreement between the parties;
- (ii) enter into any agreement with the other party if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the other party or that an agreement has been reached to that effect unless (i) details of any such arrangement have been disclosed in writing to the other party prior to the execution of the agreement and (ii) approval of such arrangement by an authorised representative of the other party has been obtained;
- (iii) offer, pay or promise to pay either directly or indirectly, anything of value to a Public Official in connection with any agreement, and the parties further agree that (i) in the performance of their respective obligations hereunder, the parties and their respective agents, sub-contractors and employees shall comply with all applicable laws, rules, regulations and orders of any applicable jurisdiction, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and (ii) each party shall notify the other immediately in writing with full particulars in the event that party receives a request from any Public Official requesting illicit payments; or
- (iv) take any other action which results in a breach by either party of any applicable anti-corruption legislation (including but not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act of 1977).

In this Condition 18, the term "Public Official" means (i) any official or employee of any government agency or government-

owned or controlled enterprise, (ii) any person performing a public function, (iii) any official or employee of a public international organisation, (iv) any candidate for political office or (v) any political party or an official of a political party.

18.3 Without prejudice to any other rights or remedies a party may have, if the Customer or the Supplier is in breach of this Condition 18, the other party shall be entitled to terminate the Supply Contract by written notice with immediate effect.

19. Compliance with Asset Control Laws and Financial Sanctions

19.1 Each of the Customer and the Supplier shall comply with applicable anti-terrorist financing, sanction and asset control laws, regulations, rules and orders, including but not limited to those imposed by the United Nations, the United States (including U.S. Department of Treasury, Office of Foreign Assets Control ("OFAC") regulations) and the European Union sanctions or restrictive measures. The Customer and the Supplier further warrant that, now and throughout the course of the Supply Contract, they are not themselves subject to any sanctions listing.

19.2 Pursuant to OFAC regulations respecting USD payments, it is expressly acknowledged that neither the Customer nor the Supplier can facilitate USD payments in any transaction related to OFAC sanctioned entities or countries, either directly or indirectly. Either party may be required to request information from the other which supports a verification statement which New York intermediary banks may require according to the OFAC regulations, including whether a person is a "specially designated national" listed by OFAC or any executive order, or a "national" of any country with which transactions are regulated by OFAC and both parties shall provide timely and truthful responses to any such reasonable enquiries that the other may make to support any required verification statements.

19.3 Without prejudice to any other rights or remedies a party may have, if the Customer or the Supplier is in breach of this Condition 19, the other party shall be entitled to terminate the Supply Contract by written notice with immediate effect.

20. Confidentiality

20.1 Subject to these Conditions, both the Customer and the Supplier agree to keep all information disclosed to it by the other party confidential, and not to disclose it without the prior written consent of the other party to any third party, unless: (i) the information was public knowledge at the time of the disclosure; (ii) the information becomes public knowledge other than by breach of the confidentiality requirements set out in this Agreement; (iii) the information subsequently comes lawfully into its possession from a third party; or (iv) such disclosure is required pursuant to any applicable laws or mandatory regulations to which the disclosing party is subject.

20.2 Notwithstanding Condition 20.1, each party shall be entitled to disclose confidential information to (i) its directors, shareholders, officers, employees, advisers, subcontractors and consultants on a need to know basis; (ii) to potential assignees or transferees; and/or (iii) otherwise as necessary for the purposes of performing its obligations under the Supply Contract, provided always that the disclosing party ensures compliance of any recipient third parties with the provisions of this Condition 20.

20.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Supply Contract.

21. Governing Law and Dispute Resolution

21.1 These Conditions and all Supply Contracts to which these Conditions apply and any non-contractual obligations arising out of or in connection with these Conditions and such Supply Contracts shall be governed by, and construed in accordance with, English law.

21.2 In the event of a dispute arising out of or in connection with a Supply Contract, the parties shall first attempt to resolve such dispute by negotiation. If the parties are unable to resolve such dispute within forty-five (45) days of commencing negotiations, such dispute may be referred to arbitration in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof.

21.3 Subject to Condition 21.4, the arbitration shall be conducted in accordance the London Maritime Arbitrators Association ("LMAA") Terms current at the time when the arbitration proceedings are commenced. . The reference shall be to a panel of three (3) arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly, and the award of such sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

21.4 Where neither the claim nor any counterclaim exceeds the sum of US\$50,000 the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure. The reference shall be to a sole arbitrator, jointly appointed by agreement between the parties.

21.5 The seat, or legal place, of the arbitration shall be London, England. The language to be used in the arbitration shall be English.

21.6 Nothing stated in this Condition shall preclude the right of either party to seek security or interim orders (by means of any appropriate remedy or relief, including but not limited to in rem arrests, injunctions, attachments, seizures, sales, detention, the exercise of a lien or otherwise howsoever) from any court of competent jurisdiction as may be necessary.

22. Miscellaneous

22.1 Entire Agreement

Each Supply Contract (incorporating, for the avoidance of doubt these Conditions and any Additional Terms (if applicable) together with the Confirmation) shall constitute the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

Each party acknowledges that, in entering into a Supply Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Supply Contract. Nothing in this Condition shall limit or exclude any liability for fraud or fraudulent misrepresentation.

22.2 Assignment and Subcontracting

- (i) The Supplier may subcontract any of its obligations under a Supply Contract to any member of the WSS Group or any other third party, provided always that the Supplier shall remain liable for actions of its subcontractor which are contrary to the terms of the Supply Contract.
- (ii) Subject to (iii) below, neither the Customer nor the Supplier may assign or transfer all nor any of its rights or obligations under a Supply Contract without the prior written consent of the other party.
- (iii) The Supplier shall be entitled, upon written notice to the Customer, to assign or novate the Supply Contract in whole or in part to any member of the WSS Group and the Customer will sign all documents necessary to effect such assignment or novation.

22.3 Waiver

No failure by either of the parties hereto, in case of a default or breach by the other party, to enforce any claim, or to exercise any remedy, or to have resort to any recourse under a Supply Contract or under any applicable law shall be deemed a waiver of any other remedy or recourse or a waiver of the same remedy or recourse for any subsequent default or breach.

22.4 Data Protection

Each party shall comply at all times with the Data Protection Act 1998 (or analogous legislation in other jurisdictions) and shall, if required by applicable law, ensure that it has all appropriate rights and consents to pass personal data to the Supplier or any member of the WSS Group (as applicable) for the Supplier to process in accordance with the terms of the Supply Contract.

22.5 No Agency or Partnership

Nothing in these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

22.6 Severability

If any term of a Supply Contract is or to any extent subsequently becomes void, unenforceable or illegal for any reason whatsoever:

- (i) such term shall be deemed excluded to the extent of such invalidity;
- (ii) any exclusion under (i) shall not affect the validity or operation of any other provision of the Supply Contract except only so far as shall be necessary to give effect to the construction of such invalidity; and
- (iii) the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

22.7 Variations

Without prejudice to Condition 9.3, no variation or amendment to a Supply Contract shall be valid unless recorded in writing and signed by both parties to such Supply Contract.

22.8 Third Party Rights

With the exception of any member of the WSS Group, who shall be entitled to enforce and take the benefit of any right expressly stated to be for the benefit of the WSS Group under a Supply Contract (including, but not limited to, those set out in these Conditions), no term of a Supply Contract shall give rise to any rights of third parties under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or to enjoy the benefit of any term of such Supply Contract.