

Gases in Containers

BAYWATER HEALTHCARE UK LIMITED whose registered office is at Wulvern House, Electra Way, Crewe, Cheshire, CW1 6GW (No. 8425363) (“BH”), and the customer referred to in Part 1 of the Signature Page (“Customer”) AGREE as follows:

1. DEFINITIONS

In this Agreement:

- 1.1** “Premises” means the premises of the Customer referred to in the ‘Order Form’.
- 1.2** “Products” means the gases or products (in liquid or compressed form) referred to in the ‘Price List’.
- 1.3** “Equipment” means the equipment and materials (other than Products and Containers) supplied by BH to the Customer.
- 1.4** “Containers” means cylinders or other containers (including the valves, valve guards, frames and other ancillary equipment) in which Products are delivered to the Customer.
- 1.5** “Standards” means BH’ medical grade specifications for the Products (unless otherwise agreed in writing) contained in the Data and Safety Sheets as published from time to time.
- 1.6** “Index” means the Retail Price Index of All Items Excluding Mortgage Interest Payments as published in the Monthly Digest of Statistics by HM Stationery Office.

2. CONSUMER CREDIT ACT 1974

This Agreement shall not apply to the hiring of Containers where the Customer is a person, partnership or other unincorporated body of persons not consisting of bodies corporate. In such circumstances the Customer must advise BH of such fact and no hiring will take place until BH submits the appropriate hire agreement to the Customer and the Customer accepts it in accordance with the Consumer Credit Act 1974.

3. SUPPLY

3.1 The Customer shall purchase from BH the whole of its requirements for the Products in

Containers at the Premises during the term of this Agreement. Subject to Clause 2 the hiring of Containers by the Customer will be governed by the terms of this Agreement.

4. DELIVERY

4.1 Unless otherwise agreed BH shall deliver the Products (in Containers) and the Equipment at the Premises.

4.2 Any delivery date given by BH shall be approximate only and BH shall have no liability for late delivery.

Risk in the Products, and in Equipment rented by BH to the Customer, shall pass to the Customer on delivery. Property in each such item shall not pass until BH has been paid in full for it.

4.3 The Customer shall provide a safe and suitable place for medicines (Products or Equipment) delivered to the Premises by BH or its agent.

4.4 Where the Customer collects Products or Equipment from BH or its agent delivery shall take place when the Containers or Equipment have been loaded onto the Customer’s vehicle. The Customer shall be solely responsible for the suitability of the vehicle and the security of the load.

4.5 The Customer shall verify the quantity of medicines (Products or Equipment) delivered to it at the time of delivery and shall give notice of short delivery at that time and, if such notice is verbal, confirm it in writing within 5 calendar days failing which it shall be deemed to have received the amount stated in the delivery advice note.

4.6 Medical oxygen is a licensed medicine and must be used in accordance with the Patient Information Leaflet (PIL) and/or Summary of medical Product Characteristics (SmPC), handled

in accordance with The Human Medicines Regulations 2012 (as amended) and should only be used for bona fide medical reasons.

5. CONTAINERS AND EQUIPMENT

5.1 The Containers remain the property of BH and the Customer shall not allow any third party to acquire possession or rights in respect of them.

5.2 The Customer will ensure that Containers are not damaged and that any lifting or movement of Containers which weigh more than 20kg is undertaken by mechanical means which do not expose them to damage. The Customer shall pay the cost of repairing or maintaining any Container damaged or misused while in its possession or control unless BH considers that it should be treated as destroyed.

5.3 The Customer shall pay BH the current replacement cost as specified by BH for any Container lost or destroyed while in the Customer's possession or control.

If at any time the Customer does not have in its possession or control the number of Containers delivered to it (less Containers returned) BH may treat the shortfall as lost unless the Customer can prove otherwise. Any Container treated as lost which is subsequently found shall be returned to BH by the Customer and BH shall repay any sum paid by the Customer for its loss less a sum equal to the rental charge which would have been payable for the period during which the Container was treated as lost.

5.4 Equipment (unless sold to the Customer) remains the property of BH and the Customer shall not allow any third party to acquire possession or rights in respect of it. BH will be responsible for its repair and maintenance. The Customer shall pay for any damage to Equipment caused by its neglect or default.

6. CHARGES AND PAYMENT TERMS

6.1 Subject to any increases as provided in Clause 7 the Customer shall pay for the term of this Agreement the price(s) set out in the 'Price List' for the Products supplied to it and the rental charge on Containers in its possession, at the rates set out in the 'Price List'.

6.2 BH shall from time to time specify a day or days during each rental period for which it will assess the number of Containers in the Customer's possession or control and the Customer shall pay the rental charges calculated on that number. If the number of any type of Containers exceeds the actual number delivered since the immediately preceding assessment the Customer shall pay additional rental charges for the excess.

6.3 The Customer shall pay any invoice rendered by BH by the fifteenth day of the month following the month of invoice date. All payments shall be

made without set-off or deduction.

If the Customer wishes to query an invoice, it shall raise its objections within 7 calendar days from date of invoice, failing which it shall have no right to object.

6.4 All sums chargeable pursuant to this Agreement are subject to the addition by BH of value added tax, duty and similar impositions.

6.5 BH shall be entitled to charge interest on any sum overdue accruing in the period from the date it becomes overdue until the date of payment at a rate of 2% over the Base rate of HSBC Bank PLC over that period. Time of payment by the Customer shall be of the essence of this Agreement.

7. REVIEW OF CHARGES

7.1 BH may increase the prices and charges referred to in Clause 6 by the percentage movement in the Index between the month and year referred to in the 'Order Form' and the latest available Index number published immediately prior to the date of the relevant BH invoice.

7.2 For every increase in BH costs of supplying Gases to the Customer under this Agreement resulting from the imposition after the date of signature of this Agreement of any tax or duty affecting such supply, (eg energy or environmental taxes, etc.) then the Customer shall pay the full amount of such increase.

7.3 For Gases which it purchases from third parties BH may further adjust the prices referred to in Clause 6 to compensate for changes in its purchasing costs to the extent that any increases under Clause 7.1 are inadequate so to do.

7.4 BH may also increase the prices and charges referred to in Clause 6 (other than in accordance with Clauses 7.1 and 7.2) by giving notice in writing to the Customer unless the Customer objects in writing within 15 calendar days of BH' notice, whereupon BH and the Customer shall enter into negotiations. If the parties have then been unable to agree the increase within 30 calendar days of the date of BH' notice it shall not take effect but BH shall be entitled forthwith to terminate this Agreement.

8. TERM

The term of this Agreement shall be 1 year from the date of its signature by both parties and shall continue until terminated, in writing, by either party.

9. FORCE MAJEURE

If BH is prevented from performing any of its obligations under this Agreement by its normal means due to industrial disputes, accidents, breakdown of plant or machinery, any failure in its normal source of supply or any circumstances

beyond its reasonable control, it may, without liability and at its discretion, suspend or terminate performance during the period it is affected by such circumstances. To the extent that BH is thus unable to supply, the Customer may, upon prior written notice to BH, purchase elsewhere as its own risk and cost such quantities of Products as may be needed to meet its then current requirements.

10. WARRANTY

10.1 BH warrants (a) the purity of the Products is not less than that laid down in the relevant Standards, (b) the Equipment will conform to its description and (c) the Containers as supplied are suitable for conveying and holding the Products and will comply with any statutory or mandatory requirements in respect of periodic testing.

10.2 While any recommendation relating to the use of the items supplied under this Agreement made by BH in its technical literature or in response to a specific enquiry or otherwise is given in good faith, it is for the Customer to satisfy itself that such items are suitable for the purpose for which it intends to use them.

10.3 BH' liability whether in contract, tort (including negligence), by way of indemnity or otherwise in respect of the performance of (or failure to perform) this Agreement including, without limitative effect, liability in respect of the quality, description or fitness for purpose of items supplied by it shall be limited to £500,000 in respect of any one incident or series of connected incidents. All implied warranties and conditions as to quality, description and fitness for purpose (whether statutory or otherwise) are excluded.

10.4 BH' shall not be liable to the Customer for loss of profits, loss of margin, loss of use, loss of contract, loss of goodwill or custom, or any indirect or other consequential or economic losses whatsoever, whether or not caused by or resulting from BH' negligence, breach of statutory duty or breach of any of its obligations under this Agreement howsoever caused.

10.5 Nothing in this Clause 10 shall limit or exclude the right of any person to bring a claim against BH for personal injury or death.

10.6 Where the Customer deals as a consumer or this is a consumer contract within the meaning of the Unfair Contract Terms Act 1977, or any statutory modification or re-enactment thereof, the terms of Clauses 10.1 to 10.4 (inclusive) will not diminish the Customer's statutory rights.

11. CONDITION

The commitment on the part of BH to supply the Customer is conditional on BH being and remaining satisfied with the Customer's credit-worthiness.

12. PRIORITY OF DOCUMENTATION

Save as provided in Clause 2 the supply of the Products and Equipment by BH to the Customer shall be governed by this Agreement regardless of whether the Customer has issued forms to BH incorporating its own terms and conditions.

13. TERMINATION

13.1 BH may terminate this Agreement forthwith if the Customer makes any composition for the benefit of creditors or goes into liquidation or if a receiver is appointed over any of its assets or an administration (or like) order is made in respect of it or if it makes an assignment for the benefit of or composition with its creditors or if, in the case of a firm, one of the partners or owners commits an act of bankruptcy. Such termination shall be deemed a breach of this Agreement by the Customer and shall be without prejudice to BH' other rights in respect of such breach. The price of any Products and/or equipment delivered and not paid for, and any unpaid rental charge, on termination shall become immediately due and payable.

13.2 BH may forthwith terminate this Agreement if any of its provisions is held by any court or other competent authority to be unenforceable .

13.3 Either party may terminate this Agreement by written notice at any time if the other party is in substantial breach of its terms.

13.4 Termination of this Agreement, however arising, shall not affect the accrued rights and obligations of either party.

14. INTERPRETATION

14.1 This Agreement shall be subject to English law if the registered office or principal place of business of the Customer is in England or Wales or, if in Scotland, to Scottish law. Clause headings used in this Agreement shall not affect its interpretation. This Agreement may not be varied unless agreed in writing by BH. Any delay by BH in enforcing its rights shall not be deemed a waiver of such rights.

14.2 In any index, bank rate or publication by which a charge is to be calculated pursuant to this Agreement should not be available at the usual time, the reference standard to be used instead shall be such as is agreed by the parties or, at the option of BH', as is specified by an expert (acting as such) appointed by the President for the time being of the Law Society.

15. DATA SHEETS

The Customer hereby acknowledges receipt of copies of the PIL. If the Customer requires additional or replacement copies it shall notify BH immediately.