

**AIR PRODUCTS TERMS AND CONDITIONS**  
**FOR EQUIPMENT AND MATERIAL PURCHASES**  
**INDUSTRIAL GASES NORTH AMERICA**

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**These Terms and Conditions are an integral part of the Purchase Order which has been transmitted by Buyer to Seller for acceptance by Seller, which acceptance shall be made strictly in accordance with these Terms and Conditions.**

## 1. DEFINITIONS AND PRIORITY OF DOCUMENTS

### 1.1 The following terms shall have the indicated definitions:

“Approved”, when applied by Buyer to Seller’s drawings or other submittals, means that such drawings or other submittals appear to interface properly with Buyer-furnished components under the Purchase Order, and Buyer has not identified any statement or feature that appears to deviate from the requirements of the Purchase Order, including the Documentation;

“Approved as Noted”, when applied by Buyer to Seller’s drawings or other submittals, means that, provided the comments noted by Buyer are incorporated by Seller into Seller’s drawings or other submittals, such drawings or other submittals as revised appear to interface properly with Buyer furnished components under the Purchase Order and, except as noted in Buyer’s comments;

“Buyer” and “Seller” mean the entities named as such in the Purchase Order;

“Change Order Instruction” means an official instruction from Buyer to Seller to incorporate a mutually agreed change to the Purchase Order.

“Documentation” means all drawings, information, Specifications, calculations, parts lists, and manuals to be prepared by Seller as are specified in the Purchase Order or, if not so specified, as are reasonably necessary for the full, proper, and safe installation, use, and maintenance of the Equipment and/or the performance of the Work;

“Equipment” means the goods (including any related Work), the supplies, materials, equipment, reports, documents, drawings and other submittals and all other items that Seller is required to furnish pursuant to the Purchase Order (including furnished pursuant to the Purchase Order and any subsequent changes agreed in accordance with the terms hereof);

“Terms and Conditions” means these Terms and Conditions for Equipment and Material Purchases;

“Liquidated Damages” means applicable damages, if any, to be recovered by Buyer as provided in Section 7;

“Order” means the order form to which these Terms and Conditions are attached, and which contains specific information pertaining to the Equipment and/or the Work (e.g., price and payment and delivery terms), including any project special notes;

“Owner” means the end user of the plant into which the Equipment is to be incorporated and/or where the Work is to be performed, provided that, if the Owner is a subsidiary or controlled affiliate of Buyer, then each reference to “Owner” shall be deemed to be a reference to “Buyer”;

“Price” means the total value of the Purchase Order to be paid by Buyer, as specified in the Purchase Order;

“Purchase Order” means and shall be comprised of the Order, the Specifications, the Documentation, these Terms and Conditions, the Special Conditions (if any), and any other mutually agreed attachments (including any duly adopted variation or change orders, purchasing notes, side agreements), in each case, as each such document may be amended from time to time by the parties in accordance with Section 30.1 of these Terms and Conditions;

“Revise and Resubmit”, when applied by Buyer to Seller’s drawings or other submittals, means that the drawings or other submittals are unsatisfactory to Buyer because they do not interface properly with Buyer-furnished components under the Purchase Order and/or do not comply with the requirements of the Purchase Order, including the Documentation;

“Special Conditions” means, if applicable, those terms and conditions pertaining to the Equipment and/or the Work and the sale and purchase thereof, in addition to these Terms and Conditions that are set forth in a separate document entitled “Special Terms and Conditions” or words to that effect;

“Specifications” means the descriptions and specifications relating to the Equipment and/or the Work contained in the Purchase Order, of which, it shall be deemed an integral part. Unless otherwise expressly specified in any attached or referenced specification of the Purchase Order, the latest edition of the relevant codes and standards listed in 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 specifications and other related documents shall be referred to Buyer for clarification and resolution before Seller proceeds.

“Work” means the work to be performed or provided by Seller, or at the direction of Seller, in connection with the Purchase Order and/or any services necessary for the manufacture and delivery of the Equipment;

- 1.2. In the event of any conflict among the documents comprising the Purchase Order, the order of precedence shall be as follows: (i) the Order, (ii) the Special Conditions, (iii) these Terms and Conditions, (iv) the Specifications, (v) the Documentation, and (vi) any other mutually agreed documents or attachments to the Purchase Order (including any duly adopted variation or change orders, purchasing notes, side agreements). In the event of any conflict between any other mutually agreed documents or attachments to the Purchase Order, the most recent document shall take precedence. Notwithstanding the order of precedence, Seller shall review the Purchase Order and all other documents delivered by or on behalf of Buyer upon Seller’s receipt, and Seller shall promptly notify Buyer in writing of any real or apparent conflicts, discrepancies, inconsistencies, errors, or omissions among such documents. Any Equipment or Work affected by such conflict, discrepancy, inconsistency, error, or omission performed by Seller prior to resolution of the same with Buyer shall be at Seller’s risk. Buyer’s decision on any inconsistencies referred by Seller shall be final.

## 2. ACCEPTANCE OF ENTIRE AGREEMENT; COMMUNICATIONS

- 2.1 The Purchase Order constitutes the sole and entire agreement between the parties. The Purchase Order shall be binding upon the parties upon the earlier of the receipt by Buyer of Seller’s acknowledgment of Seller’s acceptance hereof or commencement of Seller’s performance of the Work hereunder. No terms or conditions contained in Seller’s acknowledgment, acceptance or other communication shall bind Buyer unless expressly accepted by a duly authorized representative of Buyer, in writing. Seller shall check the Order and any other documents comprising the Purchase Order that are submitted to Seller by Buyer, upon receipt thereof. In case of inconsistency between the documents Seller will revert to Buyer for written clarification prior to acceptance.
- 2.2 The Purchase Order shall be in the English language and all documentation related thereto, including without limitation, any documentation to be provided by Seller or its suppliers will also be in the English language, unless specified otherwise in the Purchase Order. All communications in connection with the Purchase Order shall be in English. Seller hereby represents to Buyer that Seller has sufficient knowledge of the English language to understand the Purchase Order fully and to perform all activities hereunder using the English language. Seller shall bear all costs and assumes all risk of any required translation.

## 3. EQUIPMENT/SCOPE OF WORK

- 3.1 Seller shall, strictly in accordance with the Purchase Order, manufacture, supply and deliver to Buyer all the Equipment and perform all the Work required (or reasonably implied or inferred as necessary) in connection with the sale of the Equipment, and perform all other Work as specified herein. No changes or compensation in excess of the Price will be permitted unless agreed in writing by Buyer in a formal amendment to the Purchase Order entered into in accordance with Section 30.1.

- 3.2 The Equipment, the Work and all required, or necessarily implied or inferred Work shall be complete in all respects (except in respects expressly excluded by the Specifications). If any detail shown on drawings that are a part of the Documentation is omitted from the text of the Specifications or vice versa, Seller shall, notwithstanding such omission, supply such detail and shall be deemed to have allowed for the same in the Price.
- 3.3 Unless otherwise agreed in writing by Buyer, all of the Equipment shall be new and unused and shall be designed and manufactured in accordance with the Specifications and the Documentation. Where no standard or codes of practice are specified, the Equipment and all Work shall be in accordance with the generally accepted best codes of practice of the industry concerned.
- 3.4 Seller shall comply with all applicable laws and regulations in connection with Seller's performance of the Purchase Order.

#### 4. DOCUMENTATION

- 4.1 Seller shall prepare and submit to Buyer the Documentation. The Documentation shall be submitted in accordance with the schedule contained in the Purchase Order, or, where no such schedule exists, such that reasonable and adequate time is available for Buyer's review without affecting the delivery date. The cost of such preparation and submission by Seller is included in the Price. Unless the Purchase Order indicates that any such submittal by Seller is to be for Buyer's information only, Buyer, upon receipt of Seller's submittals, shall review and return same to Seller, marked "Approved", "Approved as Noted" or "Revise and Resubmit". Upon receipt of a submittal marked:
  - 4.1.1 "Approved", Seller may proceed with its Work to the extent of and in accordance with the Approved submittal.
  - 4.1.2 "Approved as Noted" and if Seller concurs with Buyer's comments, Seller shall incorporate same and may proceed with its Work to the extent of and in accordance with the Approved as Noted submittal. Seller shall submit to Buyer within fourteen (14) calendar days a revised submittal in which Buyer's comments have been incorporated. If Seller determines that it cannot incorporate Buyer's comments without prejudice to Seller's warranty or other obligations under the Purchase Order, Seller shall so advise Buyer in writing within seven (7) calendar days of its receipt of Buyer's comments, stating the reasons therefor. Seller may proceed with its Work to the extent of and in accordance with the Approved as Noted submittal only upon Buyer and Seller resolving Buyer's comments.
  - 4.1.3 "Revise and Resubmit", Seller shall immediately take all necessary action to revise its submittal in accordance with Buyer's comments, the Purchase Order, the Specifications, and the Documentation and resubmit to Buyer. In no event shall Seller proceed with affected Work until Seller's revised submittals have been returned to Seller marked "Approved" by Buyer or "Approved as Noted" by Buyer (in which case, 4.1.2. above shall apply).
- 4.2 All Documentation shall show, in a suitable legend block, the Purchase Order number and equipment reference number (as applicable) as indicated in the Purchase Order.
- 4.3 Buyer has the right to approve Documentation, but such approval shall not relieve Seller of any of its responsibilities under the Purchase Order. No deviation from or modification to, the Specifications, or documents supplied to, or approved by Buyer will be made by Seller without the prior written agreement of Buyer that specifically references that such deviations or modifications will occur and be permitted by Buyer hereunder.
- 4.4 The Documentation shall be considered a work made for hire and all rights comprised in the copyright thereof shall be owned by Buyer. The Documentation shall not be copied or shown to any third party (other than permitted subcontractors in connection with the Purchase Order) without the prior written consent of Buyer. The Documentation shall only be used by Seller, or such sub-contractors, in fulfillment

of the Purchase Order. For the avoidance of doubt, Buyer may, in Buyer's sole and absolute discretion, transfer ownership of all Documentation to Owner.

- 4.5 The timing of Seller's submittals and Buyer's review shall be in accordance with the schedule set forth in the Purchase Order, or, if no schedule is defined, the parties shall conduct such reviews promptly. The submission of any drawing or other submittal document by Seller to Buyer under the Purchase Order will be certification by Seller that the information set forth therein is accurate in all material respects.

## 5. ASSIGNMENT, SUBCONTRACTING, AND LIENS

- 5.1 Except in respect of goods and services bought or procured in the normal course of Seller's business, Seller will not sub-let or sub-contract any material part of the Purchase Order without Buyer's prior written consent. In any case, no sub-letting or sub-contracting will relieve Seller of any of its obligations under the Purchase Order. To the extent sub-letting or sub-contracting occurs, Seller will ensure that all material provisions of the Purchase Order as such pertain to the portion of the Purchase Order that is the subject of the sub-letting or sub-contracting are incorporated into each sub-order or subcontract, including preserving the rights and benefits of Buyer as further described in Section 5.4. If requested by Buyer, Seller shall supply un-priced, certified copies of such sub-orders and subcontracts to Buyer immediately when issued.
- 5.2 If Buyer nominates one or more sub-contractors to perform certain parts of the Purchase Order, Seller shall employ such sub-contractor(s) to perform such parts unless Buyer agrees, in writing, otherwise.
- 5.3 Seller shall not assign or transfer any, or any part, of its rights or obligations under the Purchase Order without Buyer's prior written consent. Any purported assignment or transfer to which Buyer has not granted its consent will be a breach of the Purchase Order by Seller and will be void and of no effect and shall entitle Buyer, in Buyer's sole and absolute discretion, to seek damages from Seller and/or to terminate the Purchase Order.
- 5.4 Seller shall be obligated to include in any subcontract or sub-order the rights and remedies which are available to Buyer under the Purchase Order, including in particular but without limitation rights and remedies pertaining to termination of the Purchase Order or the Work on whole or in part; access to Seller's premises for purposes of removing equipment, drawings, and semi-finished work; Seller's warranties, and shall include in all such subcontracts and sub-orders the free assignability of such rights and remedies.
- 5.5 Seller shall furnish, as deemed necessary by and in format acceptable to Buyer, partial and/or final lien waivers, affidavits, or other documents required to keep the Equipment and Buyer's property free from liens or claims for liens arising out of the furnishing of the Equipment and/or performing the Work. If any such lien is filed or claim is made, Seller shall remove the lien or defend against any such claim. If Seller fails to remove such lien or claim within seven (7) days after receipt of written notice from Buyer or Owner, Buyer and/or Owner may proceed to remove such lien or claim, and Seller shall pay Buyer or Owner, as applicable, any and all costs and expenses incurred by Buyer and/or Owner in so doing, including reasonable attorneys' fees and court costs incurred.

## 6. DELIVERY AND EXCUSABLE DELAYS

- 6.1 The Equipment shall be delivered by Seller to the destination named by Buyer when and in a manner specified by Buyer and in the manner required in the Purchase Order. All Work shall be performed at destination named by Buyer when and in a manner specified by Buyer and in the manner required in the Purchase Order. Unless otherwise specified in the Purchase Order, any trade term in the Purchase Order shall have the meaning given to it by Incoterms (2020). Unless otherwise specified in the Purchase Order, risk of loss shall pass to Buyer upon delivery, provided, however, that any loss or damage, whenever and wherever occurring, that results from Seller's improper packaging, protection, labeling or crating, shall be and remain the responsibility of Seller. Except as provided below, title shall pass to Buyer upon Buyer's acceptance. Title in all material allocated for inclusion in the Equipment will vest in Buyer when such material is so allocated and has been paid for by Buyer, or is subsequently paid for by Buyer. Seller will

mark such material as the property of Buyer, but such material will remain at Seller's risk until delivered in accordance with the Purchase Order. 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 Purchasing 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.

- 6.2 To the extent the Purchase Order contemplates that progress payments are to be made to Seller, Buyer shall have and shall be entitled to perfect a first priority security interest in the Equipment and/or Work to the extent of the progress payments made by Buyer. To the extent requested by Buyer, Seller shall promptly execute such documents and agreements as may be necessary to effectuate or perfect such a security interest under the applicable laws.
- 6.3 To the extent the Purchase Order contemplates that progress payments are to be made to Seller, Buyer shall be entitled to withhold final payment until Seller: (a) has completed all Work and delivered to Buyer all components of the Equipment, including all drawings, reports, lien waivers and other Documentation specified in the Purchase Order; and (b) has complied with all requirements of and performed all items required by the Purchase Order. All amounts otherwise payable under the Purchase Order may be withheld pending acceptance of the Equipment and/or Work by Buyer and resolution of any defaults, claims, or backcharges filed against Buyer or of any offsets, credits, charges or amounts due to Buyer under the Purchase Order or any other purchase orders, contracts, or agreements. Final payment to Seller shall not relieve Seller of its continuing obligations under the Purchase Order, including any applicable warranty.
- 6.4 The Equipment and all required or necessary Documentation shall be completed and delivered at the time(s) specified in, and otherwise in accordance with, the Purchase Order. Seller shall not deliver any part of the Equipment before the specified delivery date unless Buyer agrees in writing. Seller shall inform Buyer immediately in, or confirm in, writing if it becomes apparent that the specified delivery date will not, or is unlikely to be met.
- 6.5 Any failure of performance by either party shall not constitute default hereunder nor 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, national or official union 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.

## 7. LIQUIDATED DAMAGES

- 7.1 In the event that Seller (a) fails to deliver the Equipment or Documentation, or perform the Work meeting the requirements of the Purchase Order on or before the dates specified, or (b) the Equipment and/or Work, when tested in accordance with the performance requirements of the Purchase Order, fails to meet these performance requirements, Buyer will suffer damages in an amount that is not susceptible to calculation with reasonable certainty. Therefore, the parties agree that the liquidated damages set forth in the Purchase 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 that actual damages are ascertainable or that such liquidated damages do not represent a reasonable determination of Buyer's damages or are penalties.
- 7.2 Seller will be liable to pay liquidated damages for late delivery of Equipment to the extent stated in the Purchase Order. Unless otherwise expressly specified, the rate of liquidated damages for late delivery of Equipment shall be at a rate of 1% of the total Purchase Order per week of delay up to a maximum of 10% of the total Purchase Order. Such liquidated damages may be deducted by Buyer from any monies due to Seller. Payment of said liquidated damages shall be in full and final satisfaction of any financial liability Seller may have to Buyer for such late delivery; provided, however, the remedy of

liquidated damages is in addition to Buyer's right to cancel for Seller's default under Section 15.1 and to exercise the remedy set forth in Section 16.2.

- 7.3 Seller will be liable to pay liquidated damages for late delivery of Documentation as agreed by Buyer and Seller, and as stated in the Purchase Order. The amount of such damages will be clearly defined in the Purchase Order

## 8. VARIATIONS AND CHANGES

- 8.1 Buyer has the right at any time by notice in writing, to direct Seller to add to or omit from, or otherwise vary, the Purchase Order. Where Seller receives any request from Buyer to make a change that would require an alteration to the Price or delivery date (or other milestone), then Seller will advise Buyer in writing within five days giving the total price of such alteration and any change in the delivery date (or other milestone). Buyer will decide whether or not the variation will be carried out and will confirm

Buyer's instructions in writing to Seller in the form of a Change Order Instruction. Seller will take no action in performing the variation in question until such instruction has been given by Buyer. To be effective, each Change Order Instruction must be mutually agreed, in writing, by the parties.

## 9. BUYER'S FREE-ISSUE MATERIAL

- 9.1 If Buyer free-issues any material to Seller for incorporation into the Equipment or Work, Seller shall inspect such material on receipt for signs of damage and for dimensional compliance with any applicable Documentation and Specifications. If Seller finds material is damaged or does not comply with the Documentation or Specifications, it shall immediately inform Buyer in writing. While free-issue material is under Seller's control, Seller shall bear risk of loss, but title to such material shall remain vested in Buyer.

- 9.2 Such free issue material shall be properly marked as property of Buyer and be used by Seller, or its subcontractors solely in connection with the Purchase Order.

## 10. EXPEDITING, INSPECTION AND TESTING

- 10.1 The Equipment and Work will be subject to expediting, source, site and final inspection and testing, by Buyer before, during and after manufacture. Buyer, Owner and their authorized representatives shall have access at all reasonable times to Seller's premises (and those of Seller's subcontractors, if applicable) to expedite, inspect and test the Equipment. Seller will give Buyer at least seven (7) days' notice when any part of the Equipment is ready for inspection or test. Seller, at Seller's own cost, will provide all tools, instruments, apparatus, equipment, utilities, facilities, services and materials for carrying out safe and convenient inspection and tests. In connection with this Section 10, Seller will provide Buyer with reasonable access to Seller's sites and other locations where the Equipment (or components thereof) is kept or where any Work is being performed. If Buyer is required to make additional or extended inspection visits as a result of Seller's non-readiness to perform scheduled tests or Seller's failure to achieve satisfactory test results, all costs and expenses incurred by Buyer in connection therewith shall be reimbursed by Seller.

- 10.2 Buyer will have the right to reject all, or any portion, of the Equipment or Work that, in Buyer's reasonable opinion, is defective or inferior in quality of material, workmanship or design. Seller, at its expense, will immediately replace the rejected Equipment, or the rejected portion, or reperform the rejected Work to meet the agreed delivery schedule, unless in Buyer's reasonable opinion such Equipment or Work, or such portion thereof, can be rendered fit for use within the agreed delivery schedule. No inspection or test made or witnessed, and no release note or other certificate given, by Buyer, Owner or their representatives will relieve Seller of its obligation to deliver the Equipment and to perform the Work in strict accordance with the requirements of the Purchase Order, nor relieve Seller of its liability in the event Seller does not fulfill such obligation.

10.3 To the extent that Buyer requests delivery of Equipment prior to final testing, then Seller will complete such testing after delivery (to the extent feasible), and Buyer shall continue to have all rights and remedies under the Purchase Order, irrespective of whether such testing is completed.

## 11. PROTECTION AND PACKING

11.1 Unless stated otherwise in the Purchase Order, Seller shall provide suitable protection and packing for the Equipment to ensure its safe delivery. The cost of protection and packing, transportation or storage is included in the Price, unless expressly stated otherwise in the Purchase Order. Buyer shall not be required to return any packing material to Seller, unless expressly stated in the Purchase Order. One copy of the detailed packing list is to be forwarded to Buyer's point of contact stated within the Purchase Order.

11.2 All packing materials must comply with all applicable laws of the country of import (including, where applicable, ISPM 15 Standards, which defines regulations related to heat treatment or fumigation).

## 12. IMPORT/EXPORT

12.1 Unless expressly stated otherwise in the Purchase Order, Seller shall apply for and obtain any license required for exporting or importing (as applicable) the Equipment as required to perform the Work or furnish the Equipment and Seller shall be solely responsible therefor. In connection with the foregoing, Buyer will provide Seller pertinent information and documentation reasonably requested by Seller to assist Seller in exporting or importing (as applicable) the Equipment as provided in the Purchase Order. Seller shall be in breach of the Purchase Order and, in addition to all other remedies available to Buyer hereunder, Buyer shall have the right to immediately terminate the Purchase Order for cause pursuant to Section 16.2 if, in Buyer's sole judgment, the export license application(s) is (are) disapproved or unreasonably delayed as a result of Seller's failure or inability to apply diligently for and obtain any applicable license(s).

12.2 Except as may be otherwise expressly provided for in the Purchase Order, if the Equipment is to be shipped and delivered to a country other than the country of origin of the Equipment, Seller shall reimburse Buyer for any costs, including costs associated with delay, incurred by Buyer in the event the Equipment to be so shipped and delivered are delayed or otherwise not permitted by customs or other governmental authority to be imported into the country of destination identified in the Purchase Order because of the failure or inability of Seller to properly prepare or, if applicable, to provide Buyer assistance in preparing, all necessary documentation required for the importation of the Equipment into the country of destination.

## 13. WARRANTY

Seller warrants that the Equipment and the Work (as applicable) will (A) conform to the Purchase Order, including, without limitation the Specifications, will be fit and sufficient for the purpose intended, of satisfactory quality, merchantable, and free from any defects in design, material or workmanship for a period of twelve (12) months after being placed in operation, or twenty four (24) months from date of delivery of the Equipment or completion of the Work, whichever occurs first, (B) be free of defects in title and that the title to the Equipment is marketable and clear and free of any liens, charges or encumbrances whatsoever and the Equipment and (C) the Work will comply with all applicable laws and regulations. If Buyer discovers any defect or other failure of the Equipment or Work to conform to the warranties contained in the Purchase Order, Seller, upon written notice from Buyer, shall promptly correct such defect or nonconformity by redesigning, repairing or replacing the defective portions of the Equipment or reperforming the Work to the reasonable satisfaction of Buyer. All costs necessary or incidental to such remedial action shall be borne by Seller. These shall include but not be limited to costs pertaining to:

- Diagnostics
- Equipment removal, disassembly and reinstallation
- Transportation and transportation insurance
- Repair

- Re-testing of the equipment
- Re-inspection
- Re-performance verification, as may be necessary
- Access to equipment
- Removal and reinstallation of ancillary equipment

13.1 Replaced or repaired parts of the Equipment shall be warranted as provided herein for a period equal to the greater of (A) the balance of the warranty period applicable to the replaced or repaired Equipment, or (B) twelve (12) months from the date of completion of the repair or replacement. If Buyer elects to accept defective or nonconforming Equipment or Work, all costs and expenses incurred by Buyer in connection with such election (including, those expenses incurred as a result of the modification or alteration of the Equipment or Work to make the Equipment or Work conforming) shall be reimbursed to Buyer by Seller, and, if Buyer elects to use such defective or nonconforming Equipment or Work without such modification or alteration, then Seller shall pay Buyer an equitable amount (to be mutually agreed, acting reasonably and in good faith) to account for the defects or nonconformances in the Equipment or Work.

13.2 Seller shall designate an emergency point of contact for immediate notification by Buyer of any defect or failure of Equipment or Work. If within twenty-four (24) hours after notification by Buyer of defect or other failure of the Equipment or Work, Seller fails to perform or where additional time is necessary, fails to commence and pursue with all diligence, the necessary redesign, repair, replacement, reperformance or tests, then Buyer without prejudice to its other rights or remedies, may perform or cause to be performed the same, and Seller shall reimburse Buyer for all costs incurred by Buyer in connection therewith.

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

13.4 Nothing contained in the Purchase Order shall limit any warranty that Seller is deemed to have made by operation of law.

13.5 The rights and remedies for breach of warranty established by the Purchase Order are cumulative and will be freely assignable by Buyer to Owner, in whole or in part, and all such rights and remedies will, to the extent such assignment is made, be enforceable by Owner directly against Seller.

#### 14. INDEMNITY

14.1 Seller warrants that the manufacture, sale, purchase, or use of the Equipment (including the Work) or any part of them will not infringe or contribute to the infringement of any letters of patent, trademark or copyright granted by the United States of America, the United Kingdom or by any other country, and agrees to defend, indemnify and hold harmless Buyer, its successors, assigns, customers and users of the equipment, against any claim, demand, loss, and costs including attorneys' fees, arising out of such infringement or alleged infringement; and after notice Seller agrees to appear and defend, at its own expense, any suits or actions, at law or in equity, arising therefrom.

14.2 Seller shall defend, indemnify and hold harmless Buyer and Owner, and their directors, officers, employees, agents, affiliates, and representatives (the "Indemnitees") from and against any claim, demand, loss, expense, and cost, including legal fees, arising out of (A) personal injury or impairment of health, including death, or (B) any loss of or damage suffered by Seller (or any subcontractor or sub-supplier of Seller, any director, officer, employee, agent, representative or invitee of Seller) to property and any economic harm or loss resulting therefrom, relating in any way to the Purchase Order, however such injury, impairment of health, or death, or property damage or loss, may be caused including, without limitation, where caused by the negligence or other actionable wrongdoing on the part of any Indemnitees or the condition of the premises of Buyer or Owner.

#### 15. SELLER'S DEFAULT

15.1 If Buyer has evidence of Seller's inability to deliver in accordance with the Purchase Order, or if Seller fails promptly to correct any defect or deficiency in the Equipment or Work, or if Seller, in Buyer's reasonable opinion, is not making sufficient progress to ensure completion by the delivery date stated in the Purchase Order (or, if such date has passed); or, if Seller has refused to carry out the reasonable instructions of Buyer; or if Seller has breached any provision of the Purchase Order, then Seller shall be in default and Buyer may give Seller written notice thereof. If Seller has not cured the default (nor taken all reasonable steps towards curing the default) within five (5) days following the date of issue of such written notice of default, Buyer shall, in addition to all other remedies available to Buyer hereunder or at law or in equity, be entitled to terminate the Purchase Order, in whole or in part, in accordance with the terms of Section 16.2.

## 16. TERMINATION

### 16.1 Termination for Convenience

- 16.1.1 Buyer shall have the right, at any time in Buyer's sole discretion, to terminate the Purchase Order, in whole or in part, for Buyer's convenience, by giving written notice to Seller specifying the extent to which the Purchase Order is terminated and the effective date of such termination. On the effective date of the termination, Seller shall discontinue the manufacture of the Equipment and/or performance of the Work (as applicable) to the extent specified by Buyer, but Seller shall continue to manufacture the Equipment and/or perform any portion of the Work (as applicable), to the extent not terminated.
- 16.1.2 In the event of termination by Buyer under this Section 16.1, Seller and its suppliers shall place no further purchase orders or other commitments relating to the Equipment or the Work, except as may be necessary for the completion of any portion of Equipment or the Work (as applicable) that has not been terminated. Upon request by Buyer, Seller shall promptly provide Buyer a list of all outstanding purchase orders and other commitments that pertain to the performance of the terminated Equipment or Work (as applicable) and shall furnish Buyer with complete copies thereof. Seller shall, unless otherwise directed by Buyer in writing, preserve and protect any components of terminated Equipment or Work (whether completed or in progress) existing as of the termination, pending Buyer's instructions. With respect to the terminated Equipment and Work, Seller shall promptly make every reasonable effort to cancel associated purchase orders and other commitments upon terms satisfactory to Buyer, or Seller shall take such other action with respect to same as may be directed by Buyer.
- 16.1.3 Seller, if, and to the extent requested to do so by Buyer, shall promptly assign to Buyer, or Owner, in form and content satisfactory to Buyer, Seller's rights, title and interest to any components of terminated Equipment or Work (in each case, whether completed or in progress) existing as of the termination, or shall otherwise dispose of same in accordance with Buyer's written instructions.
- 16.1.4 Should Buyer not request the assignment of components of the Equipment and/or Work pursuant to Section 16.1.3 and if such components of the Equipment and/or Work include items that are standard stock equipment, components or materials of Seller or its suppliers, then Buyer shall have no obligation to make payment for such components of Equipment and/or Work so terminated. Also, should Buyer not request the assignment of components of the Equipment and/or Work pursuant to the above Section 16.1.3 and if such components of the Equipment and/or Work do not include items that are standard stock equipment, components or materials of Seller or its suppliers, then any payment to Seller for such Equipment or Work shall be less the salvage value of same.
- 16.1.5 Subject to Seller's compliance with the provisions of this Section 16 and other applicable portions of the Purchase Order, Seller shall recover from Buyer, as complete, full and final settlement for such terminated Equipment or Work, a sum equal to Seller's actual direct cost for the terminated Equipment or Work (as applicable) satisfactorily performed as of the effective date of termination, plus an allowance for reasonable overhead and profit on such direct cost, provided, however, that such a sum does not exceed a proration of the total price of the Purchase Order, commensurate with the ratio that the terminated Work performed or Equipment completed by Seller and accepted

by Buyer as of the effective date of the termination bears to the entire Work and/or Equipment specified under the Purchase Order prior to termination. Any payment to Seller for terminated Equipment Work or hereunder shall be less any amounts previously paid to Seller on account of such terminated Equipment Work or. In addition, Seller shall recover from Buyer Seller's reasonable and direct costs incurred to terminate its supplier purchase orders and other commitments. In no event, however, shall the total payment to Seller under the Purchase Order exceed the total Price of the Purchase Order prior to termination.

- 16.1.6 All requests for compensation under any of the foregoing provisions shall be submitted to Buyer in writing with reasonable supporting documentation and evidence supporting Seller's request. In no event shall Seller be entitled to any prospective, anticipated or lost profits or any damages of any type with respect to the terminated portion of the Equipment and/or the Work.

## 16.2 Termination for Default

- 16.2.1 Buyer shall have the right, at Buyer's sole discretion and without prejudice to any other remedy under the Purchase Order or at law or in equity, to withhold further payments to Seller and/or to terminate the Purchase Order, in whole or in part, after having given Seller written notice of default, specifying the extent to which the Purchase Order is terminated for default, if Seller fails to deliver any or all of the Equipment or perform any or all of the Work pursuant to the scheduled required dates specified in the Purchase Order, or Seller defaults in its performance of any other material obligation under the Purchase Order, and Seller does not cure its failure to deliver or its default in performance within a period of seven (7) days after Seller's receipt of such a written notice of default from Buyer. Upon expiration of the aforementioned seven (7) day cure period, Seller shall discontinue the manufacture of the Equipment and/or performance of the Work (as applicable) to the extent specified by Buyer, but Seller shall continue to manufacture the Equipment and perform any portion of the Work (as applicable), to the extent not terminated.
- 16.2.2 In the event of termination by Buyer under this Section 16.2, Seller and its suppliers shall place no further purchase orders or other commitments relating to the Equipment or the Work, facilities or services, except as may be necessary for the completion of any portion of the Equipment or Work (as applicable) that has not been terminated. Upon request by Buyer, Seller shall promptly provide Buyer a listing of all outstanding purchase orders and other commitments that pertain to the performance of the terminated Equipment or Work (as applicable), and shall furnish Buyer with complete copies thereof.
- 16.2.3 Seller, if and to the extent requested to do so by Buyer, shall promptly assign to Buyer, or Owner, in form and content satisfactory to Buyer, Seller's rights, title and interest to (A) any components of terminated Equipment or Work (in each case, whether completed or in progress) existing as of the termination, and (B) any supplier agreements and other commitments to Seller by third parties in connection Seller's performance of the Purchase Order, to the extent requested by Buyer. Buyer, at its option and without waiving any other available remedy under the Purchase Order or at law or in equity, may take possession of any or all components of Equipment or Work (whether completed or in progress, or, delivered to the Project site or on order), or may obtain goods similar to those ordered under the Purchase Order on terms and conditions that Buyer deems appropriate, and may complete the terminated Equipment or Work by whatever method Buyer deems necessary.
- 16.2.4 If Buyer terminates the Purchase Order, in whole or in part, pursuant to this Section 16.2, then, in addition to any other remedies available to Buyer, (A) Buyer shall be entitled to obtain Equipment or Work that was to be supplied or provided under the terminated portion of the Purchase Order from any other source, (B) Seller shall be liable for all costs incurred by Buyer in procuring such substitute Equipment or Work that are in excess of what would have been the cost to Buyer if such Equipment had been supplied or such Work had been performed under the terms of the Purchase Order, and (C) Buyer shall not be obligated to pay Seller in respect of Equipment or Work (or any portion thereof) that has been terminated pursuant to this Section 16.2. Buyer, upon termination

under this Section 16.2, may withhold any further payments to Seller until all Work and Equipment has been completed and installed and Buyer has determined that there are no such excess costs. If excess costs exist, Buyer may apply such withheld payments against such excess costs.

- 16.2.5 If the Purchase Order is terminated under this Section 16.2 and it is later determined by Buyer or adjudged that there was no default, such termination shall be considered to be a termination for convenience and the provisions of Section 16.1 will apply.
- 16.2.6 All requests for compensation under any of the foregoing provisions of this Section 16.2 shall be submitted to Buyer in writing with reasonable supporting documentation and evidence supporting Seller's request. In no event shall Seller be entitled to any prospective, anticipated or lost profits or any damages of any type with respect to the terminated portion of the Equipment or the Work. If Buyer incurs costs in excess of the remaining balance of the Purchase Order price, Seller shall promptly pay to Buyer, after receipt of Buyer's invoice, the amount of such excess. Notwithstanding anything to the contrary, in no event will Buyer be liable to Seller for a total payment under the Purchase Order of a sum that exceeds a proration of the total price of the Purchase Order commensurate with the ratio that the Equipment or Work not terminated (and delivered to and accepted by Buyer) bears to the entire Equipment or Work specified under the Purchase Order prior to termination.
- 16.2.7 If Buyer terminates the Purchase Order, in whole or in part, pursuant to this Section 16.2, then, in addition to any other remedies available to Buyer, Buyer shall be entitled to enter Seller's premises and, notwithstanding any lien, to take possession of and remove therefrom all Equipment, whether complete or not, that has become the property of Buyer pursuant to the Purchase Order. The cost to Buyer of so doing shall at Buyer's option be repaid to Buyer by Seller or shall be deducted from any money due from Buyer to Seller under the Purchase Order.

## 17. SUSPENSION

- 17.1 Buyer shall have the right, at any time and in Buyer's sole discretion, to direct Seller to suspend the manufacture of the Equipment or performance of the Work, in whole or in part, by giving written notice to Seller specifying the extent to which the manufacture of the Equipment or the performance of Work is suspended and the effective date of such suspension. The suspension shall continue for the period of time specified in the written notice. On the effective date of the suspension, Seller shall suspend the production of the Equipment and/or the performance of the Work to the extent that the notice so specifies, but Seller shall continue to manufacture the Equipment and perform any portion of the Work (as applicable), to the extent not suspended.
- 17.2 In the event of suspension by Buyer under this Section 17, Seller shall, at Buyer's request, preserve and protect components of suspended Equipment or Work (whether completed or in progress) existing as of the suspension, pending Buyer's instructions.
- 17.3 If suspension under this Section 17 is due to causes not related to Seller's failure to perform its obligations under the Purchase Order, the scheduled date(s) for Seller's performance, as set forth in the Purchase Order, shall be reasonably adjusted to reflect the length of the suspension, and Buyer shall reimburse Seller for the reasonable and direct additional costs incurred by Seller as a result of the suspension that are documented to the satisfaction of Buyer and that are attributable solely to: (a) the safeguarding or storing of the Equipment or Work (as applicable), including Equipment or Work at Seller's facilities or the facilities of Seller's suppliers, or in transit; and (b) any resultant demobilization and remobilization that is required as a result of the suspension. Adjustment to Seller's scheduled dates for performance and reimbursement of the costs specified in this Section 17.3 shall constitute Seller's sole and exclusive remedies for any suspension elected by Buyer hereunder.
- 17.4 At any time prior to, on or after the effective date of the suspension, Buyer may require Seller to promptly resume performance or production of all or any portion of the suspended Equipment or Work (as

applicable) by giving written notice to Seller authorizing resumption of such suspended Equipment or Work.

17.5 No claim for additional time for performance or for compensation relating to a suspension of Equipment or Work due to causes related to Seller's failure to perform its obligations under the Purchase Order shall be presented by Seller or considered by Buyer.

17.6 Any claim for additional time for performance or for compensation relating to a suspension of Equipment or Work under this Section 17 shall be presented to Buyer in writing with reasonable supporting documentation and evidence supporting Seller's request within ten (10) calendar days after the suspended Equipment or Work has been either resumed or terminated at the direction of Buyer. The failure of Seller to submit a written claim within such period of time shall constitute a waiver of Seller's right to submit a claim relating to suspension hereunder.

## 18. REMEDIES/WAIVER

18.1 The remedies herein reserved to Buyer shall be cumulative, and additional to any other or further remedies provided in law or at equity. Buyer's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or provisions of the Purchase Order at any time shall not in any way affect, limit, modify, waive, or be deemed to affect, limit, modify or waive Buyer's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or provision of the Purchase Order, notwithstanding any course of dealing or custom of the trade.

## 19. NON-DISCLOSURE AND PUBLICITY

19.1 Seller shall not make use of drawings, specifications, data or other documents or information furnished to it by Buyer, except in performance of Seller's permitted work on behalf of Buyer, including, but not limited to, performance under a Purchase Order and/or request for proposal or other solicitation from Buyer. Upon completion, cancellation or termination of the Purchase Order, Seller shall promptly furnish to Buyer all Documentation, and shall return to Buyer or, at Buyer's direction, delete or destroy all information furnished by Buyer in connection with the performance of the Purchase Order, and shall not retain or permit others to retain any reproduction or copy thereof, save for an archival copy of the documentation. If Seller deletes or destroys such information, an officer of Seller shall promptly certify such destruction in writing upon written request of Buyer. Seller shall not disclose any documentation or information furnished by Buyer (including Buyer's name or Owner's name) to any third party and shall make no further use thereof (of any information derived therefrom), either directly or indirectly, without Buyer's prior written consent, except in connection with the performance of the Purchase Order.

19.2 Seller shall not, without first obtaining Buyer's consent, 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.

## 20. ANTI-CORRUPTION / CODE OF CONDUCT

20.1 Seller represents, warrants, and covenants, on behalf of itself and the Seller Group (defined below):

20.1.1 Seller has read, understands, and will comply with all Anti-Corruption Laws. "**Anti-Corruption Laws**" mean any applicable foreign or domestic anti-bribery and anti-corruption laws, regulations, rules, or orders, as amended from time to time, and shall always include for purposes of this Agreement the U.S. Foreign Corrupt Practices Act ("**FCPA**") and UK Bribery Act 2010 ("**UKBA**") as each may be amended irrespective of the location of any performance or nationality or residence of the parties.

20.1.2 No employee, officer, director, representative or agent of Seller, or of any of Seller's parents, subsidiaries, partners, or affiliates (collectively, the "**Seller Group**"), is a "Government Official or Entity". "**Government Official or Entity**" shall include any governmental, military, political or public international organization or entity, or any department, subdivision, agency, or instrumentality of the same, including any state or government-owned or controlled business or

entity, any political party, or any officer, employee, or candidate for office of any of the foregoing, or any person acting for or on behalf of any of the foregoing.

- 20.1.3 Seller Group has not and will not, directly or indirectly, pay, give, promise, or offer (or authorize any of the foregoing) any money, gifts or anything of value to any Governmental Official or Entity or to any other person, or accept or receive any money, gifts, or anything of value, for purposes of: obtaining or retaining business for or with, or directing business to, any person, including, without limitation, Buyer (or its affiliates or agents); influencing any official act, decision or omission of any Government Official or Entity; inducing any Government Official or Entity to do or omit to do any act in violation of its lawful duty; or securing any improper advantage.
- 20.1.4 Except as previously disclosed by Seller to Buyer in writing, (i) there have been no accusations, allegations, claims, investigations, informal inquiries, indictments, prosecutions, charges, or other enforcement actions against the Seller Group relating to bribery, corruption, money laundering, fraud, obstruction of justice, racketeering, or any other legal or ethical violation, and (ii) Seller Group has never violated any Anti-Corruption Law or caused any other party to be in violation of any Anti-Corruption Law.
- 20.1.5 Seller shall promptly notify Buyer in writing in the event that any of the foregoing representations or warranties are not true or are no longer true, or in the event of a breach of any of the foregoing representations, warranties, and covenants. Seller shall reaffirm compliance in writing if requested by Buyer at any time.
- 20.2 Seller will maintain financial books and records that timely, completely, fairly and accurately reflect in reasonable detail all financial transactions, in accordance with all applicable laws, including the Anti-Corruption Laws, and shall maintain such books and records for at least three years after the expiration or termination of the Purchase Order, and Seller agrees that Buyer, or its outside auditors, shall be permitted upon request to audit Seller's books, accounts, records and invoices and accompanying documentation for compliance with any applicable Anti-Corruption Laws. Seller agrees to cooperate fully in any audit or in connection with any investigation regarding any potential violations of the Anti-Corruption Laws in connection with the Purchase Order.
- 20.3 Seller shall ensure that all members of the Seller Group comply with the covenants in this Section. Seller additionally agrees that it shall "flow down", for the express benefit of Buyer (and its affiliates), all of the provisions in this Section to any Seller or subcontractor of the Seller performing work in relation to the Purchase Order. Seller shall ensure that any such Seller or subcontractor agrees to comply with and be bound by the provisions of this Section, and Seller shall be liable to Buyer (and its affiliates) for any violations, breach, or non-compliance by any of Seller's vendors or subcontractors.
- 20.4 Seller understands and agrees that any misrepresentation, breach, or violation under this Section shall constitute a material breach of the Purchase Order entitling Buyer to terminate the Purchase Order for cause and to withhold further performance without prejudice to any other rights or remedies available under the Purchase Order or at law or in equity. Buyer may also suspend performance or withhold payments if it has a good faith belief that Seller has violated, intends to violate, or may have violated any Anti-Corruption Laws. SELLER SHALL DEFEND, INDEMNIFY AND HOLD BUYER (AND ITS AFFILIATES) HARMLESS FROM AND AGAINST ANY CLAIMS, COSTS, LOSSES, PENALTIES OR DAMAGES OF ANY KIND, INCLUDING ATTORNEY FEES, ARISING FROM OR RELATING TO ANY MISREPRESENTATION, VIOLATION OR BREACH BY SELLER OR ANY MEMBER OF THE SELLER GROUP OR ANY PERSON OR ENTITY ACTING ON THEIR BEHALF OF ANY OF THE PROVISIONS UNDER THIS SECTION.
- 20.5 Seller agrees to abide by Buyer's Code of Conduct in connection with the transactions contemplated by the Purchase Order and in its dealings with Buyer. The Buyer's Code of Conduct is available for review by accessing [www.airproducts.com/codeofconduct](http://www.airproducts.com/codeofconduct).
- 20.6 Seller shall abide by the Air Products' Human Rights Policy (available at <https://www.airproducts.com/company/governance/commitment-to-ethical-business/human-rights>) and all

applicable national laws and international treaties concerning human rights, labor rights, and human trafficking and slavery. Consistent with the United Nations Universal Declaration of Human Rights and the International Labor Organization's Declaration on Fundamental Principles and Rights at Work, Seller shall endeavor to prevent, mitigate, and account for the impacts of its activities in connection with the transactions contemplated by the Purchase Order on the human rights of individuals directly or indirectly affected by their supply chains.

Buyer reserves the right to conduct a due diligence review to confirm Seller's compliance with this Section. Seller shall cooperate with any reasonable due diligence requests of Buyer. If Buyer is not satisfied that Seller is in compliance with this Section 20.6, Buyer reserves the right to suspend or terminate the Purchase Order. Buyer does not assume a duty under this Section 20.6 to monitor Seller including, without limitation, for compliance with laws or standards regarding working conditions, pay, hours, discrimination, forced labor, or child labor.

## 21. COMPLIANCE WITH LAWS

- 21.1 Seller undertakes to design, manufacture, transport, deliver and sell the Equipment and perform all Work 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 or where the Work will be performed.
- 21.2 If (a) the Purchase Order is governed by its terms by the laws of the United States of America or one or more of its States, (b) any part of the Work is to be performed in, or Equipment delivered into and out of, the United States, or (c) the Buyer is an entity incorporated in or formed under the laws of the United States of America or one of its States, then
- 21.2.1 Seller represents that the goods to be furnished and 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.
- 21.2.2 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.
- 21.2.3 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.
- 21.3 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.

## 22. HEALTH AND SAFETY

22.1 Seller will provide full information regarding the use for which the Equipment has been designed, and any restrictions and safeguards which should be observed in all stages of its operation. Seller will provide and fix all warning notices that may be required in order to comply with the undertaking set forth in Section 21. Seller will provide adequate safety mechanisms, alarms guarding and protection necessary to protect operating personnel.

## 23. PRICE, PAYMENT, AND TAXES

23.1 Unless expressly stated in the Purchase Order, the Price shall be deemed to include any and all taxes arising from the design, manufacture, transport, delivery, and sale of the Equipment, including without limitation taxes, duties, fees, excises, assessments, and similar government charges howsoever described and howsoever denominated imposed by any governmental entity having jurisdiction over the transactions which are the subject of the Purchase Order and/or the performance of the Work. Such taxes, duties, etc. whether they are a part of the Price or are separately stated in the Purchase Order, shall be separately stated on any invoice submitted to Buyer. If Buyer furnishes Seller an exemption certificate, or any other similar proof of exemption, with respect to any tax, duty, etc. then Seller shall not include such tax on the invoice. Failure to comply with this requirement will result in Seller's invoice being rejected.

23.2 Payments will be made as specified in the Purchase Order.

## 24. TECHNICAL ASSISTANCE

24.1 In connection with the Equipment and the Work, Seller shall provide technical advisors as necessary to assist Buyer or Owner during installation or testing of the Equipment and the Work. Additional terms and conditions pertaining to the provision of such services may be set forth in a separate Purchase Order, at Buyer's discretion.

## 25. BANKRUPTCY AND INSOLVENCY

25.1 If Seller shall: become bankrupt or insolvent; have a receiving order made against it; compound with its creditors; commence a winding up, dissolution, or similar proceeding (such proceeding not being voluntary for the purpose of reconstruction or amalgamation while solvent); carry on its business under an administrative receiver for the benefit of its creditors or any of them; have an administrator appointed; have any distress levied on Seller's goods, then, in any such event, Buyer shall, to the fullest extent permitted by applicable law, have the right to terminate the Purchase Order for cause under Section 16.2 forthwith by notice in writing to Seller or to the administrative receiver, liquidator, administrator or to any person in whom the Purchase Order may become vested, or give such administrative receiver, liquidator, administrator or other person the option of carrying out the Purchase Order subject to providing a guarantee for the due and faithful performance of the Purchase Order up to an amount to be agreed. References to any of the above events shall, in respect of any jurisdiction in which the Seller is located, be deemed to include the legal concept which most nearly approximates it in that jurisdiction.

## 26. CONFLICT MINERALS

26.1 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") provided by the Responsible Minerals Initiative, <http://www.responsiblemineralsinitiative.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 the Purchase Order. 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 seven (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 determined 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.

## 27. GOVERNING LAW; DISPUTE RESOLUTION

27.1 Unless otherwise specified in the Purchase Order, the contract resulting from the acceptance of the Purchase Order shall be construed and interpreted in accordance with (i) the laws of the Commonwealth of Pennsylvania, U.S.A. (without giving effect to its conflict of laws provisions) for orders placed by Buyer or any entity controlled by Buyer and having its principal place of business in the United States of America, and (ii) the laws of England for orders placed by any entity controlled by Buyer and having its principal place of business in a place other than the United States of America. The United Nations Convention on Contracts shall not be applicable.

27.2 If any dispute or difference arises out of or in connection with the Purchase Order which the parties are unable to resolve by negotiation the parties shall, with the assistance of (i) where Pennsylvania law applies, the American Arbitration Association, Commercial Mediation Rules, Philadelphia, PA, and (ii) where English law applies, the Center for Dispute Resolution in London, England, seek to resolve the dispute or difference amicably using an alternative dispute resolution (“ADR”) procedure acceptable to both parties before pursuing any other remedies available to them.

27.3 If either party fails or refuses to agree to or participate in the ADR process or if in any event the dispute or difference is not resolved to the satisfaction of both parties within 30 days after it has arisen, then either party shall have the right to initiate legal proceedings against the other but only in a court located in Pennsylvania, or England, as applicable based on the applicable governing law, it being the intent of the parties that such court shall have exclusive jurisdiction over any legal proceedings initiated by either party against the other in connection with the Purchase Order.

## 28. DEFECT AND NONCONFORMANCE NOTIFICATION

28.1 Seller is responsible for promptly notifying Buyer of all defects and nonconformances that could result in failure of a component resulting in an unsafe operating condition or adversely impact performance.

28.2 Notification shall include at a minimum a clear description of the defect, including all necessary parts affected, serial numbers, part numbers, quantity, dates delivered and Buyer PO.

28.3 Seller shall document and submit for approval a proposed remedy to the defect including the repair, test, and inspection requirements, estimated cost and time required to perform the repair. Buyer shall approve in writing prior to Seller proceeding.

## 29. OBSOLESCENCE

29.1 Seller shall be required to provide any spare parts related to the Equipment and/or Work that has been furnished under the Purchase Order that are manufactured or distributed by Seller as Buyer may elect to purchase from Seller, provided that this election shall not relieve Seller of any of its warranty obligations under the Purchase Order. If Seller or Seller’s subcontractor/supplier intends to terminate or discontinue the production of spare parts related to any Equipment and/or Work that has been furnished under the

Purchase Order, Seller shall give Buyer written notice of its intention to do so in sufficient time to permit Buyer to obtain Buyer's spare parts requirements from Seller or from others. Seller shall provide Buyer, at no cost, the drawings, blueprints and specifications for the fabrication, manufacture, and/or assembly of the spare parts if and as requested by Buyer.

### 30. AMENDMENTS

30.1 The Purchase Order cannot be amended, modified, supplemented, or waived unless stated in writing and signed by authorized representatives of each party. Any purchase orders, acknowledgements, site access documents or other similar documents that are not part of the Purchase Order that are proffered by Seller will have no legal effect and will be deemed intended for record purposes only and will not amend, supplement, modify or waive the Purchase Order or any part hereof.

### 31. CERTIFICATES OF ORIGIN AND SELLER'S DECLARATION

31.1 Upon request, Seller shall promptly provide, free of charge: a Certificate of Origin; (if U.S. origin) a Manufacturer's Affidavit; or, if qualified, a Free Trade Certificate of Origin that states the good(s) originate in a beneficiary country and qualifies for preferential treatment (e.g., Free Trade Agreement Certificates, Long Term Supplier Declarations).

### 32. SET-OFF

32.1 At any time, Buyer is entitled to set-off any amounts Seller owes to Buyer against any amounts Buyer owes Seller (irrespective of whether such amounts arose under this or any other purchase order, contract, or agreement, or otherwise).

### 33. BACKCHARGES

33.1 If Buyer performs or causes to be performed any Work that is the responsibility of Seller under the Purchase Order, Buyer may backcharge Seller for the costs incurred by Buyer in performing such Work (hereinafter "Backcharge Work"). Backcharge Work may arise from Seller's request for Buyer to perform Work that is included within Seller's scope under the Purchase Order or from Work performed by Buyer that is allowable under the terms of the Purchase Order for Work that is within Seller's scope, or for Work performed by Buyer as a result of Seller's non-compliance with the provisions of the Purchase Order or as a result of Seller's acts of omission or negligence.

33.2 Upon identification by Buyer of an actual or anticipated backcharge, Buyer shall issue a backcharge notice to Seller, describing the Backcharge Work to be performed, the scheduled period for performance, the cost or estimated cost to be charged to Seller and other terms Buyer deems relevant. The cost will consist of all direct expenses incurred by Buyer in performing the Backcharge Work, including all labor, material, equipment, and taxes. In addition, an allowance of 25% will be added to total direct costs to cover Buyer's indirect costs, overhead, supervision and administration.

33.3 Seller shall sign and return the notice of backcharge within one (1) day after receipt, prior to commencement of the Backcharge Work. In the event Seller refuses to sign, Buyer may, at Buyer's option, proceed with the Backcharge Work and charge the cost of the Backcharge Work to Seller. Thirty (30) days after commencement of the Backcharge Work or upon completion of the Backcharge Work, whichever occurs sooner, Buyer will invoice Seller for the incurred cost and Seller agrees to promptly reimburse Buyer.