

# TERMS AND CONDITIONS

## 1. Product Specifications

All products, materials and industrial and specialty gases sold hereunder (the "Goods") as well as Seller's gas containers used in the sale of gases (the "Cylinders"), shall conform to the standard specifications established by Seller and shall comply with applicable codes and standards.

## 2. Cylinders

All of Buyer's requirements of Goods shall be supplied by Seller in Seller's Cylinders. Unless otherwise specified herein, Buyer shall return the Cylinders, transportation prepaid, to Seller's point of shipment. Buyer agrees that whenever Cylinders are returned to Seller for refilling or for any other purpose, Seller may in return supply Buyer with either the same Cylinders or with other Cylinders of a similar size. Buyer agrees that the Cylinders and any part or accessory thereof are and shall remain the sole property of Seller. Buyer will not allow Cylinders to become subject of any such lien and encumbrance or claim by third party. Buyer assumes all risk of loss or damage to the Cylinders or to any part of accessory thereof, even in force majeure case, from Cylinders' delivery until Cylinders' return to Seller's point of shipment. For Cylinders (including any part or accessory thereof) lost or damage, Buyer agrees to pay Seller, the full replacement value of the Cylinders and/or said part or accessory, at Seller's current valuation. For damages that the Seller is able to have repaired, Buyer shall pay the actual costs of all repairs thereto. Buyer shall not, nor shall Buyer allow any third party to alter, adjust, repair or tamper with the cylinders or any accessory thereof. Buyer agrees, even in the case of force majeure, not to have the Cylinders recharged with any product, gas, liquid or other material whatsoever by any person, firm or corporation other than Seller. Cylinder rental rates, which could be daily, monthly or yearly, will be computed and assessed for all Cylinders on loan to the Buyer at the end of each month at Seller's then current standard published rate. Cylinders that have a prepaid yearly rental agreement, or other long term agreements, will be exempted from said rental charges.

## 3. Inspection

Buyer shall inspect the Goods and Cylinders upon their arrival. Should Buyer find that the Goods do not conform to the description herein, Buyer shall give written notice to that effect to Seller within 5 days from arrival of such Goods. Failure of Buyer to give Seller such notice shall constitute an irrevocable acceptance of the Goods, and Buyer shall be bound to pay the full price thereof. If after irrevocable acceptance of the Goods, Buyer, with Seller's written consent, returns the Goods to Seller, a handling charge of 20% of invoice value will be levied on all such Goods returned for credit.

## 4. Deliveries

All Goods will be delivered F.O.B. to Seller's local delivery facility. Title and risk of loss will pass to Buyer upon delivery.

## 5. Payment and Taxes

All payments will be made according to the terms of payment on Seller's invoice. If Buyer does not pay on time, Seller may (i) place Buyer on COD, (ii) suspend deliveries, or / and (iii) enter upon Buyer's premises and repossess the Cylinders. Seller shall have the right to charge, on any amount unpaid 30 days after invoice date, interest each month at 2%. Interest is compounded monthly (26.82% per annum) on overdue accounts. Buyer agrees to pay all taxes (if any) upon the sale, delivery, storage and use of the Goods or the Cylinders.

## 6. Warranties

Seller warrants that the Goods delivered to Buyer comply with the standards of the Compressed Gas Association and Seller's standards. If the Goods do not conform to warranty, Buyer's sole remedy is to require Seller to replace the non-conforming Goods at Seller's cost. Buyer understands that in order for Seller to be able to properly investigate, Buyer must notify Seller of all claims within 10 days after occurrence. Seller makes no other warranty of any kind, express or implied, including without limitation, warranties or merchantability and fitness for a particular purpose.

## 7. Liability and Indemnity

Buyer acknowledges having been informed by Seller's representative of the safe method for handling and carrying cylinders and agrees herein to completely discharge the Seller of any responsibilities that could result from his decision to carry the Cylinders in an inappropriate way and / or go against the applicable laws. Seller shall not entertain any claims for loss of content based on defective valves or other Cylinder imperfections unless same are made within 10 days after receipt of the respective Cylinders by Buyer and unless the Cylinder is returned to Seller with a tag attached stating the defect within said 10 days. Subject to limitation contained in sections 6, each party will be responsible for and will indemnify the other from and against any and all direct claims and demands, loss or damage to property or persons, at any time caused by or resulting from its negligence, its acts or omissions of those of its agents and employees. Regardless of the circumstance, neither party will be liable to the other for special, indirect or consequential damages howsoever occurring.

## 8. Safety Information

Buyer acknowledges that the Goods are a hazardous chemical, classified as such under the Federal Hazardous Product Act, and that its use, in the workplace, is regulated by the Provincial Occupational Health and Safety Act and Regulations. Buyer acknowledges that there are hazards associated with the transportation, handling, storage, possession and use of the Cylinders and the Goods. Buyer represents that it understands the hazardous nature of the Goods and the Cylinders and that it is its duty to warn, protect and train as appropriate all personnel and third parties, and its property and that of others, who may be exposed to these hazards. Buyer also acknowledges that Seller has provided Safety Data Sheets (SDS) online on Seller's website [www.westerngasco.com](http://www.westerngasco.com). Buyer understands that the Goods and the Cylinders must not be used without first consulting the SDS. Buyer will make sure all employees and persons who might become exposed to the Goods receive and refer to copies of the SDS.

## 9. Limitations on Intended Users

The Goods are intended for ultimate purchase by commercial industrial users and for operation by persons trained and experienced in the use and maintenance of welding equipment and industrial and specialty gases. Except as expressly provided by Seller in writing, the Goods are NOT intended for resale by Buyer to consumers and thereby. Buyer is not authorized to extend Seller's warranties to any consumer.

## 10. Modifications

No provision of any purchase order of Buyer will alter or add to the terms of the Agreement, and any such provisions will be void. No modification of this Agreement will be binding unless it is in writing and signed by an authorized representative of each party.

## 11. Waiver

The waiver by either party of any of its rights under this Agreement will not be construed as constituting a precedent.