

## USA Terms and Conditions

These terms and conditions are applicable to any use of this site and any product or equipment supplied to you ("Buyer") through this site from Linde Gas & Equipment Inc. and/or its affiliates ("Seller"). By using this site and/or placing an order through this site, Buyer hereby agrees to be bound by all the terms and conditions of this document (this "Agreement"), and the Legal Notice and Privacy Statement linked hereto, as modified from time to time by Seller. Do not use this site or place an order if you do not wish to be bound hereby.

### 1. REVIEW.

Buyer agrees to review these terms from time to time and prior to placing an order, Buyer agrees that each order will be subject to Seller's prices, terms and conditions at the time such order is placed, including any deposit and periodic charge for cylinder or equipment rental, and that Seller may, prospectively, change the terms and conditions of this Agreement from time to time by posting an update to terms and condition on this website.

### 2. ACCEPTANCE.

Orders will not be binding on Seller until Seller accepts them. Seller's acceptance may be based on such considerations as availability, Seller's confirmation of the particulars of the order, or Seller's satisfaction with credit card or other payment terms. Buyer consents to Seller obtaining credit information to the extent reasonably necessary for those purposes, and to the disclosure of such information to the extent reasonably necessary to enforce this Agreement.

### 3. PRICES AND PAYMENT.

Buyer will pay Seller the Prices for product, cylinders and other containers used to deliver product and other equipment (collectively, "Items") supplied hereunder and any charges and surcharges related thereto, including those associated with regulatory and environmental compliance, greenhouse gas emission reductions, and obtaining power and transportation, whether or not set forth on the site, including any deposit and periodic payment for cylinder or equipment rental. In addition, Buyer will pay or reimburse Seller for any sales, property, use, excise, tariff or other duty, tax, charge or fee now or hereafter imposed by reason of any sale, delivery or furnishing of any Items hereunder. Seller will invoice Buyer by Seller's standard billing methods. If payment is by credit card, rather than invoice, Seller will debit Buyer's card upon shipment of ordered Items, including any deposit and periodic payment for cylinder or equipment rental, or upon Buyer incurring any other charge, which for purposes of cylinder or equipment rentals will be monthly; otherwise, Terms of payment will be net ten (10) days following date of invoice. Any deposit will be refunded upon Seller's receipt of any covered Item at Seller's point of shipment for that Item but is subject to offset for damage (reasonable wear and tear excepted) and any other charges due under this Agreement. At Seller's request and subject to Buyer's ability to do so, Seller and Buyer will utilize Seller's website or other electronic data interchange for invoicing and paying of invoices. If Buyer fails to make timely payment in accordance with the terms of this Agreement, or its financial responsibility becomes otherwise impaired, or if Buyer is otherwise in

default of its obligations hereunder, Seller reserves the right, among other remedies, to refuse all future sales except for receipt of cash with order and/or payment in full of all outstanding charges, and/or assess and collect from Buyer a monthly late charge on any delinquent balance equal to the lesser of eighteen percent (18%) per annum or the maximum charge permitted by law, and/or enter Buyer's premises and remove any leased Items or other Seller's equipment located thereat with or without notice of legal process, and/or suspend Seller's performance under this Agreement and/or terminate this Agreement. If any action is required to collect Buyer's delinquent account, recover any leased Items or other Seller's equipment or otherwise enforce the terms and conditions of this Agreement, Buyer will pay Seller all fees and costs of such collection, recovery or enforcement including reasonable legal fees and expenses.

Buyer represents and warrants to Seller that as of first delivery of the Items to Buyer, Buyer is not obligated under any other agreement to purchase any Item exclusively from a different supplier. In the event the foregoing representation and warranty proves to be false, Buyer will indemnify, and hold harmless Seller from and against any and all costs, fees (including reasonable legal fees and expenses), damages, liabilities and claims which Seller may incur in connection with any claim or claims asserted by any third party as a result thereof.

#### 4. DELIVERY.

Items will be delivered F.O.B. Seller's point of shipment. Any delivery date set forth in Buyer's confirmation of the order is Seller's estimate of when Items will be delivered to a carrier for delivery to Buyer and will not be deemed to represent a fixed or guaranteed delivery date. Title to and risk of loss of Items will pass to Buyer upon delivery to such carrier at point of shipment. The delivery of Items by Seller will constitute Buyer's purchase thereof, and the quantities delivered will be measured by Seller by the method it regularly uses for the type of delivery made.

Buyer grants to Seller the right of twenty-four (24) hour access to each delivery site, and if (a) Buyer fails to grant such access, or (b) Seller is unable to deliver Item at any time consistent with Seller's delivery schedule or otherwise in accordance with the terms of this Agreement due to any act or omission of Buyer, Buyer will pay Seller any applicable delivery charge set forth in Seller's delivery charge schedule. If Seller is requested by Buyer and is able to make deliveries during a strike or other concerted acts of workers affecting Buyer, then such deliveries will be made at Buyer's sole risk and, notwithstanding anything in this Agreement to the contrary, Buyer hereby indemnifies and holds harmless Seller from and against all costs (including legal fees), damages, liabilities or claims arising out of any such deliveries. In addition, Seller reserves the right to request, in its sole discretion, that Buyer provide qualified personnel to deliver Items to any delivery site affected by such strike or concerted acts, and Buyer will provide such personnel. If, at Buyer's request, Seller makes more than one (1) delivery of Items on any day, Buyer will pay Seller any special expenses incurred.

#### 5. INSTALLATION AND DELIVERY SITES; CYLINDERS.

Installation of any Items sold or leased is not included unless specified in Buyer's confirmation of the order. If installation is included, and delays at the installation site require Seller to expend more time than is customarily allotted for such installation, Buyer will pay Seller at Seller's rates then in effect for such additional time.

Cylinders and/or other containers and other equipment that are used to deliver product by Seller (collectively, "Cylinders") will remain the property of Seller at all times. Risk of loss of Cylinders shall pass to Buyer upon delivery. Seller will not be responsible for connecting any Cylinder to Buyer's product distribution system. Buyer will not permit the refilling of any Cylinders by any third party with any substance, whether gas, liquid or solid. Cylinders will not be loaned to or used by any third party except as Seller may agree in writing.

Buyer will return all Cylinders to Seller in a non-contaminated condition with valves closed. Buyer will pay Seller for any loss or damage to Cylinders beyond normal wear and tear and for any cleanup of Cylinders returned in a contaminated condition.

Buyer will pay Cylinder rent or fees specified by Seller. Seller may increase the amount of such rent or fees to its then current standard rates at any time on thirty (30) days' prior written notice. Such charges shall be paid for each Cylinder until it is returned or, if it is damaged beyond repair or missing, until Buyer pays for such Cylinder in full at Seller's then current published price.

Buyer shall, from time to time, at the request of Seller, submit an accounting of Cylinders delivered to Buyer which have not been returned and shall permit Seller to enter its premises to verify such accounting. By paying the amount specified for Cylinder rent on the invoices provided to Buyer by Seller, Buyer shall be deemed to agree that the number of Cylinders specified in such invoice are in Buyer's possession as of the close of business on the date specified in such invoice.

Buyer hereby grants to Seller the right to enter Buyer's location and remove any Cylinders which have not been returned to Seller within thirty (30) days after the termination of this Agreement, or at any time for non-payment of rent or facility fee, or for Buyer's breach of this Agreement, or if Seller, after seeking adequate assurances from Buyer, reasonably believes that Buyer will not be able to meet its obligations under the Agreement. Seller will not be liable for any damages resulting from such removal.

Buyer will promptly remove any liens and claims against Cylinders due to their location at Buyer Location(s) or possession by Buyer.

## 6. SPECIFICATIONS AND WARRANTIES.

Any Items supplied hereunder that are manufactured by Seller will meet the specifications displayed on the relevant order screen or listed in the product information sheet(s) provided by Seller. Buyer may reject any Item which does not meet such specifications and no charge will be made for any Item so rejected. Since Buyer may obtain devices which have the capability of testing whether Items meet such specifications, no claim of any kind with respect to the conformance of any Item to the foregoing specifications, whether or not based on negligence, warranty, strict liability or any other theory of law, will be greater than the price of the quantity of nonconforming Item in respect to which such claim is made. The foregoing constitutes Buyer's exclusive remedy and Seller's sole obligation with respect to any such claim. Seller will have no liability with respect to Items delivered that are not manufactured by Seller, the results obtained by use of the Items, whether in terms of product condition, operating cost, general effectiveness, success or failure, or regardless of any statement made in any written proposal submitted by Seller. It is expressly understood that any technical advice furnished by Seller is given gratis and Seller assumes no obligation or liability for the advice given or results obtained, all such advice being given and accepted at Buyer's risk.

Notwithstanding any other warranty provision otherwise contained in the Agreement, with respect to any Items delivered that are not manufactured by Seller, Seller will assist Buyer with respect to availing itself of the manufacturer's warranty.

THERE ARE NO EXPRESS WARRANTIES BY SELLER OTHER THAN THOSE SPECIFIED IN THIS ARTICLE 6. NO WARRANTIES BY SELLER (OTHER THAN WARRANTY OF TITLE AS PROVIDED IN THE UNIFORM COMMERCIAL CODE) WILL BE IMPLIED OR OTHERWISE CREATED UNDER THE UNIFORM COMMERCIAL CODE INCLUDING WITHOUT LIMITATION WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

## 7. PRICE CHANGES.

Seller will have the right to adjust any periodic service or rental charges by giving Buyer not less than fifteen (15) days prior notice of the effective date of such adjustment. Posting of generally applicable price changes on Seller's web site or e-mailing notification to any address with which Buyer has registered for on-line transactions will be deemed properly given notice.

## 8. CONTINGENCIES.

Neither party hereto will be liable to the other for default or delay in the performance of any of its obligations hereunder (except any obligation to make payments when due) due to act of God, accident, fire, flood, storm, riot, war, act of terrorism, sabotage, explosion, strike, concerted acts of workers, pandemic, epidemic, disease, national defense requirements, governmental law, ordinance, rule or regulation, whether valid or invalid, extraordinary failure of equipment or apparatus, inability to obtain

electricity or other type of energy, feedstock, raw or finished material from normal sources of supply, labor, equipment or transportation, or any similar or different contingency beyond its reasonable control which would make performance commercially impracticable whether or not the contingency is of the same class as those enumerated above, it being expressly agreed that such enumeration is non-exclusive; provided, however, that neither business downturn nor economic conditions will qualify as a contingency within the meaning of this Article. In the event any such contingency affects only a part of Seller's capability to produce and/or deliver any Item, Seller will allocate production and/or deliveries among the requirements of all its contracted customers and Seller's own requirements in a fair and reasonable manner. Buyer will pay or reimburse Seller for any additional costs incurred relating to the delivery of any Item to Buyer during a contingency.

#### 9. HEALTH, SAFETY, INDEMNITY AND LIABILITY.

Buyer acknowledges that there are hazards associated with Items supplied, including, without limitation, the storage, use and handling thereof, and Buyer agrees that it and its agents or personnel if any, concerned with Items are at least 21 years of age and are qualified, trained and aware of such hazards. Buyer assumes all responsibility for the suitability and the results of using Items alone or in combination with other equipment, articles or substances and in any manufacturing, medical, or other process or procedures. Buyer will notify Seller of any hazards and safety procedures at Buyer's delivery sites and of any anticipated construction, renovation, or change in operations in the area of any delivery site so that any hazards associated with same can be minimized. Buyer will warn and protect its employees, contractors and others exposed to the hazards posed by Buyer's storage, use and handling of Items. Seller's Safety Data Sheet(s) are listed at [www.linde.us.com](http://www.linde.us.com) and Buyer will incorporate such information into Buyer's safety program. Buyer hereby waives any right of subrogation that Buyer, any insurer of Buyer or any third party making a claim through Buyer, may have under this Agreement. SELLER WILL NOT BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES (INCLUDING LOST PROFITS, REVENUES, SALES, DIMINUTION IN VALUE, COVER OR OTHER SIMILAR DAMAGES) ARISING IN CONNECTION WITH THIS AGREEMENT OR WITH RESPECT TO ANY DESTRUCTION OF, DAMAGE TO OR LOSS RELATING IN ANY WAY TO BUYER'S PROPERTY USED IN CONNECTION WITH THE PRODUCTS, EQUIPMENT OR SERVICES SUCH AS VACCINES, BIOLOGICAL MATERIALS OF ANY SORT OR SCIENTIFIC RESEARCH, OR ANY OTHER LOSS OR DAMAGE, ARISING IN CONNECTION WITH THE SUPPLY OF PRODUCT, EQUIPEMENT OR SERVICES TO BUYER, IN ALL CASES WITHOUT REGARD TO THE NATURE OF THE CLAIM OR THE UNDERLYING THEORY OR CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, STRICT LIABILITY, EQUITY OR ANY OTHER THEORY OF LAW) ON WHICH SUCH DAMAGES ARE BASED AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Each party will indemnify and hold harmless the other party from and against any and all costs, fees (including reasonable legal fees and expenses), damages, liabilities and claims arising from the injury, illness or death of the indemnifying party's employees in any way related to any activities performed in connection with or Items supplied by Seller or stored, handled or used by Buyer, whether or not such injury, illness, or death is claimed to have been caused by, resulted from, or was in any way connected with the negligence of the party to be indemnified. Seller's liability for any claim of any kind hereunder, whether or not based on contract, tort (including negligence), strict liability, warranty, or any other

grounds, will not exceed the purchase price of the Item or the portion of the purchase price attributable to any part or parts of the Item in respect to which such claim is made.

#### 10. CONFIDENTIALITY.

All order terms, specifications, operating data, drawings, designs, pricing, costs and other confidential information furnished by Seller to the Buyer in connection with this Agreement are the proprietary and confidential information of Seller. Such information is considered valuable trade secrets of Seller and Buyer will hold all such information in confidence. Any unlawful disclosure of such information may result in significant damages to Seller.

#### 11. ASSIGNMENT.

Any assignment of this Agreement by either party without the prior written consent of the other party, which consent will not be unreasonably delayed or withheld, will be void; provided, however, that Seller will have the right without Buyer's consent to assign this Agreement in whole or in part to any affiliate of Seller, or any party obtaining all or substantially all of the business assets of Seller related to the production, storage or distribution of any Items. This Agreement will inure to the benefit of, and be binding upon, the respective heirs, representatives, successors, including any by way of merger or consolidation, and permitted assigns of the parties.

#### 12. NOTICES.

All notices, unless otherwise provided herein, will be in writing and deemed given on the date the notice is hand delivered, or mailed or on the first business day following the date electronically transmitted to the receiving party at such party's designated address. Via U.S. Mail: ECommerce Director, Linde Gas & Equipment Inc., 10 Riverview Drive, Danbury, CT, 06810. Via email: LindeDirect@Linde.com. Buyer's address is that given in the on-line /site registration and ordering process to which this Agreement applies.

#### 13. DISPUTE RESOLUTION.

In the event that a party to this Agreement has reasonable grounds to believe that the other party hereto has failed to fulfill any obligation hereunder, or that its expectation of receiving due performance under this Agreement may be impaired, such party will promptly notify the other party in writing of the substance of its belief. The party receiving such notice must respond in writing within thirty (30) days of receipt of such notice and either provide evidence of cure of the condition specified, or provide an explanation of why it believes that its performance is in accordance with the terms of this Agreement, and also specify three (3) dates, all of which must be within thirty (30) days from the date of its response, for a meeting to resolve the dispute. The claiming party will then select one (1) of the three (3) dates, and a dispute resolution meeting will be held. If the parties cannot, in good faith discussions, resolve their dispute, they will be free to pursue all remedies allowed under the law without prejudice.

#### 14. APPLICABLE LAWS.

This site is operated by Seller from within the United States of America. Seller makes no representation that the site materials are appropriate or available for use in other locations, and access to them from territories where their contents are illegal is prohibited. Those who choose to access this site from other locations do so at their own risk and are responsible for compliance with any applicable local laws. Buyer may not use or transfer the materials in violation of U.S. export/import or other law and regulations. This Agreement, as well as any claim, controversy or dispute arising under or related to this Agreement, will be governed by the laws of the State of New York, without reference to its conflict of laws provisions which would render applicable the laws or any other jurisdiction. Buyer and Seller hereby waive to the fullest extent permitted by law any right to a trial by jury in any action or proceeding based upon, arising out of, or in any way relating to this Agreement.

#### 15. GENERAL.

This Agreement is limited strictly to the on-line purchases identified herein and does not supersede or amend any prior agreement or agreements between Buyer and Seller covering the supply of products to Buyer's sites. By using this site, Buyer agrees to be bound by all the terms and conditions of this Agreement, and the Legal Notice and Privacy Statement linked hereto as modified from time to time by Seller; should the site user not agree, do not use this site. There are no other promises, representations or warranties affecting this Agreement, and any other or different terms or conditions in any purchase orders or other documents issued or accepted hereunder will be deemed null and void. No modification or waiver of this Agreement will bind Seller unless expressly set forth in writing and signed and accepted by an authorized representative of Seller. A waiver of any of the terms and conditions hereof will not be deemed a continuing waiver but will apply solely to the instance to which the waiver is directed. The provisions of this Agreement are severable and if any one or more such provisions shall be determined to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of any of the remaining provisions or portions thereof shall not in any way be affected thereby. Any headings contained in this Agreement are used only as a matter of convenience and reference, and are in no way intended to define, limit, expand or describe the scope of this Agreement. Buyer's obligations under Section 3, 5, 6, 9, 10, 14 and 15 will survive the termination of this Agreement.

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