

REGISTER OF ENTERPRISE AGREEMENTS

ENTERPRISE AGREEMENT NO: EA05/271

TITLE: Linde Gas Port Kembla Cryogenic Plant Enterprise Agreement 2004

I.R.C. NO: IRC4/6535

DATE APPROVED/COMMENCEMENT: 18 November 2004 / 18 November 2004

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**NEW AGREEMENT OR
VARIATION:** New.

GAZETTAL REFERENCE: 21 October 2005

DATE TERMINATED:

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COVERAGE/DESCRIPTION OF

EMPLOYEES: The agreement applies to all employees employed by Linde Gas Pty Limited, employed in the classifications set out in clause 6, who are operating the Cryogenic Plant at the Bluescope Steel Port Kembla Steelworks and the unions party to this agreement, who fall within the coverage of the Metal, Engineering and Associated Industries (State) Award.

PARTIES: Linde Gas Pty Ltd -&- The Australian Workers' Union, New South Wales

LINDE GAS PORT KEMBLA CRYOGENIC PLANT ENTERPRISE AGREEMENT 2004

PART A - GENERAL CONDITIONS

SECTION 1 - APPLICATION AND OPERATION OF AGREEMENT

1. Agreement Title

This agreement is entitled Linde Gas Port Kembla Cryogenic Plant Enterprise Agreement 2004.

2. Arrangement

Clause No. Subject Matter

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3. Application and Parties Bound

This Agreement shall apply to Linde Gas Pty Limited, all its employees employed in the classifications set out in Clause 6 of this Agreement, who are operating the Cryogenic Plant at the Bluescope Steel Port Kembla Steelworks and the unions party to this Agreement.

The parties to this Agreement are:

Linde Gas Pty Limited;

The Australian Workers Union Port Kembla Branch (AWU); and

Employees of Linde Gas Pty Ltd who are members or entitled to be members of the organisations detailed above and are engaged in classifications specified in Clause 6 of this Agreement.

4. Term of the Agreement

- 4.1 This Agreement will come into operation from the 1 October 2004 or from the date of registration with the Industrial Relations Commission of New South Wales, whichever is the latest, and shall wholly displace all other agreements and agreements that would otherwise apply. The Agreement shall remain in place to 30 September 2006.
- 4.2 The Parties agree to commence negotiations for an Enterprise Agreement for three (3) months prior to 30 September 2006.
- 4.3 The Parties to this Agreement shall not pursue any extra claims as per the period nominated in Clause 4.1. & 4.2.

5. Objectives of the Agreement

This Agreement is designed to establish a set of terms and conditions that will attract and retain a group of enthusiastic, supportive and motivated employees to operate the Cryogenic Plant at Port Kembla.

The parties agree that is a key objective of this agreement to establish a stable workplace relations platform to ensure supply of product and services from the Port Kembla to Bluescope Steel and other clients.

SECTION 2 - RATES OF PAY AND RELATED MATTERS

6. Rates of Pay

- 6.1 The minimum rates of pay for any classification covered by this Agreement are contained in Part B - Table 1. The rates are all purpose rates for 38 ordinary hours and are inclusive of annual leave loading and all other special and disability allowances with the exception of shift allowance and overtime.
- 6.2 The rates of pay will increase by 4.5% effective from 18 March 2005.
- 6.3 The rates of pay will increase by a further 4.5% effective from 18 March 2006.
- 6.4 Classification Definitions

Oxygen Plant Operator (OPO)

An Operator who is fully trained to provide all of the expertise needed to safely and efficiently operate the No.3 Air Separation Plants, the Hydrogen Plant and all of the associated plant while abiding by the goals and values of the Cryogenic Plant.

Operates the plant using the computer systems (Bailey), local controllers etc and responds to alarm conditions, interprets information and applies process knowledge in response to variances.

Meets all safety, environmental and statutory requirements including the relevant OHS&R responsibilities.

Operates the Air Separation Plants, the Hydrogen Plant and the associated plant in conjunction with maintenance team members.

Assists the maintenance/work teams with start-up, shut-down and testing of plant and associated equipment and carries out isolations of plant under the directions of the Shift Coordinator.

Assists and cooperates in all types of training, assists with some administrative functions and ensures that housekeeping is maintained at a high standard.

Assists with the training and development of APO's although has no responsibility for the assessment of the competencies of APO's.

Participates in the shift rotation system having knowledge of both OPO and APO duties.

Auxiliary Plant Operator (APO)

An Operator who assists with the safe and efficient operation of the No.3 Air Separation Plants, the Hydrogen Plant and all of the associated plant while under training to become an OPO. Carries out some but not all of the duties of an OPO and progressively increases the range of functions performed as he or she increases their range of competencies.

7. Superannuation

- 7.1 The employer will pay a minimum superannuation contribution of 9% on defined earnings into:
 - The Linde Superannuation Plan; or
 - The Superannuation Trust of Australia ("STA").
- 7.2 "Defined earnings" shall include an employee's ordinary weekly rate and any shift allowances incurred due to the working of the normal shift roster. Defined earnings shall not include overtime or public holidays.

- 7.3 Each employee may elect to make additional payments into his or her nominated superannuation fund and may elect to have such payments deducted from his or her pay before or after tax.
- 7.4 Employee's who commence employment from the commencement of this Agreement, who have prior experience in the operation of the Cryogenic Plant and who have received reciprocal additional employer contributions from their previous employer will continue to receive the same level of employer contribution on the basis that they continue to make the same level of employee contribution.
- 7.5 Employee's who do not meet the criteria specified in Clause 7.4 and who elect to make a voluntary employee contribution of 3% will receive a Company contribution in total of 10%. Similarly, employees who make a 4% voluntary contribution will receive a Company contribution of 12%.

8. Income Protection

The Company will provide income protection insurance for the employees covered by this agreement at a cost to the Company of no greater than 1% of gross earnings.

9. Time and Payment of Wages

All wages will be paid fortnightly by electronic funds transfer directly into an account nominated by the employee with a bank, building society, credit union or other financial institution recognised by the Company.

9.1 Union Dues

With the written authority of each employee the Company will deduct union dues from the pay of the employee and remit the same amount to the relevant union.

SECTION 3 - HOURS OF WORK, SHIFT WORK AND OVERTIME

10. Hours of Duty

10.1 Full-time Employees

Ordinary working hours will be an average of 38 hours per week over the full cycle of the relevant work roster. Ordinary working hours will not exceed:

- 10.1.1 Eight hours during any consecutive 24 hours although shifts of up to twelve hours during any consecutive 24 hours may be implemented where there is agreement between the Company and the majority of employees in the relevant work area.

Unless an explicit written agreement is entered into between the employer and the employee, all employees covered by this Agreement will be required to work shift work as per the relevant roster.

10.2 Day Workers

Where an employee and the Company agree that the employee is to be engaged only to perform day work then the ordinary hours shall be as follows:

- 10.2.1 Ordinary working hours will be worked Monday to Friday, inclusive, between the hours of 6.00 am and 6.00 pm each day.

- 10.2.2 On each day worked Monday to Friday inclusive, between 30 and 45 minutes will be allowed between the hours of 11.30 am and 1.20 pm for Day Workers to have a meal except in the case of urgent breakdown work which may be necessary to secure an immediate resumption of operations.

10.3 Shift Workers

The following provisions shall apply to shift workers:

10.3.1 Twenty minutes will be allowed to Shift Workers each shift for crib which will be counted as time worked.

10.3.2 In the case of 12-hour shift systems, two 20-minute crib breaks will be taken approximately four hours apart. Each crib break will be taken in accordance with the needs of the operation and will be counted as time worked.

11. Shift Work Allowances for Shift Workers

11.1 Shift Workers will be paid, in addition to the rates payable under Clause 6 in this Agreement, the following shift work allowances:

11.1.1 Shift Workers whilst working rotating shifts (day shift, night shift, afternoon shift), with regular weekly changes - at the applicable rate per 38-hour week as set out in Item 1 of Table 2 in Part B in respect of all shifts worked.

11.1.2 Shift Workers whilst working shift work, which involves regular weekly changes will be paid the applicable amount per 38-hour week as set out below:

- (a) Day shift, night shift; - Item 1 of Table 2 in Part B
- (b) Day shift, afternoon shift; - Item 2 of Table 2 in Part B
- (c) Day shift, day shift, afternoon shift; - Item 2 of Table 2 in Part B
- (d) Day shift, day shift, night shift; - Item 2 of Table 2 in Part B

11.1.3 Shift Workers whilst working shift work on shift systems as follows:

- (a) Night shift, afternoon shift;
- (b) Night shift only;
- (c) Afternoon shift only;

Will be paid the applicable amount per 38-hour week as set out in Item 3 of Table 2 in Part B

11.1.4 Shift Workers who work any afternoon or night shift other than under the shift systems set out in paragraphs 11.1.1, 11.1.2 and 11.1.3 of this sub-clause, and are not paid in respect of any day shift worked, will be paid at the applicable amount per shift for each afternoon or night shift worked as set out in Item 4 of Table 2 in Part B.

11.1.5 Each shift allowance prescribed above is on a shift basis the rate being determined in each case by dividing the shift allowance prescribed by five.

11.2 In this clause:

11.2.1 "Night shift" means any shift finishing after 12:00am and at or before 8:00 am;

11.2.2 "Afternoon shift" means any shift finishing after 6:00pm and before 12:00am

11.2.3 Any amount prescribed by this sub-clause will be calculated to the nearest 10 cents, any broken part of 10 cents in the result not exceeding 5 cents being disregarded.

12. Saturday Rates for Shift Workers

Shift Workers who have an ordinary shift rostered on a Saturday will be paid at the rate of time and one-half.

13. Penalty Calculation

Shift allowance and special rates are not subject to any premium or penalty additions.

14. Sunday and Public Holiday Rates

14.1 An employee will be paid at the rate of:

14.1.1 Double time for all work done on Sundays;

14.1.2 Double time and one half for all work done on the public holidays prescribed in clause 19, Public Holidays.

14.2 A shift commencing on a Sunday or Public Holiday will be paid for at the Sunday or Public Holiday rates throughout and a shift which does not commence on a Sunday or Public Holiday, though it extends into a Sunday or Public Holiday, will not carry Sunday or Public Holiday rates for any part of this shift.

15. Night Work for Day Workers and Day Shift Workers

15.1 Subject to clause 13, Penalty Payments, but otherwise despite anything contained in this agreement:

15.1.1 A Day Worker who is required in lieu of ordinary day work; or

15.1.2 A Day Shift Worker who is required in lieu of a day shift on which he or she would ordinarily be rostered, to work at night for periods of not less than a full shift on less than five consecutive nights, or on less than four consecutive nights when the fifth night is his or her 38-hour week rostered off night, will be paid at the rate of time and one half of the ordinary rate of pay for the purpose of clause 6.1, Rates of Pay, except:

15.1.3 On Saturdays, Sundays, 38-hour week rostered off days and holidays; and

15.1.4 In respect of any night for which the employee has not been given at least 48 hours' notice, when the employee will be paid at overtime rates for Day Workers. No shift allowance is payable in respect of night work under this clause.

15.2 In this clause "night" means any hours between 3.20 p.m. and 7.20 a.m., and "Day Shift Worker" means a Shift Worker employed on a shift system involving day shift only.

16. Transfer of Day Workers from Day Work to Shift Work

16.1 Day Workers may be employed as and become Shift Workers and paid accordingly. The period of transfer will not be less than:

16.1.1 Five shifts; or

16.1.2 Four shifts when the fifth shift is his or her 38-hour week rostered off shift.

16.2 Day Workers should be given at least 48 hours' notice by the Company of the transfer to shift work. If this notice is not given by the Company he or she will be paid at overtime rates for any shift upon which he or she are employed as a Shift Worker under this clause.

17. Transfer of Shift Workers

- 17.1 A Shift Worker who is required to work on a shift he or she would not ordinarily be rostered will be paid at overtime rates for any such shift. This provision does not apply if:
- 17.1.1 The Shift Worker has been given at least 48 hours' notice of the requirement to transfer; or
 - 17.1.2 The Shift Worker is reverting to the shift on which he or she would ordinarily have been rostered.

18. Overtime

- 18.1 Day Workers - Day Workers for all time worked:
- 18.1.1 In excess of, or outside the ordinary working hours and time prescribed by this agreement; or
 - 18.1.2 In excess of five hours without a meal break (except in the case of urgent breakdown work necessary to secure an immediate resumption of operations), will be paid at a rate of time and one half for the first two hours and at the rate of double time after that.
- 18.2 Shift Workers - Shift Workers for all time worked:
- 18.2.1 In excess of the ordinary working shift hours prescribed by this agreement; or
 - 18.2.2 On more than 11 shifts in 12 consecutive days; or
 - 18.2.3 On a rostered shift off; or
 - 18.2.4 In excess of five and one-half hours without a crib break, Will be paid at the rate of time and one half for the first two hours and at the rate of double time after that.
- This sub-clause will not apply when the time is worked:
- 18.2.5 By arrangement between the employees themselves; or
 - 18.2.6 For the purpose of effecting the customary rotation of shifts.
- 18.3 General -
- 18.3.1 Minimum Eight hour rest -
 - (a) Where overtime work is necessary it should, where reasonably practicable, be arranged so that employees have at least eight consecutive hours off duty between work on successive days. The Company may agree to a longer period where special circumstances exist.
 - (b) An employee who works so much overtime after the end of his or her ordinary work on one day so that he or she is not able to enjoy an eight hour break before his or her ordinary work start time on the next day will be released after the completion of the overtime for eight consecutive hours and will be paid for any ordinary working time that occurs during the release.

If on the instructions of the Company such an employee resumes or continues working without having had eight consecutive hours off duty, he or she will be paid at double rate until he or she is released from duty for such period and he or she will then be entitled to be absent until he or she has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such period.

18.3.2 Minimum Payment of Four Hours

- (a) A Day Worker, required to work on a Saturday, Sunday, a 38-hour week rostered day off or a Public Holiday; or
- (b) A Monday to Saturday Shift Worker required to work on a Sunday, a 38-hour week rostered day off or a Public Holiday, will be paid for a minimum of four hours' work. Provided that where the actual working time is less than four hours, the working period will not be regarded as overtime for the purposes of sub-clause 18.3.1.

18.3.3 Rounding Up to Nearest Quarter of an Hour - For the purposes of this clause 17, a fraction of a quarter of an hour of overtime counts as a quarter of an hour if more than five minutes have been worked.

18.3.4 Payment for Call-out - An employee recalled from his or her home to work overtime will be paid for a minimum of four hours' work. If the actual time worked is shorter than four hours the working period will not be regarded as overtime for the purpose of paragraph 18.3.1 - Minimum eight hour rest. For the purpose of this clause, a recall from home to work overtime takes place when the employee is notified at home of the requirement to return to work. An employee recalled from his or her home to work overtime will, at the employee's option, be provided with a suitable meal free of cost for each normal meal break falling during the overtime for which he or she was called out, or be paid for a meal allowance as set out in Item 5 Table 2 Part B.

18.3.5 Crib - an employee required to continue at work on overtime for more than one and a half hours after his or her ordinary ceasing time, who was not notified before leaving work on the previous day or shift that he or she would be required to work overtime, may choose to receive either:

- (a) A suitable meal free of cost, and another meal for each subsequent meal break into which the work extends; or
- (b) Payment of a meal allowance as set out in Item 5 Table 2 Part B

18.3.6 Transport Home - Where an employee working overtime finishes work at a time when reasonable means of transport is not available to them, the Company will:

- (a) within a reasonable time transport the employee to:
 - (i) A reasonable distance from his or her home; or
 - (ii) A place to which the employee usually travels by public transport when returning home from work; or
 - (iii) A place from which he or she can, within a reasonable time, obtain public transport to a reasonable distance from his or her home or the place to which he or she usually travels by public transport when returning home from work; or
- (b) Pay the employee his or her current rate of pay for the time reasonably occupied in reaching his or her home.

SECTION 4 - TYPES OF LEAVE AND PUBLIC HOLIDAYS

19. Public Holidays

19.1 The days on which New Year's Day, Australia Day, Good Friday, the Saturday following Good Friday, Easter Monday, Anzac Day, Queen's Birthday, the local Eight Hour Day, Christmas Day and Boxing Day and the picnic day of the Steel Industry Unions, if any, are observed and special days appointed by proclamation as public holidays throughout the State, are to be public holidays. Day Workers and Monday to Saturday Shift Workers not required to work on a public holiday will be paid for the public holiday at the ordinary rates of pay under clause 6.1, Rates of Pay

19.2 This provision for payment does not apply to:

19.2.1 An employee whose rostered shift falls on a public holiday (subject to the provisions of sub-clause 23.2 of clause 23, Days Added to the Period of Annual Leave or Long Service Leave;

19.2.2 An employee who is absent without leave or reasonable excuse, on the working day before or after a public holiday.

20. Sick Leave

20.1 Illness or Incapacity - An employee who is absent for his or her ordinary working hours due to personal illness or incapacity, and not due to his or her own serious and wilful misconduct, is entitled to be paid at ordinary time rates of pay for the time of his or her absence, subject to the following:

20.1.1 Worker's Compensation - An employee is not entitled to be paid for an absence of any period for which he or she is entitled to workers' compensation.

20.1.2 Absence Notification - An employee must inform the Company of his or her inability to attend work as soon as practicable after the commencement of his or her absence. An employee should state the nature of the illness or incapacity and the estimated duration of his or her absence.

20.1.3 Proof of Absence - An employee must prove to the satisfaction of the Company or, in the event of a dispute, the Industrial Relations Commission of New South Wales that he or she is or was unable to attend for duty on the day or days for which payment under this clause is claimed on account of his or her illness or incapacity.

20.2. Entitlements -

20.2.1 Calculation of Entitlements - Employees who are experienced in the operation of the Port Kembla Cryogenic Plant.

Employees who have prior experience in the operation of the Port Kembla Cryogenic Plant will be entitled to the following sick leave based on their prior experience:

- (a) An employee with less than 1 year prior experience in the Cryogenic Plant shall be entitled to 5 days sick leave.
- (b) An employee with one or more year's prior experience in the Cryogenic Plant shall be entitled to 8 days sick leave.
- (c) An employee with more than ten years prior experience in the Cryogenic Plant shall be entitled to 10 days sick leave.
- (d) Employee's who commence employment from 1 October 2004 but who have prior experience in the operation of the Cryogenic Plant shall have the first full year's entitlement available from 1 October 2004.
- (e) "Prior experience" shall refer to employment in the role of an Oxygen Plant Operator or Auxiliary Plant Operator at Port Kembla by Linde Gas Pty Limited or any other employer.

20.2.2 Calculation of Entitlements - All Other Employees

An employee is entitled to sick pay for the number of ordinary working hours based on the years of his or her continued employment as follows:

- (a) An employee with less than 1 year's continued employment is entitled to 5 days sick leave;

- (b) An employee with one or more years' continued employment is entitled to 8 days sick leave;
- (c) There is no entitlement to sick leave until an employee has completed 3 months' continuous service.

20.2.3 Accumulation of Entitlements

Unused sick leave will accumulate each year of continuous employment with the Company, whether under this or any other agreement. Accumulated sick leave may be used in subsequent years of continued employment subject to the conditions prescribed by this clause. The maximum period of accumulation is 16 years, from the end of the year in which he or she accrued.

20.2.4 Continuous Service.

For the purpose of this clause, continuous service is considered as not being broken by any:

- (a) Absence from work on leave granted by the Company; or
- (b) Absence from work due to personal illness, injury or other reasonable cause which the employee has provided sufficient proof. These absences will not be taken into account in computing the qualifying period of 3 months.

21. Personal/Carer's Leave

21.1 Use of Sick Leave -

21.1.1 An employee, other than a casual employee, with responsibilities in relation to a class of person set out in subparagraph 21.1.3(b), who needs the employee's care and support, is entitled to use, in accordance with this sub clause, any current or accrued sick leave entitlement, provided for in clause 20, Sick Leave, of this agreement for absences to provide care and support for such persons when he or she is ill. Such leave may be taken for part of a single day.

21.1.2 The employee will, if required, establish either by providing a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person. In normal circumstances, an employee must not take carer's leave under this sub clause where another person has taken leave to care for the same person.

21.1.3 The entitlement to use sick leave in accordance with this sub clause is subject to:

- (a) the employee being responsible for the care of the person concerned; and
- (b) the person concerned being a:
 - (i) Spouse of the employee; or
 - (ii) De-facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
 - (iii) Child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
 - (iv) Same sex partner who lives with the employee as the de facto partner of that-employee on a bona fide domestic basis; or

- (v) Relative of the employee who is a member of the same household, where for the purpose of this subparagraph:
 - (A) "relative" means a person related by blood, marriage or affinity;
 - (B) "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
 - (C) "household" means a family group living in the same domestic dwelling.

21.1.4 An employee will, wherever practicable, give the Company notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee will notify the Company by telephone of such absence at the first opportunity on the day of absence.

21.2 Unpaid Leave for Family Purpose -

An employee may elect, with the consent of the Company, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in 21.1.3(b) who is ill.

21.3 Annual Leave

21.3.1 An employee may elect with the consent of the Company, subject to the Annual Holidays Act 1944, take annual leave not exceeding five days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.

21.3.2 Access to annual leave, as prescribed in 21.3.1, will be exclusive of any shutdown period.

21.4 Time Off in Lieu of Payment for Overtime

21.4.1 An employee may elect, with the consent of the Company, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the election.

21.4.2 Overtime taken as time off during ordinary time hours will be taken at the ordinary time rate that is an hour for each hour worked.

21.4.3 If, having elected to take time as leave in accordance with 21.4.1, the leave is not taken for whatever reason payment for time accrued at overtime rates will be made at the expiry of the 12 month period or on termination of employment.

21.4.4 Where no election is made in accordance with 21.4.1, the employee will be paid overtime rates in accordance with the agreement.

21.5 Make-up Time

21.5.1 An employee may elect, with the consent of the Company, to work "make-up time", under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the agreement, at the ordinary rate of pay.

21.5.2 An employee on shift work may elect, with the consent of the Company, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.

21.6 Rostered Days Off

21.6.1 An employee may elect, with the consent of the Company, to take a rostered day off at any time.

21.6.2 An employee may elect, with the consent of the Company, to take rostered days off in part day amounts.

21.6.3 An employee may elect, with the consent of the Company, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon, at a time mutually agreed between the Company and employee, or subject to reasonable notice by the employee or the Company.

22. Annual Leave

22.1 Day Workers and Monday to Saturday Shift Workers - For annual leave provisions see *Annual Holidays Act 1944*.

22.2 Shift Workers under clause 10, Shift Workers whose ordinary working period includes Sundays and Public Holidays as ordinary working days:

22.2.1 In addition to the annual holiday of 4 weeks provided by section 3 of the Annual Holidays Act 1944 for a year of employment, seven-day Shift Workers under clause 11 are entitled to the additional leave specified below:

- (a) If an employee has worked as a seven-day Shift Worker for the full year he or she is entitled to one week's additional leave;
- (b) Subject to subparagraph 22.2.1(d), if an employee has worked as a seven-day Shift Worker for only a portion of the year, he or she is entitled to 1 additional day of leave for every 33 ordinary shifts worked as a seven-day Shift Worker;
- (c) Subject to subparagraph 22.2.1(d) an employee will be paid for additional leave at the Annual Leave Rate of Pay, for the number of ordinary hours of work for which the employee would have been rostered for duty during the period of additional leave;
- (d) Where the additional leave calculated under this sub-clause is or includes a fraction of a day, the fraction will not form part of the leave period. Any fraction will be discharged by payment only;
- (e) In this clause, reference to one week and one day includes holidays and non-working days.

22.2.2 Where an employee's employment is terminated and he or she is therefore entitled under Section 4 of the Annual Holidays Act 1944, to payment in lieu of an annual leave with respect to a period of employment, he or she is also entitled to an additional payment of 3 hours at the Annual Leave Rate of Pay for each 21 shifts of service as a seven-day Shift Worker which he or she worked during his or her period of employment.

22.3 Monday To Saturday Shift Workers Who Are Regularly Rostered For Duty On Saturdays As Ordinary Working Days -

In addition to the annual holiday of 4 weeks provided by Section 3 of the Annual Holidays Act 1944 for a year of employment, Monday to Saturday, Shift Workers who are regularly rostered for duty on Saturdays as ordinary working days are entitled to the additional leave specified below:

22.3.1 For every 13 Saturdays upon which an employee worked an ordinary shift as a Monday to Saturday Shift Worker who is rostered for duty on Saturdays as ordinary working days, is entitled to 1 day additional leave for that year.

22.3.2 Where the additional leave calculated under this sub-clause is or includes a fraction of a day, the fraction will not form part of the leave period. Any fraction will be discharged by payment only.

23. Days Added to the Period of Annual Leave or Long Service Leave

23.1 Seven-day Shift Workers - A seven-day Shift Worker under clause 10, whose working period includes Sundays and Holidays as ordinary working days is entitled to 1 added day of annual leave or long service leave, if a public holiday prescribed in clause 19, Public Holidays, falls within the period of leave.

23.2 Rostered Off Duty - An employee who is rostered off duty on a day which is a public holiday prescribed by this agreement and who is not required to work on that day will:

23.2.1 By mutual consent, be paid, in the pay for the period in which the public holiday falls, for the public holiday at the rate payable pursuant to sub-clause 18.1, Public Holidays, or

23.2.2 Have 1 day added to his or her annual leave period

This sub-clause does not apply when the public holiday falls:

23.2.3 On a Saturday or Sunday, except in the case of employees employed as seven-day Shift Workers under clause 11; or

23.2.4 On a Sunday in the case of employees employed as Monday to Saturday Shift Workers who are regularly rostered for duty on Saturdays as ordinary working days.

23.3 Rate for Added Days

Any day or days added in the case of annual leave will be paid for at the Annual Leave Rate of Pay. Any day or days added in the case of long service leave will be paid at the long service leave rate of pay.

23.4 Discharging Added Days

Any day or days added in accordance with sub-clause 23.1 or 23.2, will be the working day or working days immediately following the period of annual leave to which the employees are entitled under clause 22, Annual Leave, or clause 24, Long Service Leave.

23.5 Definition of Working Days - For the purposes of sub-clause 23.4, "working days" will be:

23.5.1 In the case of an employee who, at the commencement of his or her period of annual leave, was employed as a Day Worker - any day of the week including a day on which employee concerned would have been rostered off duty if he or she were not on annual leave or long service leave, but excluding a Saturday, a Sunday or a public holiday prescribed by this agreement.

23.5.2 In the case of an employee who, at the commencement of his or her period of annual leave, was employed as a Monday to Saturday Shift Worker - any day of the week other than a Sunday or a public holiday prescribed by this agreement including a day on which the employee concerned would have been rostered off duty if he or she were not on annual leave or long service leave.

23.5.3 In the case of an employee who, at the commencement of his or her period of annual leave, was employed as a seven-day Shift Worker under clause 11, any day of the week including a day on which the employee concerned would have been rostered off duty if he or she were not on annual leave.

23.6 Termination Payment

Where an employee's employment has been terminated and he or she becomes entitled, under Section 4 of the *Annual Holidays Act 1944*, to payment in lieu of an annual holiday with respect to a period of employment, he or she is also entitled to an additional payment for each day accrued to them under sub-clause 23.2 at the Annual Leave Rate of Pay.

23.7 Seven-day Shift Workers

An employee who is employed as a seven-day Shift Worker who:

23.6.1 Has a day added to his or her annual leave pursuant to sub-clauses 23.1 and 23.2; and

23.6.2 Such a day falls on a public holiday prescribed by clause 19, Public Holidays, on which the employee would have been rostered to work an ordinary shift were it not for his or her entitlement to an added day, will be paid for such day, in addition to his or her entitlement under sub-clause 23.3, at the rate prescribed by sub-clause 19.1 of clause 19, Public Holidays.

24. Long Service Leave

24.1 For long service leave provisions see *Long Service Leave Act 1955*.

24.2 Despite the *Long Service Leave Act 1955* the agreement rate element of ordinary pay for long service leave will be either:

24.2.1 The rate determined in accordance with the *Long Service Leave Act 1955*; or

24.2.2 The rate applicable to the employee at the commencement of his or her Long Service Leave entitlement, whichever is the greater.

24.3 An employee is entitled to have all days which are prescribed as Public Holidays by clause 24, Public Holidays, treated as days appointed by the Governor as public holidays for the purposes of the application to him or her of Section 4 (4A) of the *Long Service Leave Act 1955*.

24.4 Accrual of Long Service Leave

24.4.1 From the commencement of this agreement, long service leave shall accrue at the rate of 13 weeks leave after 10 years continuous service.

24.4.2 An employee who has completed with the Company at least 5 years service, and whose services are terminated by the Company for any reason other than the employee's serious and wilful misconduct, or by the employee on account of illness, incapacity or domestic or other pressing necessity, or by reason of the death of the employee, will be paid out their accrued long service leave entitlement.

24.5 Inclusion of shift payments after 1 January 2006:

24.5.1 The inclusion of shift payments (i.e. as provided for in clauses 11, 12, 14 and 15 of this agreement) in the payment for long service leave actually taken by shift workers, will apply to long service leave taken on or after 1 January 2006.

24.5.2 The application of shift payments to long service leave entitlements does not apply where the long service leave is taken as part of an employee's resignation/retirement arrangement.

24.5.3 Long service leave that is paid out on termination of employment will be paid at the base 38 hour week rate.

24.5.4 Arrangements made for the taking of long service leave will be subject to the approval of the Company.

25. Jury Service

25.1 An employee required to attend jury service:

25.1.1 During his or her ordinary working hours; or

- 25.1.2 Immediately following an ordinary night shift or immediately before an ordinary afternoon shift on which the employee is rostered to work and, as a result of attending for jury service, is not reasonably able to report for work on the night shift or afternoon shift, will be reimbursed by the Company the difference between the amount paid to them by the Court for his or her attendance for jury service and his or her ordinary time rate of pay and applicable bonus for the period he or she would have worked had he or she not attended for jury service.
- 25.2 An employee must notify the Company as soon as possible of the date upon which he or she is required to attend for jury service.
- 25.3 An employee must give the Company proof of his or her attendance, the duration of such attendance, and the amount received from the Court in respect of the jury service.

26. Compassionate Leave

26.1 Entitlement

An employee, other than a casual employee, will be entitled to up to two days compassionate leave without deduction of pay, on each occasion of the death of a person as prescribed in sub-clause 26.3 of this clause. In addition to the ordinary time rate of pay, the employee will be paid the amount of over agreement or bonus he/she would have otherwise received during ordinary working hours.

- 26.2 An employee is not entitled to compassionate leave if the period of leave coincides with any other period of paid leave.
- 26.3 Compassionate leave will be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (b) of paragraph 21.1.3 of sub-clause 21.1 of clause 21, Personal/Carer's Leave, provided that, for the purpose of compassionate leave, the employee need not have been responsible for the care of the person concerned.
- 26.4 Compassionate leave may be taken in conjunction with other leave available under sub-clauses 21.2, 21.3, 21.4, 21.5 and 21.6 of the said clause 21. In determining such a request, the Company will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- 26.5 Notification - The employee must notify the Company as soon as practicable of the intention to take compassionate leave and will provide to the satisfaction of the employer proof of death.

27. Parental Leave

For parental leave provisions refer to Part 4, Parental Leave, of Chapter 2, employment, of the *Industrial Relations Act 1996*, as amended from time to time.

SECTION 5 - EMPLOYMENT RELATIONSHIP

28. Contract of Employment

28.1 Weekly Employment

Employment will be on a weekly basis, subject as provided for elsewhere in this agreement.

- 28.2 Probation - Employees will be on probation for the first 3 months of his or her employment. Employment will be on a daily basis at the weekly rate fixed and may be terminated for the first week at a day's notice and subsequently, may be terminated on one week's notice, or by the payment in lieu or forfeiture of 1 week's wages, as the case may be. This clause shall not apply to employees with prior experience as defined in sub-clause 20.2.1 (e) of this agreement.

28.3 Termination

Subject to sub-clause 28.2, Probation employment may be terminated by 1 week's notice on either side, given at any time during the week, or by the payment or forfeiture of 1 week's wages, as the case may be. Where an employee has given notice, or has been given notice by the Company, he or she will, upon request, be granted leave of absence without pay for 1 day or shift during the period of notice in order to look for alternative employment.

28.4 Performance of Work

Employees must perform such work as the Company may, from time to time reasonably require. An employee who does not perform or attend for his or her duty will lose his or her pay for the actual time of non-attendance or non-performance, except as provided by clause 20, Sick Leave.

28.5 Deduction of Pay for Non-work

This clause does not affect the right of the Company to deduct payment for any day during which an employee cannot be employed usefully because of any strike, or through any breakdown of machinery, or due to any cause for which the Company reasonably cannot be held responsible.

29. Requirements to Work in Accordance With the Needs of the Company

29.1 Overtime

For the purpose of meeting the needs of the plant, the Company may require an employee to work reasonable overtime, including work on a Sunday and a public holiday, at the rate prescribed by this agreement.

29.2 Change of Shift System - Subject to clause 16, Transfer of Day Workers from Day Work to Shift Work, and clause 17, Transfer of Shift Workers, for the purpose of meeting the needs of the industry the Company may require any employee to transfer from one shift system to another shift system prescribed by this agreement at the applicable rate. Unless reasonable cause exists, an employee will work in accordance with this requirement.

30. Termination of Employment Due to Retrenchment Or Redundancy

30.1 Retrenchment

30.1.1 Application

This sub clause 30.1 applies to collective dismissals by way of retrenchment, whether made at the same time or over a period of time and where the dismissals relate to circumstances affecting the Company's enterprise and not to the conduct of the employees.

30.1.2 Informing Unions and Employees Affected

The Company is obliged to inform the union parties to this agreement, and the Company's employees who may be affected by any retrenchments, of the facts and circumstances of the proposed retrenchments as soon as the Company becomes aware that the retrenchments are necessary.

30.1.3 Notice of Termination

Despite any other provision of this agreement, an employee being dismissed will receive four weeks' written notice of dismissal, or four weeks' pay in lieu of notice given. Employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service shall be entitled to an additional week's notice. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

30.1.4 Leave to Seek Alternative Employment

If an employee is required to work out his or her 4 weeks' of notice, the employee is entitled to 1 day's leave with pay in each of the 4 weeks to enable him or her to look for alternative employment. If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the Company, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent.

30.1.5 If an employee is retrenched then the Company shall make all reasonable endeavours to secure alternative employment for the employee within the Company's other operations. If acceptable alternative employment is found then severance payment will not be made.

30.2 Severance Payment

(a) An employee who has prior experience (as defined in Clause 20.2.1 (e)) in the operation of the Cryogenic Plant at Port Kembla and commence employment from 1 October 2004 shall receive the following severance payments in the event of retrenchment:

- (i) A flat severance payment of 14 weeks; and
- (ii) A service payment of 2.5 weeks per year of continuous service with the company.

The payments prescribed in (i) and (ii) of this sub clause shall combined and in total not exceed 104 weeks pay.

(b) All other employees not included in (a) of this sub clause shall receive:

If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of Service Under 45 Years of Age	Entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

Where an employee is 45 years of age or over, the entitlement shall be in accordance with the following scale:

Years of Service 45 Years of Age & Over	Entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

(c) A week's pay refers to the agreement wage, plus applicable over agreement or bonus. Pay does not include shift work allowances, weekend penalties or overtime.

30.2.1 Less than Twelve Months Service Not Entitled

Employees retrenched who have less than 12 months continuous service, are not entitled to severance pay under this sub clause.

30.3 Employee leaving during the notice period

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the employee remained with the Company until the expiry of such notice provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

30.4 Alternative employment

Subject to an application by the Company and further order of the Industrial Relations Commission, the Company may pay a lesser amount (or no amount) of severance pay than that contained in paragraph 30.1.3 above if the Company obtains acceptable alternative employment for an employee outside the Company.

30.5 Transmission of Business

The provisions of this clause are not applicable where the business after the date of this agreement is transmitted from Linde Gas Pty Limited (in this subclause called "the transmittor") to another employer (in this subclause called "the transmittee"), in any of the following circumstances:

30.5.1 Where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee; or

30.5.2 Where the employee rejects an offer of employment with the transmittee:

In which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and

Which recognises the period of continuous service, which the employee had with the transmittor to be continuous service of the employee with the transmittee.

31. Avoidance of Industrial Disputes

The parties to this Agreement are committed to maintaining continuity of supply in accordance with the commitments in Clause 32 of this Agreement and harmonious employee relations based on mutual trust, open communication and proactive consultation processes.

The parties will use their best endeavours to resolve issues at all times and at the lowest possible level in the Company.

Any issue requiring resolution shall be dealt with in the following manner:

31.1 Where an employee(s) has an issue, which has not resolved in the normal course of business, they shall raise it with their Coordinator and both shall use their best endeavours to resolve it as quickly as possible.

31.2 Where an issue is directly relevant to a work area, it shall be discussed and every endeavour made to resolve it within the team.

31.3 Should the issue not be resolved as above within a sensible, mutually agreed timeframe, it shall be referred to and discussed with the Plant Manager.

- 31.4 If not resolved, any of the Parties may raise the issue with the Human Resources Manager for resolution.
- 31.5 If still unresolved, the matter may be referred to the relevant union, who will discuss the matter with the Company.
- 31.6 Before the issue proceeds to the Industrial Relations Commission, the Company will ensure that its management and the union will ensure that its local union official has been involved in the process.
- 31.7 The parties agree that when the disputes procedure has been commenced the matter in dispute shall revert to the position it was prior to the disputes procedure being activated. Work shall continue as normal while the dispute is resolved.
- 31.8 If still unresolved, the matter may be referred to the Industrial Relations Commission, by either party, for conciliation and/or arbitration in accordance with due process.
- 31.9 After the procedure has been exhausted and subject to any the determination of the Industrial Relations Commission there will be no restriction on the Company implementing the relevant change.
- 31.10 At any stage during the Avoidance of Industrial Disputes procedure the employee has the right to have union representation.

At levels 31.1 to 31.8 inclusive of the above, the employee(s) may choose to have an accredited union representative or another employee in attendance. While the above process is being pursued, work shall continue as normal (without any bans or limitations). The Parties to this Agreement may raise an issue to a higher level in the process at any time.

32. Production Continuity

This clause is limited in its application to the circumstances of an industrial stoppage. The parties agree that continuity of production is vital and necessary to ensure the Company meets its contractual obligations with their clients. These include Bluescope Steel at Port Kembla and other essential service customers. It is agreed that in the event of an industrial stoppage employees will.

- 32.1 Only withdraw their services where it is safe to do so in relation to plant, people and the environment; and
- 32.2 Ensure that employees of Bluescope Steel are able to meet their award obligations in relation to Clause 37 of Regulation of Disturbances to Production and Supply in the Bluescope Steel (AIS) Pty Ltd - Port Kembla Steelworks Employees Award 2004; and
- 32.3 Always allow a minimum coverage of two Operators as may be required to operate the Plant in a safe and efficient manner unless a meeting of all Operators together is required; and
- 32.4 In no way prevent or oppose Linde Gas from being able to use staff personnel in the plant.

33. Introduction of Change

33.1 Company's Duty to Notify

33.1.1 Where the Company has made a definite decision to introduce major changes in production, program, Organisation, structure or technology that are likely to have significant effects on employees, the Company shall notify the employees who may be affected by the proposed changes and the union.

33.1.2 "Significant effects" include termination of employment, major changes in the composition, operation or size of the Company's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

Provided that where the Agreement makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

33.2 Company's Duty to Discuss Change

33.2.1 The Company shall discuss with the employees affected and the union, the introduction of the changes referred to in subclause 33.1 hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by employees and/or the union in relation to the changes.

33.2.2 The discussions shall commence as early as practicable after a firm decision has been made by the Company to make the changes referred to in subclause 33.1 hereof.

33.2.3 For the purposes of such discussion, the Company shall provide to the employees concerned and the union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, where this disclosure would be adverse to its interests.

SECTION 6 - AGREEMENT EXECUTION

34. Signatures

This page, the preceding 19 pages and PART B attached constitute the memorandum of agreement between Linde Gas Pty Limited and the Australian Workers Union Port Kembla Branch and is hereby:

Executed as an agreement this 4th day of November 2004

Tim Jackson
Human Resources Manager
For and on behalf of Linde Gas Pty Limited

Witness

Andy Gillespie
Branch Secretary
For and on behalf of The Australian Workers Union Port Kembla Branch

Witness

PART B

Table 1 - Wage Rates

Classification	Weekly Wage Rate (Commencement of Agreement)	Weekly Wage Rate (18 March 2005) +4.5%	Weekly Wage Rate (18 March 2006) +4.5%
Oxygen Plant Operator	\$883.00	922.75	964.25
Auxiliary Plant Operator	\$827.50	864.75	903.65

Table 2 - Allowances

Item No	Allowance Description	Weekly Rate (Commencement of Agreement)	Rate (18 March 2005) +4.5%	Rate (18 March 2005) +4.5%
1	Shift Allowance 1	\$61.80	\$64.60	\$67.50
2	Shift Allowance 2	\$52.60	\$55.00	\$57.50
3	Shift Allowance 3	\$82.20	\$85.90	\$89.80
4	Shift Allowance 4	\$24.80	\$25.90	\$27.10
5	Meal Allowance	\$9.00	\$9.40	\$9.80