

# Carbacid (CO<sub>2</sub>) Limited

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# CO<sub>2</sub>

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## HIGH PURITY NATURAL CARBON DIOXIDE IN BULK & CYLINDERS – “CARB-ICE” DRY & WET ICE

### CYLINDER RENTAL - TERMS AND CONDITIONS.

#### SECTION 1 - AGREEMENT

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between

\_\_\_\_\_ hereafter called (the "Customer"), and Carbacid (CO<sub>2</sub>) Limited, hereafter called the (" Company"). The Company and the Customer, for the consideration hereafter named, agree as follows:

Under the General Conditions of Rental, the Company hereby rents to the Customer – Compressed gas cylinders named and identified in the following “List of Compressed Gas Cylinder,” for use and at such rental rate for approximately such time as is therein stated. subject to the Company’s Terms and Conditions of Supply regarding gas cylinders as are applicable at the date hereof and which shall be deemed to be incorporated herein as if set out in full save and except where there is any inconsistency between the Company’s General Terms and Conditions of Sales and the Terms and Conditions of this agreement, the latter shall prevail.

#### LIST OF COMPRESSED GAS CYLINDERS:

	GAS TYPE	SIZE	QTY	DEPOSIT RATE	RENTAL RATE	RENTAL PERIOD		TOTAL DEPOSIT IN KShs	TOTAL QUARTERLY RENTAL IN KShs
						FROM	TO		
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
TOTAL CYLINDERS						SUB TOTAL			
						VAT 16%			
						TOTAL AMOUNT PAYABLE			

#### 1. GENERAL CONDITIONS OF CYLINDER RENTAL AGREEMENT

The conditions of rental here below stated, together with the Agreement set forth, constitute a contract between the parties therein named which contract is hereafter referred to as “this Agreement”.

**2. RENTAL PERIOD:** The Rental period shall cover all time from the date of this agreement till the expiry of this rental period.

#### 3. SECURITY DEPOSIT:

a. The Customer shall pay a security deposit at the time that this Rental is signed. This deposit will be returned to the Customer at the termination of this Rental, subject to the option of the Company to apply it against Rental charges and damages. Any amounts refundable to the Customer shall be paid at the time this Rental is terminated. The security deposit shall not bear interest.

- b. The cylinder deposit paid by the Customer shall be held by the Company throughout the continuance of this agreement as security for the due performance by the Customer of the terms and conditions of this agreement. The deposit shall take into account the full replacement value/cost of each cylinder rented to the Customer under this agreement.
- c. If the Customer shall make default or breach any of the terms and conditions contained in this agreement, the Company shall be entitled, without prejudice to any of its rights and remedies as hereinafter provided, and without prior notice to the Customer, to expend the security deposit or any part thereof in making good such default or breach, and subject to the continuance of this agreement, the Customer shall on demand pay to the Company such sum or sums of money as may be required to keep up the deposit.
- d. The cylinder deposit shall be liable to review from time to time entirely at the discretion of the Company. The Customer will be given one-month notice of any change in the cylinder deposit.

#### **4. RENTAL CHARGES:**

- a. Full payment for the cylinder rent on the due dates shall be the essence of this agreement and the Customer shall be deemed to be in default if any instalment of the cylinder rent or any part thereof shall remain unpaid for more than fourteen (14) days after becoming due.
- b. The cylinder rent shall be liable to review from time to time entirely at the discretion of Carbacid (CO<sub>2</sub>) Limited. The client will be given one-month notice of any change in the cylinder rent.

#### **5. FEES, ASSESSMENTS, AND TAXES PAID BY CUSTOMER:**

Customer shall pay all fees for validation, and other taxes or hereafter imposed, and relating to Customer's use or possession of the pressure vessel and accessories. Any new tax or duty imposed during the period of this agreement which may affect it, will be passed on to the Customer by the Company.

**6. OPERATORS:** Customer shall provide competent operator to operate, monitor and undertake preventive works on compressed gas cylinder and connected equipment during the Rental Period. The operator shall be employee of Customer during the Rental Period, and shall pay salary or wages and all other applicable costs. Customer shall provide and pay for all workmen's compensation insurance and pay all payroll taxes required by law and applying to such operators and workman.

**7. OWNERSHIP:** The Company shall at all times retain ownership and title of the Cylinders and other connected equipment and accessories, and nothing contained in this agreement shall confer or be deemed to confer any interest in the Cylinders to the Customer and shall not be sold, assigned sub-let, pledged, lent or parted with possession in any manner whatsoever by the Customer.

**8. NO SUBLETTING ASSIGNMENT:** The Customer shall not assign or sublet any interest in this Rental or the equipment or permit the equipment to be used by anyone other than the Customer or Customer's employees, without Company's prior written consent.

#### **9. LOCATION, USE AND PRESERVATION OF CYLINDER:**

- a. The cylinders, fittings and caps are supplied with respect to this invoice are loaned by the Company to the Customer, NOT SOLD and are to be returned to Company's depots in the same condition as when received, ordinary wear and tear excepted.
- b. The Customer shall not himself or have any other party attempt to repair or tamper with any cylinders or parts thereof or re-loan or otherwise dispose of any of the cylinders or have them recharged with any product, gas, liquid or materials whatsoever by any persons, firm or other than Carbacid (CO<sub>2</sub>) Limited.
- c. The Customer accepts full responsibility against loss or damage by fire, theft or otherwise of the cylinder until the cylinder is returned to the Company at its premises or is placed on a vehicle of the Company or one of its transport contractors for return to the Company's premises and a receipt obtained; and the Customer shall hold the Company indemnified up to the agreed value of the cylinder (being the purchase price of the cylinder based on its current market value) against all loss, damage or destruction of any cylinder howsoever caused, and further against the full costs of repair to any such cylinder. Customers are advised to take out full insurance coverage in respect of all such risks as foresaid.
- d. The Customer assumes all risks and liabilities for the cylinder, and for the use, operation and storage thereof, and for injuries to or deaths of persons and damage to property howsoever arising from or incidental to such use, operation or storage, whether such injury to or death of persons be of agents or employees of the Customer or of third parties, and such damage to properties be of the Customer or of others; and the Customer shall hold the company indemnified from all loss, damages, claims, personal liabilities and expenses, including legal costs, howsoever arising or incurred because of or incidental to the cylinder and the use, operation and storage thereof, and alleged use, operation or storage thereof. Customers are advised to take out insurance coverage in respect of all such risks as foresaid.
- e. In the event of a customer failing to return a cylinder to Company's depot within (2) months from the date the cylinder was delivered to the Customer or the expiry date of an extended cylinder hire agreement, whichever is the later, the customer shall pay to the Company by way of liquidated damages for such failure demurrage and damages. Such damages to be calculated in accordance with the current replacement value of the cylinder in question provided that the payment of the amount aforesaid shall not affect the right of Company to recover possession of the cylinder.
- f. The Company may at any time exercise the rights of an owner in respect of the cylinder including the right to enter premises to inspect or recover possession of the cylinder.

- g. The Company will not entertain any claims for loss of contents based on defective valves or other cylinder imperfections unless same are made within forty-eight (48) hours after receipt of the respective sealed cylinder by the Customer and unless the sealed cylinder is returned to the Company stating the defect or defects within the said forty-eight (48) hours. No claim shall be accepted if the seal is tampered with or broken.
- h. The cylinder shall be returned to the Company in the same condition as when received. The Customer accepts full responsibility against loss or damage by fire, theft or otherwise of the cylinder until the cylinder is returned to the Company agent and a receipt obtained and the Customer shall hold the Company indemnified up to the replacement value of the cylinder against loss, damage or destruction of the cylinder howsoever caused, and further against the full cost of repair to such cylinder, fair wear and tear always excepted.
- i. The Customer undertakes to use the cylinder solely for Gases purchased only from **Carbacid (CO2) Limited** and shall not under any circumstances fill Company's cylinders with Gases or substance procured from any other Organisation, person or source. The Company shall not under any circumstances accept any liability in respect of any loss, damage, injury to any person or property whatsoever arising from the breach of the provisions of this sub-clause or from the use or misuse of the said cylinder.

#### **10. EXCHANGE CYLINDERS:**

- a. The signing by the Cylinder Rental Agreement and the payment of the fee entitles the Customer to hold the cylinders as covered by this agreement from the date and for the period shown.
- b. The Customer is entitled to exchange any empty Company's cylinder as described against a full exchange cylinder of the same type and size by paying the refilling charges.

#### **11. RENEWAL/EXPIRY OF AGREEMENT:**

At the expiry of the period of the agreement the Customer may retain the cylinders by renewing the agreement for an additional period. The renewal is subject to the payment of a new fee as applicable at the date of renewal for the new period required.

If the Customer does not wish to renew the agreement the cylinder must be returned to the Company together with this agreement to process the refund of security deposit.

#### **12. TRANSPORT OF COMPRESSED GAS CYLINDERS**

- a. Transporting gas cylinders in cars, vans or enclosed spaces in other vehicles is dangerous and should be avoided.
- b. Gas cylinders should never be transported in closed spaces such as the boot of a car. It is **EXTREMELY DANGEROUS** and could cause an **EXPLOSION, FIRE** or **ASPHYXIATION**.
- c. Transporting gas cylinders containing liquid oxygen or flammable or toxic gases in an enclosed vehicle or compartment of a vehicle is prohibited by law.
- d. Gas cylinders should be transported in a **FIXED UPRIGHT POSITION & FASTENED** with windows **OPEN FOR VENTILATION**.
- e. It would be safer to transport the cylinder(s) by open truck, or to let **THE COMPANY** or its **AGENT**, where applicable, arrange delivery.
- f. **IF THE CUSTOMER** still intends to transport the gas cylinder(s) by car or van then the supply of gases is subject to the Cylinder Hirer agreeing to the following:
  - i. **THE CUSTOMER** assumes the risk of bodily injury the himself/herself or any other person or of loss or damage to the vehicle or any other property directly or indirectly caused by, or resulting from the transporting of the gas cylinder(s) by the Customer, and
  - ii. **RELEASES THE COMPANY** or its agents, employees and officers from and indemnifies them against any liability for bodily injury to any person or loss or damage to any property (including but not limited to consequential loss or damage) directly or indirectly caused by or resulting from, the transporting of the gas cylinder(s) by the Customer. **THIS WARNING IS TAKEN BY THE CUSTOMER AS A DISCLAIMER** of any liability by **THE COMPANY** or its agent, employees and officers

### **13. REPOSSESSION:**

In the event of the Customer default or breach of any of the provisions of this agreement, the Company shall be entitled without any prior notice to the Customer to retake possession of the cylinder/s from any land or premises on or which the cylinder or any of them are or are believed by the Company to be situated, and the Customer shall pay to the Company all expenses (including legal costs and auctioneers charges on a full indemnity basis) incurred by or on behalf of the Company in ascertaining the whereabouts of the cylinder and the taking possession of it and for preserving, storing, insuring, repairing and/or replacing the cylinder thereafter, and of any legal proceedings taken by or on behalf of the Company to enforce the provisions of this agreement.

### **14. WARRANTIES:**

- a. The Customer takes the cylinder and the Gas in the condition in which it is at the date of the delivery of the same to the Customer and the Company does not in any way represent or warrant that the cylinder or the gas is suitable or fit for the particular or any purpose for which they are or may be required by the Customer.
- b. No liability shall attach to the Company either in contract or in tort for loss, injury or damage sustained by reason of any defect in the cylinder or the gas whether such defect is latent or apparent on examination.

### **15. INDEMINITY:**

The Customer shall indemnify and hold the Company harmless from and against all claims, actions, proceedings, damages, expenses and demands whatsoever, whether in respect of negligence, accident, injury, disease, loss or damage or any other cause howsoever arising made by any person arising or connected with this agreement.

### **16. TERMINATION OF THE AGREEMENT:**

- a. This agreement may be terminated,
  - (i) By either party giving the other three (3) months notice in writing and upon the expiry of such notice the Customer shall deliver up the cylinder/s in good and rentable condition, to the Company at its place of business at Nairobi, or such other address as may be specified by the Company.
  - (ii) If the cylinder rent or any part thereof shall remain unpaid for fourteen (14) days after becoming due (whether formally demanded or not) or if any obligation on the part of the Customer herein contained shall not be performed or observed or if the customer shall abandon the cylinder or the Customer (being a company) shall enter into liquidation whether compulsory or voluntary (save for the purpose of reconstruction or amalgamation without insolvency) or (not being a company) shall become bankrupt or shall call a meeting of or enter into any composition with creditors or suffer any distress or execution to be levied on the property of the Customer, then, in any such case this agreement shall automatically and without notice determine and thereupon the Customer shall cease to be in possession of the cylinder/s with the Company's consent and it shall be lawful for the Company at any time thereafter to retake possession of the cylinder/s but without prejudice to any claim by the Company in respect of any antecedent breach of any term or condition of the agreement.
- b. If upon the termination of this agreement the cylinder/s cannot after due diligence be found or recovered by the Company, or is recovered or delivered up to the Company by the Customer, or any other person in a damaged or destroyed state, then the Customer shall upon demand, forthwith make payment to the Company of the full replacement value of the cylinder/s or the full cost of repairing the cylinder/s, as the case may be.

### **17. FORBEARANCE AND WAIVER:**

- a. No relaxation, forbearance, delay or indulgence by the Company in enforcing any of the terms and conditions of this agreement or granting of time by the Company shall prejudice or affect or restrict the rights and powers of the Company hereunder nor shall any waiver of any breach hereof operate as a waiver of any subsequent or any continuing breach hereof.

### **18. NOTICES:**

- a. Any notice given under this agreement shall be validly served on the Customer if it is personally served on the Customer or is sent to the Customer by prepaid post or left at the above mentioned address of the Customer or his current or last known business or private address.

- b. Any notice given under this agreement to the Company shall be validly served if it is sent by prepaid post or left at Carbacid premises.
- c. Where notice is sent by post it shall be deemed to have been received within the seven (7) days after the time of posting.

**19. SUB-DISTRIBUTION:**

In the event that cylinders are rented from a duly Authorised Distributor of the Company these Terms and Conditions shall vest in the Authorised Distributor so that the Customer shall be bound to both the Authorised Distributor and the Company by these Terms and Conditions. The vesting of these Terms and Conditions in the Authorised Distributor for the purpose of subletting the cylinders shall not absolve the Authorised Distributor or the Customer from its liabilities to the Company under these Terms and Conditions and the Company shall retain its rights to recourse from the Customer as if the Agreement was between the Company and the Customer. The name of the duly Authorised Distributor appears on the face of this agreement.

This agreement shall not commence unless and until it has been signed by or on behalf of the Company and the Customer and the deposit prescribed herein has been paid by the Customer.

\_\_\_\_\_  
Agreed and signed by Customer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Designation of signatory

**Section 2 – CLIENT DATA**

Business Name:.....

Postal Address:.....

Physical Address:.....

Company Number:.....

Plot Number:.....

PIN number:.....

VAT Number:.....

Telephone:.....

Fax Number:.....

E-mail:.....

Nature of Business:.....

Date Established:.....

Type of Organisation: Sole Trader/Partnership/Private Limited Company/Public Limited Company/Statutory Board (*delete inapplicable*)

.....

Directors, Partners or Sole Proprietor:

1. Name: ..... Title: .....

2. Name: ..... Title: .....

Issued Share Capital of Limited Company: .....

Bankers: 1.	Name: .....
	Branch: .....
	A/C No: .....
2.	Name: .....
	Branch: .....
	A/C No: .....

Business References:

1. Name:  
Postal Address:  
Contact Person & Position

2. Name:  
Postal Address:  
Contact Person & Position:

3. Name:  
Postal Address:  
Contact Person & Position:

Authorised Signatories who will transact business with us:

1. Name: ..... Signature:.....

2. Name: ..... Signature:.....

For Carbacid (CO<sub>2</sub>) Limited.

For Customer

\_\_\_\_\_  
Signature with Rubber stamp

Name:.....

Designation:.....

Date:.....

\_\_\_\_\_  
Signature with Rubber stamp

Name: .....

Designation.....

Date:.....

*(This agreement shall not commence unless and until it has been signed by or on behalf of Carbacid (CO<sub>2</sub>) Limited and the Customer).*

- Please attach:**
1. Company registration
  2. VAT Registration
  3. Pin No.