

Terms and Conditions for Sale of Goods and Supply of Gas Cylinders

Revised May 2010

1. Range of application

These Conditions apply to all sales of goods (including gases) and the supply of gas cylinders from Wilhelmsen Ships Service AS (a company within the Wilh. Wilhelmsen ASA Group of Companies that owns the trademarks "Wilhelmsen Maritime Services", "Barwil" and "Unitor"), its subsidiaries and authorised distributors (the "**Company**").

A customer placing an order with the Company (the "**Customer**"), or the acceptance by the Customer of the goods and/or gas cylinders delivered by the Company, whichever occurs first, shall constitute the Customer's acceptance of these Conditions and the express exclusion of the Customer's conditions of purchase.

All sales of goods and supplies of gas cylinders are deemed to be made to the vessel to which the goods and gas cylinders are delivered or are to be delivered, and for and on behalf of the vessel, its master, its owners and such other party or parties who has or have placed the order and/or accepted the goods and/or the gas cylinders, and all contracts shall be deemed to be concluded with the master of the vessel, the owners of the vessel and such other party or parties as described herein.

If an order is placed by a Customer as agent for a principal (disclosed or undisclosed), then such Customer shall be liable jointly and severally with such principal for the payment of all amounts due and the performance of all obligations under these Conditions.

2. Order confirmation

If a Customer does not without undue delay after receipt of an order confirmation notify the Company in writing of any inaccuracies, the order confirmation is considered to be expressly agreed between the parties. The Company is not responsible for obvious errors and deficiencies in an order confirmation.

3. Price and payment for goods – deposit and fees for gas cylinders

The purchase price for the goods sold is stipulated in accordance with the Company's price list in force at the time and place of delivery.

For gas cylinders supplied by the Company, the Customer shall pay a deposit and associated fees in accordance with the Company's price list in force at the time and place of delivery. The gas cylinders shall be returned to any one of the Company's depots. Subject to Conditions 4 and 7, the deposit shall then be refunded in accordance with the terms of the cylinder agreement in effect.

The Company shall not be responsible for any tax, duty, levy, import/export charges, environmental fees or other charges of any kind imposed by the state or state authority where the goods and gas cylinders are delivered, by reason of the delivery of the products to the Customer (other than tax on the Company's overall net income) and which should be paid by the Customer. The Customer shall fully reimburse the Company in respect of any claims or expenses incurred in connection with such taxes and charges, such amount to be added on the Company's invoice.

The Customer shall pay the purchase price, the deposit and any other amount due in full, free of bank charges, as specified in the invoice at the latest within 30 days from the invoice date. The Company shall be entitled to claim interest of 2% per month (before as well as after judgement) on any overdue payment from the due date until payment in full is received by the Company. If payment is overdue, the Company is entitled to claim and recover full compensation for collection costs and expenses in and out of court and all legal costs and expenses on a full indemnity basis.

4. Equal exchange of gas cylinders

If the Customer orders supply of gas, the Company shall supply to the Customer a filled Unitor gas cylinder against receipt of an empty Unitor gas cylinder of the same kind. In such cases the deposit paid by the Customer shall not be refunded and a supplementary deposit may be charged or credited to reflect the Company's price list in effect at the time and the price and payment terms stated in the applicable cylinder agreement.

5. Delivery

The goods and gas cylinders shall be delivered at the time and date agreed upon between the parties. For destinations, places or ports requested, which are not listed in the Company's port index (<http://www.wilhelmsen.com/SERVICES/MARITIME/COMPANIES/BUSS/Pages/buss.aspx>), deliveries are made EXW (ICC Incoterms 2000).

Terms and Conditions for Sale of Goods and Supply of Gas Cylinders

For destinations, places or ports requested, which are listed in the Company's Port Index (but not being a Free Delivery Port), deliveries are made FCA to the Company's warehouse (ICC Incoterms 2000), transportation costs to Customer will be charged to the Customer subject to quotation.

For Free Delivery Ports listed in the Company's price list, deliveries directly to the vessels are made FAS (ICC Incoterms 2000) and deliveries to places other than alongside the ship are made FCA (ICC Incoterms 2000), unless otherwise stated in the Company's order confirmation. If the parties initially have agreed on delivery FAS (ICC Incoterms 2000) and the Company is subsequently instructed for whatever reason to deliver the goods at a place other than alongside the ship, the delivery conditions are altered to FCA (ICC Incoterms 2000) at the new place, except as provided below.

For all ports, even if listed as a Free Delivery Port in the Company's price list, the Company's costs and expenses related to the following additional services will be charged at cost:

- barge, boat or crane hire
- rush shipment of products not commonly requested at the place of delivery.

Any applicable delivery costs and expenses shall be advised by the Company in quotations and order confirmations. Overtime and waiting time of more than 60 minutes will be charged to the Customer for deliveries at ports not listed as a Free Delivery Port in the Company's price list. The Company's normal opening hours at all places of delivery are listed at the Company's network directory.

If the Customer is obliged to pay the purchase price or deposit before or at the delivery, and payment has not been made, or the Customer has failed to pay any other amount due and payable to the Company, the Company is not obliged to hand over the goods or the gas cylinders or otherwise transfer control over the goods or the gas cylinders without simultaneous payment of all overdue amounts.

6. Properties of goods and gas cylinders

The goods and gas cylinders shall be in conformity with information given in the Company's product guide as effective from time to time

(<http://www.wilhelmsen.com/services/maritime/companies/buss/products/Pages/default.aspx>). The Company reserves the right to amend its product guide and the product specifications at any time without notice. The Company may in its sole discretion provide goods not listed in the Company's product guide.

7. Title to gas cylinders

The Company shall retain ownership and title to the Unitor gas cylinder while it is in the Customer's possession. The Company's gas cylinders delivered to and from the Customer will be registered and updated by the Company's electronic tracking system. The Customer will receive a user ID and password to the Company's cylinder web page where the Customer will have access to monitor such cylinders on board all of the Customer's ships.

The Company will charge its Customers a deposit fee to ensure correct return of the Company's gas cylinders, as per Conditions 3 and 4.

The Customer may, without prior notice to, additional payment to, or approval from the Company, assume title to any Unitor gas cylinder in its possession and transfer title to such cylinder to any third party, provided always that the Customer complies with the provisions of paragraph 4 of this Condition 7. In case the Customer (i) destroys or damages, (ii) defaces, (iii) loses, (iv) delivers the Unitor gas cylinder to a third party not authorised by the Company or (v) does not return the Unitor gas cylinder to the Company's possession, control and test/maintenance system within a period of 18 months from receipt of delivery from the Company (or the Company's authorised third party), the Company's ownership to the gas cylinder shall cease immediately.

When the Company's ownership to a gas cylinder ceases in such events as stated in paragraph 3 of this Condition 7, any obligation or liability on the Company with regard to the gas cylinder shall terminate immediately, and the Customer shall remove the Unitor trade name from the cylinder and immediately inform the Company in writing about the actions taken. Any deposit fee paid by the Customer for that relevant gas cylinder will not be refunded and may be retained by the Company. If no deposit fee is previously paid, the Company will charge the Customer with a further fee equal to the deposit fee according to the Company's price list in effect at the time the Customer informs the Company.

In case the Customer returns to the Company a Unitor gas cylinder not registered to be in the Customer's possession, the Customer will not be entitled to refund of any deposit fee paid by another customer for such gas cylinder.

Terms and Conditions for Sale of Goods and Supply of Gas Cylinders

8. Risk/Retention of title

The goods (including gases) and the supplied gas cylinders are at the risk of the Customer from the time of delivery. The ownership and title to the purchased goods (not gas cylinders, see Condition 7) passes to the Customer when the Company has received payment in full of the purchase price, including interest and costs where applicable.

If the Company has not received payment for the goods, the gases or the deposit for the gas cylinders within 30 days from the invoice date, the Company shall, without any court order or other process of law, have the right to retake possession of the goods, the gases and the gas cylinders wherever they are located. The Customer hereby grants the Company permission to enter onto any of its vessels, property or premises or those of any of its subsidiaries or affiliates in order to retake possession of such goods, gases and gas cylinders. The Customer is obliged to assist the Company in retaking possession. The Company is entitled to claim and recover full compensation for all costs and expenses in and out of court and all legal costs and other expenses incurred by the Company in retaking possession.

9. Delay

Subject to the provisions in Condition 11 (including, without limitation, Force Majeure), if the delivery of the goods or gas cylinders are delayed, and this is not due to the Customer or circumstances on its part, the Customer may cancel the order if and when the delay constitutes a fundamental breach and the Company thereafter has been given the opportunity to deliver the goods or gas cylinders within reasonable time.

The Customer loses any right to cancel the order if a claim for cancellation is not submitted to the Company in writing within three days from the agreed delivery date.

Except as provided by this Condition 9, the Customer shall have no further rights or claims whatsoever in respect of any delay in delivery on the part of the Company.

10. Lack of conformity

Subject to the provisions in Condition 11, in the event of lack of conformity of the supplied goods or gas cylinders with the order confirmation at the time of delivery which is not due to the Customer or circumstances on its part, the Company shall at its sole discretion rectify the lack of conformity, deliver substitute goods or gas cylinders or reduce the purchase price of the goods proportionally to the lack of conformity.

The Customer loses any claim based on lack of conformity where such lack of conformity would have been discovered on reasonable inspection at the time of delivery, or if the Customer does not make a claim in writing to the Company as soon as the lack of conformity should have been discovered. In any event the Customer loses its claim based on the lack of conformity if it does not submit a claim in writing to the Company within 30 days after the delivery of the relevant goods or gas cylinders.

Except as provided by this Condition 10, the Customer shall have no further rights or claims in respect of lack of conformity on the part of the Company.

11. Limitation of liability

11.1 Entire financial liability

Subject to Condition 9 and Condition 10, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of (i) any breach of any contract to which these Conditions apply, (ii) any use made or resale by the Customer of any of the goods, or of any product incorporating any of the goods and (iii) any representation, statement or tortious act or omission including negligence arising under or in connection with any contract to which these Conditions apply.

11.2 Exclusion of implied warranties, conditions and terms

All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from any contract to which these Conditions apply.

11.3 Liabilities not excluded or limited

Nothing in these Conditions excludes or limits the liability of the Company (i) for death or personal injury caused by the Company's negligence or (ii) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability or (iii) for fraud or fraudulent misrepresentation.

11.4 Indirect loss - cap

Subject to condition 11.2 and condition 11.3, (i) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of any contract to which these Conditions apply shall be limited to the contract price

Terms and Conditions for Sale of Goods and Supply of Gas Cylinders

received by the Company and (ii) the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with any contract to which these Conditions apply.

11.5 Customer's specifications and installations

For products ordered and specified by the Customer, not forming part of the Company's product guide, (cf Condition 6), the Company assumes no liability whatsoever, and disclaims any express or implied warranty relating to sale and/or use of such product, including liability or warranties relating to functional ability for a specific application/use, merchantability, or infringement of any patent, copyright, or any other intellectual property right. The Company shall in no event be liable for any damage to products manufactured, assembled or installed by the Customer of which the goods sold hereunder form a part.

11.6 Transfer of title to gas cylinders

The Company 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 cylinder if transfer of title as referred to in Condition 7 has taken place.

11.7 Force Majeure

If the Company is unable to make delivery or to make delivery within the agreed delivery time, owing to Force Majeure, or events beyond the reasonable control of the Company or events that could not be reasonably foreseen by the Company when the order was placed or the order confirmation was issued, the Company's obligation to deliver shall cease or, if appropriate, be suspended for the duration of such obstructions. The Company's obligation shall also cease or be suspended in the event of delay due to security arrangements, incidents or other similar event in the port whether or not the delay could be considered within the Company's reasonable control or to be reasonably foreseeable by the Company. Force Majeure means any industrial disputes, riots, mobs, fires, floods, wars, embargo, shortage of labour, power, fuel, lack of means of transportation or general lack of other necessities, regulations or orders from any governmental agency, port or ship security control or any other circumstances beyond the control of the parties. The Company is in no event liable for loss or damage resulting from delay due to any of the circumstances mentioned in this Condition 11.7.

12. Indemnification

The Customer shall comply with all warnings, instructions and safety rules provided to it by the Company from time to time and shall acquaint itself with and apply best industry practice at all times in relation to the storage, handling and use of all goods and gas cylinders.

The Customer acknowledges that the goods sold and the gas cylinders supplied under these Conditions are, or may be, hazardous to human health, and the Customer assumes all risk and liability for the use of the goods and gas cylinders. 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 goods and gas cylinders. The Customer shall advise its employees, independent contractors and others who handle the goods and gas cylinders for the Customer, and shall take such action as is reasonably necessary to advise others, who are foreseeably users of the goods or gas cylinders of the suspected or proven hazards of the goods and gas cylinders and the proper handling of the goods and gas cylinders. The Customer assumes all risk and liability for the proper use and handling of the goods and gas cylinders after delivery and shall indemnify the Company and hold the Company harmless from all consequences including but not limited to all liability, costs and expenses whatsoever arising from improper use or improper handling, including claims by third parties.

13. Intellectual property rights

The Company shall retain ownership to any and all intellectual property rights in relation to the goods and cylinders supplied under these Conditions. Such intellectual property rights shall include but not be limited to trade marks, patents, copyright, names, styles and designs used in relation to the supplied goods and gas cylinders (whether or not registered or capable of registration), and shall include all goodwill associated therewith. The Customer shall not be granted any rights from the use of the Company's intellectual property rights.

14. Ethical standards

14.1 Compliance

The parties agree that neither party shall:

- (a) 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 the applicable cylinder agreement or any other agreement between the parties;

Document non controlled as printed or downloaded. Valid version always available in GIMS

Terms and Conditions for Sale of Goods and Supply of Gas Cylinders

- (b) enter into a cylinder agreement or any other 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;
- (c) offer, pay or promise to pay either directly or indirectly, anything of value to a Public Official in connection with a cylinder agreement. The parties further agree that in the performance of their respective obligations under the cylinder agreement, 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. The Customer shall notify the Company immediately in writing with full particulars in the event that the Customer receives a request from any Public Official requesting illicit payments; or
- (d) take any other action which results in a breach by either party of any applicable anti-corruption legislation.

In this clause 14, 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.

14.2 Breach of ethical standards

If the Customer or any of its agents, sub-contractors or employees breaches condition 14.1, the Company may terminate the cylinder agreement by written notice with immediate effect. Any termination pursuant to this condition 14.1 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Company.

14.3 Determination by Company

Notwithstanding condition 16 (Governing Law - disputes), any dispute relating to:

- (a) the interpretation of conditions 14.1 and 14.2; or
- (b) the amount or value of any gift, consideration, inducement or reward referred to in condition 14.1,

shall be determined by the Company and such determination shall be final and conclusive.

15. OFAC compliance

Pursuant to the U.S. Department of Treasury, Office of Foreign Assets Control (“**OFAC**”) regulations respecting USD payments, the Company cannot facilitate USD payments in any transaction related to OFAC sanctioned entities, either directly or indirectly. As of the effective date of these Conditions, sanctioned entities include the countries of Burma, Cuba, Iran, North Korea, Sudan and Syria, and certain named persons linked to those countries. The Company may be required to request information from the Customer 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. The Customer shall provide timely and truthful responses to any such reasonable enquiries the Company may make to support any required verification statements.

16. Governing Law – disputes

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

Any dispute arising out of or in connection with a contract to which these Conditions apply shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Condition. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three 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 give notice that it has done so within the 14

Terms and Conditions for Sale of Goods and Supply of Gas Cylinders

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. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement. Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator. In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced. Nothing stated previously in these Conditions shall preclude the right of the Company 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) according to local law and legislation for claims under all contracts to which these Conditions apply in any jurisdiction the Company sees fit.

17. Severability

If any provision of these Conditions or of any contract to which these Conditions apply is or subsequently becomes void, unenforceable or illegal, that shall not affect the validity, enforceability or legality of the other provisions of these Conditions or of any contract to which these Conditions apply.

18. Counterparts

A contract to which these Conditions apply may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of such contract.

19. Third party rights

A person who is not a party to a contract to which these Conditions apply has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of such contract.