

Welders Supply Company of Louisville, Inc.
Terms and Conditions of Sale

1. Sale Limited to Terms.

- **Applicability.** These terms and conditions of sale (these “**Terms**”) and the provisions of any documents specifically referenced in these Terms set forth the entire understanding and agreement between Welders Supply Company of Louisville, Inc., having an address at 331 Boxley Avenue, Louisville, Kentucky 40209 (“**Seller**”), and the purchaser (“**Purchaser**”) relating to Seller’s (i) sale of the goods (the “**Goods**”) and the gas product (the “**Gas Product**”) described on the applicable program agreement, packing slip, delivery receipt, or the mobile receipt (each, a “**Contract Document**”) identifying such Goods or Gas Products and (ii) loan of the gas cylinders (the “**Cylinders**”) described on the applicable Contract Document identifying such Cylinders. The Goods, the Gas Product, and the Cylinders shall collectively be referred to herein as the “**Product.**”
- **Modification and Other Terms.** These Terms may not be modified, amended, or rescinded, except by a writing signed by both Seller and Purchaser which specifically states that these Terms are modified. These Terms shall prevail over any of Purchaser’s general terms and conditions of purchase (whether included in Purchaser’s purchase order or in other form(s) or document(s) delivered by Purchaser to Seller) regardless of whether or when Purchaser has submitted its purchase order or such terms. Fulfillment of Purchaser’s order does not constitute acceptance of any of Purchaser’s terms and conditions and such terms and conditions do not serve to modify, amend or supplement these Terms.

2. Acceptance of Terms. Purchaser shall be deemed to have accepted these Terms by: (a) signing or otherwise acknowledging the applicable Contract Document, electronically or otherwise, or (b) accepting shipment of the Product without a written objection. In the event of a conflict between the terms or conditions of these Terms and the terms or conditions of a Contract Document, the terms or conditions of these Terms shall govern and control. The provisions of each relevant Contract Document are incorporated in these Terms by this reference and are an integral part of the parties’ contract.

3. Quantity and Price. Purchaser shall purchase the relevant Product(s) at the price set forth in the relevant Contract Document or, if not set forth therein, in Seller’s standard pricing list for such Product(s) in effect as of the delivery thereof (the “**Price**”), and in the quantity set

forth on the applicable Contract Document identifying such Product. No discount on the Price shall be allowed unless otherwise expressly provided in the relevant Contract Document.

4. **Taxes, Freight and Shipping Charges.** Except as otherwise agreed to by the parties in writing, the Price does not include any taxes (including without limitation sales or use taxes), licenses, fees, duties, tariffs, freight, or shipping charges for the Product (collectively, the “**Additional Charges**”). Additional Charges shall be included as a separate line item on the invoice.
5. **Payment Terms.** Unless otherwise expressly provided in the relevant Contract Document, Purchaser shall pay all invoices within 30 days of receipt. SELLER SHALL IMPOSE A LATE CHARGE EACH MONTH ON THAT PORTION, IF ANY, OF THE INVOICE WHICH WAS NOT PAID WHEN DUE, EQUAL TO THE LESSER OF (a) 1 1/2% PER MONTH (ANNUAL PERCENTAGE RATE OF 18%) OR (b) THE MAXIMUM RATE (IF ANY) WHICH MAY BE CHARGED UNDER APPLICABLE LAW.
6. **Cylinder Terms.**
 - Generally. All Cylinders contemplated in the relevant Contract Document, if any, are loaned to Purchaser and continue to be Seller’s property to be used for a limited period of time as provided for on the applicable Contract Document. Unless otherwise agreed to in writing by both parties, Purchaser shall return all Cylinders to Seller in good condition, with valves tightly closed.
 - Rental and Demurrage Charges. Purchaser shall pay Seller its daily rental fee and demurrage charges for all Cylinders under loan to Purchaser, without set-off or deduction, as set forth below:
 - For all gas Cylinders, cryogenic Cylinders, portable banks of Cylinders, rare and specialty gas Cylinders, and such other types of Cylinders as Seller may from time to time designate, Purchaser shall pay the daily rental fee customarily charged by Seller for Cylinders of that type and capacity as of the date the invoice is sent. Such daily rental fee will accrue for each day Purchaser has possession of the Cylinders, until the Cylinders are returned to Seller as contemplated below.
 - For all other types of Cylinders, Seller will generally set a return date and communicate such date to Purchaser.
 - If Purchaser fails to return the Cylinders on the designated return date, Purchaser shall pay Seller its customarily charged daily demurrage rates in

effect for Cylinders of that type and capacity as of the date the invoice is sent until such Cylinder has been returned to Seller.

- Seller has established its customary daily rental fees and daily demurrage charges. Purchaser may, upon written request to Seller, obtain a statement of such daily rental fees and daily demurrage charges for the Cylinders. Such statement is subject to change from time to time by Seller in its sole discretion.
- Invoices. Seller shall issue monthly invoices to Purchaser for the daily rental fees and demurrage charges accrued during the preceding calendar month. Such invoices shall be due as contemplated in Section 5 above.
- Deposit. Seller may require a deposit from Purchaser for the Cylinders in an amount deemed appropriate by Seller. Purchaser shall pay such deposit on or before taking possession of the Cylinders. Seller is not required to segregate any deposit from any other funds and is expressly authorized to commingle the deposit with other funds. Without limiting any other rights that Seller may have, Seller may, from time to time, apply all or part of such deposit against any outstanding obligation of Purchaser which is not paid or performed as and when due and/or against any damages incurred by Seller on account of Purchaser's failure to return one or more Cylinders in accordance with these Terms.
- Possession. Purchaser shall be deemed to have acknowledged receipt of the Cylinder upon signing of the applicable Contract Document, electronically or otherwise. Purchaser shall be conclusively presumed to have possession and control of the Cylinder until the earlier of (a) Seller's receipt of Purchaser's written statement that Purchaser is unable, for any reason, to return the Cylinder (and any Cylinder subject to such statement shall be deemed to be lost) or (b) Seller receives actual possession of the Cylinder and has given Purchaser a signed receipt (on a form satisfactory to Seller) evidencing such return. NO CLAIM THAT ANY CYLINDER HAS BEEN RETURNED WILL BE HONORED UNLESS PURCHASER HOLDS SUCH SIGNED RECEIPT FROM SELLER EVIDENCING THE RETURN OF THAT CYLINDER.
- Loss, Destruction, or Damage.
 - If any Cylinder is lost, stolen, destroyed, or damaged while the Cylinder is in the possession of Purchaser as contemplated above, and repair of such

Cylinder is not economically feasible or physically possible (damage to fittings on any Cylinder shall constitute damage to that Cylinder), Purchaser shall pay Seller the amount equal to the replacement costs that would be incurred by Seller for the Cylinder which was lost, stolen, destroyed, or damaged.

- If any Cylinder is damaged, but in Seller's judgment may be repaired so that its condition will be at least equal to its condition just before it was damaged, Purchaser shall pay Seller such costs and expenses (including without limitation any expense for transportation) incurred by Seller to have the Cylinder repaired, promptly following Seller's invoicing for such costs and expenses. Seller shall determine, in its sole discretion, whether repair of such damaged Cylinder is economically feasible or physically possible.
- Purchaser shall pay daily rental fees and demurrage charges for each lost, stolen, damaged, and/or destroyed Cylinder until such Cylinder is returned to Seller in the required condition as described above, or if the Cylinder is lost, stolen, destroyed, or damaged and its repair is not economically feasible or physically possible in Seller's judgment, then until Seller is paid in full for the replacement costs as provided for above.

- REFILLS. CYLINDERS MAY NOT BE REFILLED WITHOUT SELLER'S PRIOR WRITTEN CONSENT.

7. **Delivery and Risk of Loss.** Seller shall deliver the Product using its own delivery truck or by common carrier, in Seller's sole discretion, to the address specified on the applicable Contract Document (the "**Delivery Point**"). Except as otherwise provided on the applicable Contract Document, title and risk of loss passes to purchaser as follows:

- If Seller delivers the Product using its own truck, title and risk of loss shall pass to Purchaser upon delivery of the Product at the Delivery Point.
- If Seller ships the Product to Purchaser by common carrier, title and risk of loss shall pass to Purchaser upon delivery of the Product to the carrier at the shipping point. Seller shall not be liable to Purchaser for any loss or damage to the Product in transit if the Product is delivered by common carrier, or otherwise not delivered by Seller or its employees.

8. **Partial Delivery.** Seller may, in its sole discretion and without liability or penalty, make partial shipments of the Product to Purchaser. Each shipment shall constitute a separate sale, and

Purchaser shall pay for such units shipped whether the shipment is in whole or partial fulfillment of Purchaser's order.

9. **Inspection and Acceptance.** Purchaser shall have 15 days from the date the Product is received to accept or reject the Product (the "**Inspection Period**"); provided, that such a rejection may only be made by Purchaser if the Product does not meet the warranted specifications and other warranted requirements (if any) expressly set forth in the Contract Document or these Terms. Purchaser shall be deemed to have accepted the Product unless, within the Inspection Period, Purchaser notifies Seller in writing of its rejection of the Product for a permitted reason as described above, stating such reason(s) for such rejection. Any defect or non-conformity with the warranted specifications and/or other warranted requirements described above not stated in Purchaser's rejection notice shall be deemed to have been waived.
10. **Return of Product.** Purchaser shall not return any Product to Seller without the prior written consent of Seller. Purchaser shall prepay freight on all Product returned to Seller.
11. **Seller's Limited Warranty.** Seller warrants that all Product conforms to any specifications expressly set forth in the relevant Contract Document and/or in Seller's standard written specifications with respect to such Product in effect and provided to Purchaser at the time of Product delivery, and to such other requirements, if any, as are expressly set forth in such Contract Document or standard written specifications, in each case in accordance with any applicable specifications, rules, and regulations of the United States Interstate Commerce Commission and the Department of Transportation.
12. **EXCLUSION OF OTHER WARRANTIES.** SELLER MAKES NO IMPLIED WARRANTY OF MERCHANTABILITY, NO IMPLIED WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE, AND NO OTHER WARRANTY, EITHER EXPRESS OR IMPLIED, CONCERNING THE PRODUCT, AND MAKES NO WARRANTIES WHICH, BUT FOR THIS PROVISION, MIGHT HAVE ARISEN FROM ANY COURSE OF DEALING OR CUSTOM USAGE OF TRADE.
13. **Claims and Limitations of Liability.**
 - Tolerances. Purchaser agrees to accept tolerances in the Product consistent with trade usage, custom, course of dealing, and industry practice.
 - Pass-Through Warranties. If the Product is subject to a warranty from the original manufacturer or seller, Purchaser's sole and exclusive remedy for failure of the Product to conform to that warranty shall be the claims, if any, that Purchaser has

against such manufacturer or other seller AND SELLER SHALL HAVE NO LIABILITY WITH RESPECT TO SUCH WARRANTY CLAIMS. Purchaser shall make any claim on account of such failure solely against the manufacturer or other seller, and shall not make any claim against Seller.

- Remedies for Non-Conformance. Purchaser's sole and exclusive remedy for failure of the Product to conform to Seller's warranties and for any other failure of Seller to perform its obligations under these Terms, shall be, at Seller's option:
 - Reimbursement to Purchaser of the price allocable to the non-conforming Product which has been redelivered, freight prepaid, by Purchaser to Seller pursuant to Section 10;
 - Repair of the non-conforming Product which has been redelivered, freight prepaid, by Purchaser to Seller pursuant to Section 10; or
 - Replacement of the non-conforming Product.
- LIMITATION OF LIABILITY. SELLER'S LIABILITIES ARE EXPRESSLY LIMITED, AND SELLER SHALL NOT BE LIABLE FOR ANY DIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE), INCURRED BY PURCHASER OR ANY OTHER PERSON AS A RESULT OF ANY BREACH OF WARRANTY OR REPRESENTATION WITH RESPECT TO THE PRODUCT, OR THEIR FAILURE TO PERFORM AS WARRANTED.

14. **Security Interest.** Purchaser hereby grants to Seller a security interest in the Product sold or loaned, as the case may be, to Purchaser, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions, replacements, modifications, as well as all proceeds (including insurance proceeds) of the foregoing, to secure all of Purchaser's obligations under these Terms, including without limitation Purchaser's obligation to pay the Price, rental fees, and any accrued late charges.

15. **Insurance.** Seller may require that Purchaser, at its own expense, maintain and carry insurance in effect with financially sound and reputable insurers of the type and in such amounts as adequate for all risks in accordance with sound and prudent business practices.

16. **Compliance with Laws.** Purchaser shall comply with all applicable laws, regulations and ordinances. Purchaser shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under these Terms.

17. **Force Majeure.** Seller shall not be liable or responsible to Purchaser, nor be deemed to have defaulted or breached these Terms, for any failure or delay in fulfilling or performing any of its obligations under these Terms when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.
18. **Indemnity.** Each party (the "**Indemnitor**") shall, at all times, indemnify and hold harmless the other party, its directors, trustees, officers, employees, volunteers, and agents (the "**Indemnitees**") from, against, and in respect of any and all assessments, losses, liabilities, judgments, damages, fines, costs, and expenses of any kind or nature arising from or incident to any actions, claims, demands, or suits resulting from or incident to the Indemnitor's representations and warranties contained in these Terms, breach of these Terms, violation of the law, or negligence or willful misconduct. In addition, such indemnification shall include, without limitation, the Indemnitees' attorney, accountant, and expert witness fees and all costs of discovery, litigation, and settlement. In addition, Purchaser shall, upon request by Seller, execute and deliver to Seller an indemnification agreement in form and substance acceptable to Seller (the "**Indemnification Agreement**"). The Indemnification Agreement shall set forth additional indemnity obligations for Purchaser and is incorporated by reference into these Terms.
19. **Confidential Information.** Non-public, confidential, and proprietary information disclosed by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**"), in connection with these Terms (collectively, "**Confidential Information**") is confidential, solely for the Receiving Party's use in performing these Terms and may not be disclosed or copied unless authorized by the Disclosing Party in writing. Confidential Information does not include any information that: (a) is or becomes available to the public other than as a result of the Receiving Party's violation of these Terms; (b) is obtained by the Receiving Party on a non-confidential basis from a third-party that was not legally or contractually prohibited from disclosing the information; (c) was in the Receiving Party's possession before the Disclosing Party's disclosure, as established by documentary evidence; or (d) was or is independently

developed by the Receiving Party, as established by documentary evidence, without using any Confidential Information. At the Disclosing Party's written request, the Receiving Party shall promptly return to the Disclosing Party Confidential Information in its possession.

20. **Relationship of the Parties.** Nothing in these Terms will be construed to create a joint venture, partnership, or an employee/employer or agency relationship. Neither party shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.
21. **Remedies.** Except as otherwise expressly provided elsewhere in these Terms (including, without limitation, Section 13 above) or in the relevant Contract Document, the rights and remedies under these Terms are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.
22. **Waiver.** No waiver by any party of any of the provisions in these Terms shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from these Terms shall operate or be construed as a waiver; nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
23. **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications (each, a "**Notice**") must be in writing and addressed to the parties at the addresses set forth on the applicable Contract Document (or to any other address that may be designated by the receiving party from time to time in accordance with this Section). The parties shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or e-mail (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in these Terms, a Notice is only effective (a) upon receipt by the receiving party; and (b) if the party giving the Notice has complied with the requirements of this Section.
24. **Assignment.** Purchaser may not assign any of its rights or delegate any of its obligations under these Terms without the prior written consent of Seller. Any purported assignment or

delegation in violation of this Subsection shall be null and void. No assignment or delegation shall relieve Purchaser of any of its obligations.

25. **Severability.** If any term or provision of these Terms is invalid, illegal, or unenforceable in any jurisdiction, that invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.
26. **Headings.** The headings used in these Terms have been included solely for ease of reference and shall not be considered in the interpretation or construction of these Terms.
27. **Survival.** Any provision of these Terms which by its nature extends beyond the expiration, termination, or cancellation of these Terms shall remain in full force and effect until fulfilled and/or performed.
28. **Governing Law; Jurisdiction.** These Terms are governed by the laws of the Commonwealth of Kentucky, without regard to conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms. Any legal suit, action, or proceeding relating to these Terms must be instituted in the federal or state courts located in Jefferson County, Kentucky. Each party irrevocably submits to the exclusive jurisdiction of such courts in any suit, action, or proceeding.