

AIR PRODUCTS AND CHEMICALS, Inc.
STANDARD TERMS AND CONDITIONS
FOR
PROJECT EQUIPMENT AND MATERIALS PURCHASES
(NORTH AMERICA)

Revision: 15 Date: 29 July 2015

1. ACCEPTANCE

This order, including these terms and conditions and any additional specifications, terms and conditions incorporated herein and attached hereto, constitutes the sole and entire agreement between the parties. This order shall be binding upon the parties either upon receipt of Seller's acknowledgment of its acceptance hereof or commencement of its performance of the work contemplated by this Order. No terms or conditions contained in Seller's acknowledgment or other communication shall bind Buyer unless expressly accepted by it in writing. The agreement of sale resulting from the acceptance of this Order shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania. In case of inconsistency between the documents Seller will revert to Buyer for written clarification.

2. DELIVERY

Unless otherwise specified in the Purchase Order, the goods shall be delivered by Seller DDP (intra EU movements) or DDU (external to EU movements) to the destination named by Buyer when and in a manner specified by Buyer. Any trade term in the Purchase Order shall have the meaning given to it by Incoterms (2010). Risk of loss shall pass to Buyer upon delivery; title to the goods shall pass to Buyer upon Buyer's acceptance of the goods. All deliveries are to be made as specified in the Purchase Order, and where such specification is not given, then when and as specified by Buyer. Immediately upon shipment, Seller is to provide shipping confirmation to Buyer's Expediting Department, advising complete shipping and routing information. Acceptance of any part of the Purchase Order shall not bind Buyer to accept future shipments, nor deprive Buyer of the right to return goods already accepted.

3. PACKING

One copy of the detailed Packing List is to be forwarded to Buyer's Expediting Department. All shipments will be packed, bundled and crated in accordance with standard commercial practice for domestic or export shipment as applicable. No charge will be allowed for packing, crating, drayage or storage unless stated herein.

4. CHANGES

No changes or modification to this Order shall be binding unless made or accepted by Buyer in the form of a written Change Order. Buyer reserves the right to make changes in the Order at any time, subject to mutually agreeable adjustments of the contract.

5. CANCELLATION

- a) Buyer shall have the right to terminate this Order in whole or in part at any time by written or telegraphic notice. In the event of termination other than for default by Seller, and only in such event, if Seller at the

time of such termination shall have in stock or on firm order any raw, semi-processed, or completed materials for use in fulfilling this Order, then (1) in the case of completed materials Buyer may, at its option, either require delivery of all or part of the completed materials and make payment therefore at the agreement price, or portion of the agreement price fairly allocated for the completed items, or (without taking delivery thereof) pay Seller the excess, if any of the agreement price over the market price at the time of termination; and (2) in the case of raw or semi-processed materials, Buyer may, at its option, either require Seller to complete and deliver all or part of said materials at the agreement price or (without taking delivery thereof) pay Seller with respect to such raw materials or semi-processed materials, which are properly applicable to this Order, a portion of the agreement price based on the stage of completion of such materials and reduced by the value of such materials at such stage of completion; and (3) in the case of materials which Seller has on firm order hereunder, Buyer may, at its option, either take an assignment of Seller's rights under such orders or pay the cost, if any, of settling or discharging Seller's obligation under such Order.

- b) The preceding paragraph, a), shall not limit Buyer's right to cancel this order, or any part thereof by reason of Seller's default in failing to comply with any or all of the terms and conditions hereof, in which event Buyer may procure the goods or services called for herein from other sources and Seller shall be liable to Buyer for any excess costs or other damages occasioned thereby.

6. NONDISCLOSURE

Seller shall not make use of drawings, specifications, data and other information furnished to it by Buyer, except in performance of this Order. Upon completion, cancellation or termination of this Order, Seller shall promptly return to Buyer all drawings, specifications, data and other information furnished by Buyer in connection with the performance of this Order, and shall not retain or permit others to retain any reproduction or copy thereof. Seller shall not disclose any such drawing, specification, data or other information to any third party and shall make no further use thereof (or of any information derived there from), either directly or indirectly, without Buyer's prior written consent, except in connection with the performance of this Order.

7. INSPECTION

All goods and work in process may be subject to source, site and final inspection and tests, or all of them, by Buyer. If inspection and tests, whether preliminary or final, are made on Seller's premises, Seller shall furnish, without additional charge, all reasonable facilities and assistance for safe and convenient inspection and tests required by Buyer and/or Buyer's customer, as the case may be. Inspection and approval by Buyer, or failure to inspect by Buyer, shall not relieve Seller of any responsibility or liability hereunder. In the event that any inspection or test hereunder establishes that the quality of Seller's work is unsatisfactory, Buyer shall have the right to instruct Seller to discontinue work until satisfactory corrective action is taken. Seller shall be responsible for corrective costs and shall perform corrective action to meet the agreed upon delivery schedule.

8. WARRANTY

Seller warrants that the goods and services covered by this Order will conform to the specifications, drawings, samples, or other description furnished or specified by Buyer, and except as modified by this Order, will be fit and sufficient for the purpose intended, merchantable, and free from any defects in design, material or workmanship for a period of twelve (12) months after being placed in operation, but not to exceed twenty-four (24) months from date of delivery of goods or completion of the work. If Buyer shall discover any defect or other failure of the goods and services to conform to the warranties in this article, Seller, upon written notice from Buyer, shall promptly correct such defect or nonconformity or re-perform defective or nonconforming services by redesigning, repairing or replacing the defective goods or services to the reasonable satisfaction of the Buyer. Any item of equipment supplied by Seller which is damaged or rendered defective as a result of a defect or other warranty failure shall be similarly repaired or replaced. All costs incidental to such remedial action, including removal, disassembly, transportation and transportation insurance, repair, reinstallation, retesting, reinsertion and re-performance verification as may be necessary to correct the defect or nonconformity and demonstrate that the previously defective goods or services conform to the requirements of this Order, shall be borne by Seller. Replaced or repaired goods and services shall be warranted as provided herein for a period equal to the greater of (1) the balance of the warranty period or (2) twelve months from the date of completion of the repair or replacement.

Seller must designate an emergency point of contact for immediate notification by Buyer of any defect or failure of goods or services. If, within twenty-four (24) hours after notification by Buyer of defect or other failure of the goods and services, Seller fails or refuses to perform promptly the necessary redesign, repair, replacement, re-performance or tests, then Buyer, without waiving any other remedy it may have under this Order or at law or in equity, may perform or cause to be performed the same, and Seller shall reimburse Buyer for all costs incurred by Buyer therefore. Seller shall be excused from its remedial obligations pursuant to this article to the extent it demonstrates that remedial work was made necessary as the result of (a) alteration, accident or abuse by persons other than Seller or those under Seller's direct supervision, or (b) Buyer's material failure to store, handle, install, operate and maintain the goods supplied by Seller in accordance with any operations and maintenance manual or other written instructions supplied by Seller.

Where a defect has arisen during the warranty period, or existed at the date of delivery, but is not then apparent, the Seller's liability will not cease merely because notice of such defect was not given to the Seller within such period.

The warranty provided herein and the remedies provided elsewhere in this Order shall be in addition to those implied by or available at law and shall exist notwithstanding the acceptance by Buyer of all or part of the items with respect to which such warranties or remedies are applicable. This provision shall not limit the effect of any representation or warranty made by Seller in connection with the purchase and sale of the items subject to this Order.

9. LIQUIDATED DAMAGES

In the event that Seller (a) fails to deliver documentation, drawings or equipment meeting the requirements of this order on or before the dates specified or (b) the equipment, when tested in accordance with the performance requirements of this order, fails to meet these performance requirements, Buyer will suffer damages in an amount that is not susceptible to calculation with reasonable certainty. Therefore, any Liquidated Damages set forth in this order represent a reasonable determination of the amount of damages that Buyer will suffer and are not penalties. Seller hereby waives any defense to Buyer's recovery of such liquidated damages on the basis actual damages are ascertainable or that such liquidated damages do not represent a reasonable determination of Buyer's damages or are penalties.

10. ASSIGNMENT

Seller shall not assign all or any portion of the performance of this Order without Buyer's prior written consent.

11. EXCUSABLE DELAYS

Any failure of performance by either party shall not constitute default hereunder or give rise to any claim for damages or otherwise if, and to the extent, caused by an occurrence beyond the reasonable control of the party affected, including, but not limited to, acts of compliance with acts of governmental authority, acts of God, strikes or other concerted acts of workmen, fires, floods, explosions, riots, war or armed conflict declared or undeclared, rebellion and sabotage. The party affected by any such occurrence shall give notice to the other within five (5) working days of its commencement and shall keep the other informed of action taken to terminate the occurrence.

12. ENDORSEMENT

Seller shall not, without first obtaining the written consent of Buyer's Procurement Department, in any manner advertise or publish the fact that Seller has furnished, or contracted to furnish to Buyer, the material and/or services ordered hereunder.

13. TAXES

Federal, State or Local taxes applicable to the goods or services furnished hereunder or the sale, purchase, transportation, use or possession thereof shall be included in the agreement price and separately stated on any invoice rendered to the Buyer. If Buyer furnishes Seller an exemption certificate, or any other similar proof of exemption, with respect to any Federal, State or Local tax included in said invoice, an appropriate adjustment shall be made to the agreement price to eliminate the imposition of such tax upon Buyer.

14. COMPLIANCE WITH LAWS

- a). Seller undertakes to design, manufacture, transport, deliver and sell the equipment in compliance with all applicable statutes, laws, regulations, rules, ordinances, consents, approvals, and any other requirement of any governmental or quasi-governmental entity having jurisdiction where the equipment is to be designed, manufactured, transported, delivered, sold, installed, and operated.
- b) Seller represents that the goods to be furnished or the services to be rendered hereunder have not been or will not be produced or performed and sold in violation of any provisions of the Fair Labor Standards Act of 1938, as amended, the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972, the Rehabilitation Act of 1973, the Occupational Safety and Health Act of 1970, the Toxic Substance Control Act, ERA's requirements for accurate labeling of products using ozone depleting substances as contained at 40 CFR Part 82, Subpart E issued under Section 611 of the Clean Air Act Amendments of 1990, or any other applicable Federal, State or Local law, ordinance, rule or regulation, and Seller agrees to make all stipulations required by such laws.
- c) **Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that the Seller take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.**
- d) The provisions of Federal Acquisition Regulation (FAR) 52.219, "Utilization of Small Business Concerns", 48 CFR 52.219-8 are incorporated herein by reference. Seller shall submit to Buyer a company-wide Commercial Subcontracting Plan, which is updated annually and prepared pursuant to Air Products Corporate Policy on purchasing from Small Business, Small Disadvantaged Business, and Women-Owned Business concerns in compliance with FAR 52.219-9, "Small Business Subcontracting Plan", 48 CFR 52.219-9, for government contracts and subcontracts for Commercial Products exceeding \$650,000 in value.

15. REMEDIES

The remedies herein reserved to Buyer shall be cumulative, and additional to any other or further remedies provided in law or at equity. No waiver of a breach of any of the provisions of this contract shall constitute a waiver of any other breach, or of such provision.

16. INDEMNITY

Seller warrants that the manufacture, purchase, use or sale of goods purchased hereunder do not infringe or contribute to the infringement of any letters patent, trademark or copyright granted by the United States of America or by any foreign country, and agrees to indemnify and save harmless Buyer, its successors, assigns, customers and users of the goods, against any claim, demand, loss, and costs including attorneys' fees, arising out of such infringement; and after notice Seller agrees to appear and defend, at its own expense, any suits at law or in equity arising there from. Seller further agrees to defend, indemnify and save Buyer harmless from and against any claim demand, loss and costs, including attorneys' fees, arising out of injury or property damage to, or the death of, any subcontractor, employee, agent, representative or invitee of Seller or of any subcontractor of Seller while in, on or near the premises of Buyer, however such injury or death may be caused and whether caused or alleged to be caused by the negligence of Buyer or its agents, the condition of the premises or otherwise.

17. INSOLVENCY

Buyer may cancel this Order without liability for the undelivered portion of the items ordered hereunder in the event Seller becomes insolvent, or makes an assignment for the benefit of creditors or there is filed by or against Seller a petition of bankruptcy, receivership, or reorganization proceedings.

18. GOVERNMENT CONTRACTS

When work and/or materials covered by this Order are for use on a United States government contract or subcontract, an acceptance of this Order also constitutes an acceptance of Buyer's "Additional Terms and Conditions Applicable to Government Contracts", which are incorporated herein and made a part hereof.

19. TECHNICIAN SPECIFICATIONS, CODES AND STANDARDS

Unless otherwise expressly specified in any attached or referenced specification or the purchase order, the latest edition of the relevant codes and standards listed therein including any addenda in effect on the date of purchase award shall be considered the governing document(s). Any conflict between the requirements of any attached or referenced specification and other related documents shall be referred to Air Products for clarification and resolution before work proceeds

20. MATERIAL ACCEPTANCE

Seller must comply, at time of purchase order acceptance, with the latest revision of the Buyer's worldwide standard 4WPI-M00001 "General Piping Material Purchase Specification" and 4WGN-20001 "Supplier Quality Requirements" related to "Country of Origin" for qualified or acceptable materials used in fabrication. A copy of these standards is available at: <http://www.airproducts.com/company/supplier-information/general-conditions-of-purchase.aspx>. The use of materials from unqualified countries requires approval in writing from the Buyer.

22. CORRUPTION

a) Seller agrees to uphold Buyer's policy which prohibits the giving or receiving of gifts or personal favors (other than normal business courtesies) to or from anyone in connection with Buyer's business.

b) Seller agrees to abide by Buyer's Code of Conduct in its dealings with Buyer. The Buyer's Code of Conduct is available for review by accessing:

<http://www.airproducts.com/~media/Files/PDF/company/en-IE-conduct-brochure-english-2012.pdf>.

23. Conflict Minerals

Seller represents and warrants that (i) Seller has conducted a review of the goods or materials to be sold hereunder to determine if any of them contain Conflict Minerals (as defined herein, "CM"), (ii) Seller maintains a due diligence program with respect to CM and has conducted due diligence on the country of origin of any CM in the goods or materials sold hereunder, and (iii) the goods or materials sold hereunder do not contain CM except as has been disclosed in writing by Seller to Buyer on a current version of the Conflict Minerals Reporting Template ("CMRT") developed by the Conflict Free Sourcing Initiative ("cfsi"), <http://www.conflictreesourcing.org/>. Seller shall provide prompt written notice to Buyer in the event of any change with respect to the foregoing representations and warranties and shall provide an updated CMRT promptly in the event of any such change and, in any event, each March 1 during the term of this contract. Notices and CMRT(s) shall be sent to Air Products and Chemicals, Inc., 7201 Hamilton Blvd., Allentown PA 18195, Attn: Corporate Secretary. Seller shall "flow down" the requirements of this paragraph to its vendors, supplier and subcontractors and require that they provide similar representations and warranties (and CMRT's) to Seller with respect to any goods and materials that may be included in the goods and materials sold hereunder. Seller shall maintain complete and accurate records with respect to its obligations hereunder for a minimum period of 7 years, and Buyer shall have the right upon written request to inspect and audit such records. For purposes of this paragraph, the term "Conflict Minerals" shall mean gold, columbite-tantalite (coltan), cassiterite and wolframite, including their derivatives, which are tantalum, tin, tungsten or any mineral determine by the Secretary of State of the United States of America to be financing conflict in the Democratic Republic of the Congo or an adjoining country.

Revision #	Description	Approved By	Date
15	Article 23 Added	R. C. Kehoe	29 July 2015
14	Article 14c Updated	V. L. Scott	20 July 2015
13	Article 14c-d Updated	M.W.Connar	24 Mar 2014
12	Incoterm Reference Year Update	M.W. Connar	21 Feb 2013
11	Update of hyperlinks	M.W. Connar	20 Oct 2009

10	Compliance with Laws Update	M.W. Connar	5 Mar 2009
9	Compliance with Laws Update	M.W. Connar	22 Jan 2009
8	Material Acceptance Update	M.W. Connar	6 Nov 2007