

TERMS AND CONDITIONS OF USE

THE TERMS AND CONDITIONS SET FORTH ON THIS FORM (THE "TERMS") AND ANY WRITTEN AGREEMENT EXECUTED BY BUYER AND CARBACID ("AGREEMENT") CONSTITUTE THE ENTIRE AGREEMENT BETWEEN CARBACID AND BUYER ("BUYER"). CARBACID WILL NOT BE BOUND BY ANY ADDITIONAL OR DIFFERENT TERMS ON BUYER'S ORDER OR OTHER DOCUMENTS THAT ARE INCONSISTENT WITH THESE TERMS. ACCEPTANCE BY BUYER OF THESE TERMS MAY BE MADE BY (1) WRITTEN ACCEPTANCE, (2) USE OF CARBACID'S ONLINE ORDERING SYSTEM OR (3) RECEIPT BY BUYER OF DELIVERY OF ANY PRODUCTS FROM CARBACID, WHICHEVER FIRST OCCURS.

Orders

Buyer will submit orders for products and services by Carbacid's online ordering system www.carbacid.co.ke or by electronic mail with attachment of official purchase order to info@carbacid.co.ke or by sending copy of purchase order by facsimile to + 254 20 535086. These Terms apply to all orders for products and services accepted by Carbacid. Acceptance of Buyer's order by Carbacid will be made only on the express understanding and condition that Carbacid Terms shall govern and there shall not be conflict with any terms and conditions in Buyer's order with these Terms. No order shall be binding upon Carbacid until Carbacid sends Buyer confirmation of such order through electronic mail, facsimile, or other written communication.

Prices, Taxes, Payment

All prices quoted, all orders accepted, and all billings rendered are inclusive of VAT for Local Sales within Kenya and Export sales are exempted from such tax. All prices presented are subjected to change at any time and with one month's notice. Terms of payment are, either

- 100% cash with confirmation on any order for which credit is not extended by Carbacid.
- 30 days from date of invoice to customers who has been authorised to purchase on account.
- In the event that payment is not received within the time period specified in the payment terms, any unpaid balance shall bear interest at the rate of 1.5%per month,
- At its discretion Carbacid may extend credit to Buyer, and any amount of credit extended by Carbacid to Buyer may be changed or withdrawn completely by Carbacid at anytime without prior notice.
- If any proceeding is brought by or against Buyer under bankruptcy or insolvency laws, Carbacid shall be entitled to cancel any order by Buyer then outstanding without prior notice.

Returns, Changes and Cancellations

Cancellations of and changes to orders for products and services, and returns of products by Buyer, will be subjected to Carbacid's cancellation fees and will include transport charges and product losses in transit..

Title, Delivery, and Acceptance

All sales of products are made either on FOB ex works and as per quantity loaded or net delivered to customer's site with Carbacid's transport. Buyer will be responsible for all shipping, borders fees, insurance charges, transit loss & damages for all FOB ex works deliveries whilst Products delivered by Carbacid transport includes all charges within Kenya border. Title and risk of loss or damage to the products shall pass to Buyer on the date the products are loaded ex works in case transportation is arranged by customer. In the event of any default by Buyer, Carbacid may decline to make further shipments without in any way affecting its rights. Carbacid will not be liable for delay or non-delivery of the products, resulting or arising from any cause beyond the reasonable control of Carbacid. The products will be deemed accepted on the Shipment Date.

Security Interest

Until full payment has been received, Carbacid reserves, a purchase money security interest in the products sold. Carbacid may request Buyer to execute any document appropriate or necessary to perfect the security interest of Carbacid and generally it shall be Bank guarantee from First Class Bank or Finance institution.

Use of Products

The products sold by Carbacid are not intended for direct human consumption. Buyer acknowledges that the products may not have been tested for safety and efficacy in commercial or any other use. The products may contain gases and chemicals, which may be harmful if misused. Due care should be exercised with all products to prevent direct human contact. Carbacid provides material safety data sheets ("MSDS") or other instructions with the initial shipment of products. Buyer shall provide the MSDS and instructions to all personnel of Buyer, and to any third party authorized by Buyer to use products purchased hereunder by Buyer, prior to the handling and use of the products by such personnel or third party. Buyer shall ensure that such personnel at all times use the products strictly in accordance with the MSDS, the instructions, and any warnings on the labels of the products; and Buyer shall obtain written assurances from such third party that the third party will at all times use the products strictly in accordance with the MSDS, the instructions, and any warnings on the labels of the products. Only qualified, trained professionals who are familiar with the hazards associated with such gases and chemicals should handle all gases and chemicals.

Confidential Information

"Confidential Information" shall mean any information disclosed by one party to the other which is marked or identified as "Confidential", "Proprietary" or in some other manner to indicate its confidential nature, or information which the receiving party should know that the disclosing party would reasonably regard as confidential. Each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except as set forth herein, and shall use reasonable efforts not to disclose such Confidential Information to any third party. Without limiting the foregoing, each of the parties shall use at least the same degree of care, which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other party under this Agreement. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information. Notwithstanding the above, neither party shall have liability to the other with regard to any Confidential Information of the other which the receiving party can prove:

1. was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving party;
2. was known to the receiving party, without restriction, at the time of disclosure;
3. is disclosed with the prior written approval of the disclosing party;
4. was independently developed by the receiving party without any use of the Confidential Information;
5. became known to the receiving party, without restriction, from a source other than the disclosing party, without breach of this Agreement by the receiving party and otherwise not in violation of the disclosing party's rights; or
6. is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party shall provide prompt notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Breach of the confidentiality obligations set forth in this Section 6 may cause irreparable damage and therefore, the injured party shall have the right to equitable and injunctive relief, and to recover the amount of damages (including reasonable attorneys' fees and expenses) incurred in connection with such unauthorized use. Upon expiration or termination of this Agreement, each party shall return all tangible Confidential Information received from the other party. Notwithstanding the foregoing provisions of this Section 6, Carbacid will have the right to use, sell, or otherwise distribute aggregated statistical information regarding On-line Buyer's use of Carbacid in accordance with Carbacid' Privacy Policy; provided, however, that Carbacid shall not disclose the name or identity of the Buyer, or any information or data from which such name or identity could reasonably be discerned. In consideration of the above, Buyer agrees that all information on the site including information related to the customer, accounts, electronic catalogue, pricing, and other information are all confidential information and property of Carbacid.

Indemnity

Buyer shall indemnify, defend, and hold harmless Carbacid and its employees, agents, successors, officers, and assigns, from any suits, losses, claims, demands, liabilities, costs and expenses (including attorney and accounting fees) that Carbacid may sustain or incur arising from (a) Buyer's use of the products (including without limitation to storage, handling, and transportation of products), (b) use of the products by a third party with Buyer's authorization, (c) use of the products by a third party without Buyer's authorization, where such unauthorized use is due to Buyer's negligent act or omission, or will full misconduct, (d) Buyer's failure to comply with any applicable laws and regulations (including without limitation those regarding the export of products or technology abroad, the Toxic Substance Control Act, or to obtain any licenses or approvals from the appropriate government agencies necessary to purchase and use the products), or (e) the Buyer's breach of any of its obligations set forth in these Terms or in the Agreement. Carbacid will provide Buyer with: (i) prompt written notice of such claim of which Carbacid is aware; (ii) control over the defence and settlement of such claim; and (iii) proper and full information and assistance at Buyer's expense to settle and/or defend any such claim. Notwithstanding the foregoing, Buyer shall not settle any such claim, suit or proceeding without the written consent of Carbacid, which shall not be unreasonably withheld.

Prospective Statements

Any forward-looking statements contained in or on Carbacid On-line including, without limitation, those concerning projected costs, profit, demand for gases, net income after taxes and earnings per share, involve risks and uncertainties, and are subject to change based on various factors, including, without limitation, the impact of changes in economies, achievement of cost reductions and efficiencies, changes in currencies, changes in interest rates, the continued development and acceptance of new products and processes, the impact of competitive products and pricing, future mergers and acquisitions (including any related charges, transactions costs and operational risks), risks associated with foreign operations, litigation, the impact of tax and other legislation and regulation in the jurisdictions in which the company operates, and other risk factors listed from time to time in Carbacid's financial or NSE reports.

Warranties and Disclaimers

All information appearing on Carbacid's On-line is provided "AS IS" and without warranties of any kind with respect to its correctness, accuracy, reliability or otherwise. Carbacid provides no warranty with respect to Carbacid On-line or the products

and/or services sold hereunder, except those products directly manufactured by Carbacid and services directly provided by Carbacid. For products not directly manufactured by Carbacid and services not directly provided by Carbacid, Buyer receives a warranty on such products or services, if any, directly from the manufacturer of those products or provider of those services to the extent such "pass-through" warranties are available. Upon the request of the Buyer, Carbacid will use commercially reasonable efforts to inform the Buyer of the warranty policy of a particular manufacturer or service provider, or to direct Buyer to a source of such information.

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Limitation of Liability

CARBACID SHALL NOT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, NOR FOR ANY LOSS OF BUSINESS, LOSS OF USE OR OF DATA, INTERRUPTION OF BUSINESS, LOST PROFITS OR GOODWILL, OR OTHER INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THIS AGREEMENT, EVEN IF CARBACID HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THIS EXCLUSION INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD PARTY CLAIMS AGAINST BUYER. CARBACID'S TOTAL LIABILITY UNDER THIS AGREEMENT WITH RESPECT TO ANY PRODUCT OR SERVICE SOLD HEREUNDER SHALL IN NO EVENT EXCEED THE PRICE PAID BY BUYER FOR SUCH PRODUCT OR SERVICE.

General

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