

TERMS AND CONDITIONS OF SALES BY SELLER
LIMITED WARRANTY AND DISCLAIMER OF CERTAIN LIABILITIES

1. **PRODUCT SPECIFICATIONS** All products, equipment, materials, medical or industrial gases sold hereunder (the "Goods") as well as Seller's industrial gas containers used in the sale of gases, shall conform to the standard specifications established by Seller and shall comply with applicable Compressed Gas Association Standards and the applicable specifications, rules and regulations of the United States Interstate Commerce Commission and the Department of Transportation. The Goods sold hereunder which have been delivered, were produced in compliance and the requirements of the Fair Labor Standards Act of 1938, as amended.
2. **DELIVERY** Should Buyer wrongfully fail to accept or pay for any shipment or delivery, Seller may, without prejudice to any other lawful remedy, defer further shipments of deliveries until acceptance thereof or until payment is made by Buyer.
3. **PAYMENT** Seller may from time to time demand different terms of payment from those specified on the face hereof whenever it reasonable appears that Buyer's financial condition requires such change, and may demand assurance of Buyer's ability to pay whenever it reasonably appears that such liability is in doubt. If Buyer shall fail to make any payments in accordance with the terms and conditions, hereof, or shall fail to comply with such demand by Seller, Seller may, at its option, treat such failure or refusal as a repudiation hereof. Interest at the maximum rate allowed by law will be charged on past due accounts.
4. **INSPECTION** Upon arrival of the Goods at the place which Buyer has ordered the Goods delivered. Buyer shall immediately inspect the Goods at his own cost and if Buyer finds that the Goods do not conform to the description, Buyer shall give written notice to Seller within fifteen (15) days after their arrival, of any claim to that effect specifically setting forth the details of claim. Failure of Buyer to give Seller such notice shall constitute an irrevocable acceptance of Goods by Buyer, and Buyer shall be bound to pay the full price of the Goods. If after irrevocable acceptance of the Goods by the Buyer, Buyer returns the Hard Goods to the Seller with Seller's written consent, a restocking charge of 25% of the invoice value will be levied on all such Hard Goods returned for credit. Gas products which conform to the manufacturer's published specifications may not be returned for credit.
5. **LIMITATIONS AND WARRANTIES**
 - (a) EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED BY PARAGRAPH ONE ABOVE AND ON THE FACE OF THE DOCUMENT, ALL WARRANTIES WHETHER EXPRESS OR IMPLIED, ALL GUARANTIES AND ALL REPRESENTATIONS AS TO THE PERFORMANCE, INCLUDING ALL WARRANTIES WHICH BUT FOR THE PROVISION, MIGHT ARISE FROM COURSE OF DEALING OR CUSTOM OF TRADE AND INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE GOODS FURNISHED BY SELLER HEREUNDER ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER. No agent, employee or representative of Seller has any authority to bind Seller to any affirmation, representation or warranty relating to the Goods to her than as specifically provided herein.
 - (b) SELLER MAKES NO WARRANTIES WHATSOEVER EXCEPT FOR THAT PUBLISHED WARRANTY OF THE MANUFACTURER'S WHOSE PRODUCT IS SOLED HEREIN.
 - (c) Seller shall not be liable for any incidental or consequential damages caused by the breach of any of the terms and conditions hereof. The liability of Seller for defective or undelivered Goods shall be limited solely (in Seller's discretion) to replacing the Goods or to granting the Buyer a credit or refund in the amount of the contracted price of the Goods. Seller shall not be liable to the Buyer or any other person for damage, loss, injury or expense, whether direct, special or consequential and whether in the form of personal injury, pecuniary loss, increased expense or otherwise.
 - (d) The remedies provided for herein shall be exclusive and shall be the sole remedies of the Buyer.
6. **LIMITATIONS ON INTENDED USERS** Except as expressly provided by Seller in Writing, Seller's products are intended for ultimate purchase by commercial/industrial user and for operation by persons trained and experienced in the use and maintenance of welding equipment and industrial and medical gases. Seller's products are not intended for consumers or consumer use. Seller's warranties do not extend to, and no reseller is authorized to extend Seller's warranties to, any consumer.
7. **LIMITATIONS OF ACTIONS** No action against Seller for breach hereof shall be commenced more than one year after the accrual of the cause of action thereof.
8. **TAXES** Any sales, use excise, ad-valorem, receipts or like taxes or any duties, imposts or customs taxes or import surcharges which may now or hereafter be imposed by national, federal, state provincial or local governments by reason of Seller's selling, exporting or importing the Goods described on the face hereof shall be borne by Buyer.
9. **TERMS AND CONDITIONS UPON WHICH CYLINDERS ARE LOANED** Cylinders remain the property of Seller at all times. The Buyer shall return each cylinder when empty to the distributing station from which the same was shipped not later than 90 days after its deliver to the Buyer. The Seller reserves the right to make a rental or demurrage charge for all time that any loaned cylinder is away from the distributing station, which rental or demurrage charge the Buyer agrees to pay on demand. Rental or demurrage shall be determined in accordance with the customary method of the Seller at the location. Serial numbers of cylinders returned must match those on the face hereof to obtain credit for return. Buyer agrees to pay for replacement of cylinder valve protection caps and/or transponders if missing upon return of cylinder.
10. **ASSIGNMENT** Buyer shall neither assign any rights nor delegate any duties hereunder without the prior consent of Seller.
11. **APPLICABLE LAW** this contract shall be governed by and construed in accordance with the laws of the State of California.
12. **PRICES** Unless otherwise specified herein, prices are subject to change to Seller's standard prices in effect at the date of acceptance of Buyer's order by Seller. Exception: On sale of welding wires and fluxes, prices are subject to change to Seller's standard prices in effect at time of shipment.
13. **MODIFICATION AND WAIVER** These terms and conditions constitute the entire agreement between Buyer and Seller and there are no understandings, representations or warranties of any kind except as herein expressly set forth.
14. **MATERIAL SAFETY DATA SHEETS** Material safety data sheets have been provided and more copies are available on request. No product should be used without first consulting the material safety data sheet. Buyer agrees to pay when billed any charge related to the maintenance and distribution of material safety data materials required by law in accordance with the Seller's billing policy. Buyer agrees to distribute Material Safety Data Sheets to all employees who use products.
15. **COLLECTION / ATTORNEY FEES** In the event of litigation by Seller or action by a licensed collection agency to recover money due for goods, products or services provided by Seller, or to recover Seller's Property. Seller shall recover any agency and/or attorney fees incurred, including attorney fees to enforce or collect any judgment entered.
Buyer acceptance is expressly conditioned on the terms hereof, and any alterations or modifications hereof shall be by mutual agreement of the parties and shall not be binding in Seller unless made in writing and agreed to by Seller. Buyer agrees that the signed copy of this agreement on file at the Seller's office shall be considered to be the original agreement in the event of any dispute.

TRANSPORTATION AND HANDLING INSTRUCTIONS
NOTICE

There are certain hazards associated with the transportation of compressed gas cylinders, particularly those containing flammable gases, when transported in a passenger vehicle or delivery van. This applies to cylinders transported in the trunk of a car or the passenger compartment. Leaks may develop when cylinders are transported in vehicles not designed for that purpose because of improper blocking or securing of cylinders, or extended confinement in an enclosed compartment when subject to excessive heating by the sun, such as a truck or passenger compartment.

All acetylene cylinders shall be transported in the upright position. NO EXCEPTIONS.

The cylinder or cylinders have been leak checked after filling and prior to receipt by the customer and found to contain no leaks at that time. The cylinder or cylinders are provided with adequate cylinder valve protection caps where threaded neck rings are provided for attachment of caps.

SELLER shall not be liable for injury, loss or damage resulting from the transportation of compressed gas cylinders in passenger car, delivery vans or any non-SELLER owned vehicle.

CYLINDERS MUST BE PROPERLY SECURED FOR SAFE TRANSPORTATION