

GENERAL TERMS AND CONDITIONS

FEBRUARY 14, 2007

S.J. Smith Co., Inc. ("Seller") and the customer identified on the front of this invoice ("Buyer"), agree to the following general terms and conditions (the "Terms") which Terms shall amend, supersede, and replace the terms and conditions in Buyer's purchase order, if any:

- INSPECTION.** Buyer agrees to inspect all products, equipment and service work at the time of delivery and to notify Seller of any shortages or defects within 15 days of delivery. No claims for shortages or defects will be accepted after such date.
- TAXES.** Seller's prices for products, equipment or services described on the front of this invoice do not include any taxes, fees or other charges which may be imposed upon the sale, rental or supply of such products, equipment or services by any governmental authority. Unless Buyer has provided Seller with an appropriate tax exemption certificate. Buyer agrees to pay or reimburse Seller upon demand for all such taxes, fees or other charges.
- PAYMENT; INTEREST; ATTORNEY FEES.** All amounts owing to Seller shall be paid at the earlier of the due date indicated on the front of this invoice or 30 days from Buyer's receipt of this invoice. Buyer shall pay Seller interest on any unpaid amount due at the lesser of 1.5% per month of the highest rate permitted by applicable law. If Seller takes legal action to collect any amount due hereunder or to otherwise enforce these Terms, Buyer agrees to reimburse Seller for its reasonable attorney fees and other enforcement expenses, and to pay all court costs in connection therewith.
- EQUIPMENT.** Title to all cylinders or other equipment leased or entrusted to Buyer by Seller and all replacements or substitutions thereto (the "Equipment") shall at all times remain with Seller or Seller's lessors, subject to Buyer's limited, terminable license to use the Equipment strictly in accordance with these Terms. Buyer agrees and warrants to Seller that Buyer shall: (a) inspect the Equipment upon receipt and notify Seller immediately if the Equipment is not in good operating condition; (b) assume all risk of loss or damage to the Equipment upon delivery to Buyer until Buyer, at its expense, returns the Equipment to Seller, (c) ensure that the Equipment remains free and clear of any claim or lien by any third party claiming by, through or under Buyer while the Equipment is in Buyer's care or at any location other than Buyer's premises or the jobsite identified on the front of this invoice ("Site"), or deliver or entrust the Equipment to any third party; (e) at its expense, return any damaged or malfunctioning Equipment to Seller for repairs, (f) not and shall not permit any third party to fill the Equipment with any liquid, gas or solid or make any repair, alteration, modification or improvement to the Equipment, without Seller's prior written consent; (g) furnish Seller with a written report concerning any accident involving the Equipment (in such detail as Seller may require), and make all other reports concerning such accident as may be required by applicable law and (h) if the law requires the user of the Equipment to be licensed, not use or permit the use of the Equipment by an unlicensed person; and (i) at Seller's request, promptly return the Equipment to Seller in the same condition as when it was received by Buyer, ordinary wear and tear excepted (any unearned rent shall be refunded to Buyer by Seller, subject to Seller's right to deduct or set off amounts owed to Seller by Buyer), and Seller shall have no further obligation to supply and products, equipment or services to Buyer thereafter. Buyer grants to Seller and its representatives the right, with or without notice, to enter Buyer's place of business or the Site during regular business hours to inspect or remove the Equipment, and Buyer waives all rights and claims for trespass or conversion and damages caused by Seller or its representatives in recovering possession of the Equipment.
- WARRANTIES.** Seller warrants to Buyer that (a) any compressed gas product supplied hereunder ("Gas") complies with the Compressed Gas Association's Standards; and (b) the services charged to Buyer described on the front of this invoice (the "Services") are free from defects in workmanship for 30 days from the date the Services are performed. If any Gas or Services fails to conform to the foregoing warranty (excluding equipment failures due to flashbacks caused by improper gas pressures), then Seller, at its option, will either supply conforming Gas or perform reasonably equivalent services at no charge to Buyer or refund the purchase price of such non-conforming Gas or Services to Buyer as Buyer's exclusive remedy with respect thereto. The foregoing warranty is exclusive and in lieu of all other warranties as to quality or fitness of all products (including Gas), equipment (including Equipment), or services (including Service), supplied to Buyer by Seller, whether statutory, written, oral or implied, including without limitation, any warranties of merchantability of fitness for a particular purpose, and all such other warranties are hereby disclaimed by Seller. No employee or representative of Seller has the authority to make any representation, promise or agreement which in any way varies or waives any of the provisions of this warranty. Seller honors the manufacturers' warranties on all products that it sells and will assist Buyer in processing a warranty claim with the product manufacturer.
- INDEMNITY.** Buyer agrees to indemnify and hold harmless Seller and the owner of the Equipment (if other than Seller), their respective parent, subsidiary and affiliate companies or entities, and the employees and agents of any of the foregoing (the "Indemnified Parties") from and against any and all claims, damages, losses, expenses, suits, cost (including reasonable legal fees), fines or penalties sustained or incurred by, or asserted against, any of the indemnified Parties which arise or result from or relate to any: (a) negligent or wrongful and or omission of Buyer, its employees, agents or contractors (the "Buyer Responsible Parties") or (b) breach of these Terms by any of the Buyer's Responsible Parties; or (c) violation of federal, state or local law, ordinance, rule or regulation by any of the Buyer Responsible Parties, including without limitation, Occupational Safety and Health Laws, or (d) of Buyer's operations, including the use or storage of products and the use, storage, transportation, or operation of the Equipment or damage (including contamination), injury or loss to the Equipment occurring before Buyer returns the Equipment to Seller.
- INSURANCE.** Until Buyer has returned the Equipment to Seller, Buyer shall maintain and keep in force all risk property insurance on the Equipment for its full replacement value.
- RETURNED GOODS.** Products and other goods may not be returned for credit without Seller's prior written consent. The original invoice must accompany all goods returned for credit and Seller's restocking and handling charges will be imposed on such returned goods. Special order items may not be returned for credit.
- GOVERNING LAW; JURY WAIVER; VENUE.** The laws of the State of Iowa shall govern the interpretation, validity and enforceability of these Terms, excluding Iowa law with respect to conflicts of law. The parties waive any right to a jury trial in any proceeding, action or suit between the parties relating to or arising out of these Terms or any product, Equipment or service supplied by Seller to Buyer and agree: (a) that all court proceedings, actions or suits which may be brought by either party against the other party relating to any of the foregoing shall be brought exclusively in a court of competent jurisdiction in the State of Iowa; and (b) to submit to the exclusive jurisdiction of such court in the event it is named as a party in any such proceeding, action or suit.
- LIMITATION OF ACTIONS.** No suit or claim based on any cause of action, regardless of the legal theory arising out of or in any way connected with these Terms or any products, equipment or services supplied to Buyer by Seller may be brought by Buyer more than one year after such cause of action accrued.
- LIMITATION OF LIABILITY.** In no event shall Seller be liable for any loss of actual or anticipated profits, loss of anticipated business, cost of substitute service equipment or products, downtime costs or delay claims (whether direct or indirect) or for any other special, indirect, incidental or consequential damages arising out of or relating to these Terms or the supply of any services, equipment or products to Buyer by Seller. Under no circumstances shall Seller's liability to Buyer in respect of any products, equipment or services supplied by Seller to Buyer exceed the purchase or rental price of such products, equipment or service.
- WAIVER; SEVERABILITY; REMEDIES.** No agreement or understanding modifying these Terms shall (a) be binding unless given in writing and signed by an authorized officer of the party to be bound thereby; or (b) imply a waiver of that provision for the future or any other provision of these Terms unless the waiver expressly so states. Each of the provisions of these Terms is severable from the others, and the invalidity or unenforceability of any one or more provisions shall not affect the validity or enforceability of the remaining Provisions. The rights and remedies of the parties are cumulative and are not exclusive of any other rights or remedies which the parties would otherwise have under applicable law.
- CONTINGENCIES.** If Seller's performance of its obligations under these Terms is delayed or made impossible or commercially impracticable due to any cause beyond Seller's reasonable control (including without limitation, acts of God, labor disputes, compliance with government laws or regulations, equipment failure, shortages in transportation, inability to obtain necessary labor or raw materials, or delays in the performance of Seller's suppliers). Seller shall have such additional time within which to perform such obligations as may be reasonably necessary under the circumstances and Seller may allocate products, services or Equipment among its customers during such period. Buyer agrees to pay or reimburse services or Equipment among its customers during such period. Buyer agrees to pay or reimburse Seller for any additional costs incurred due to delivery of any Product during a contingency.
- NO RESALE.** Buyer acknowledges that all products are being sold for use and consumption by Buyer and Buyer agrees not to resell, lease or otherwise distribute any such products without Seller's prior written consent.
- STATUS OF PARTIES.** Seller and Buyer are independent contractors; nothing in these Terms is intended, and nothing shall be construed to create, an employer-employee, co-employer, partnership, or joint venture relationship between the parties.
- DELIVERIES.** The quantity of any liquid products delivered hereunder shall be measured in gallons as delivered to the Equipment, and such quantity, in gallons, shall be converted for billing purposes to standard cubic feet. Seller reserves the right to refuse to fill any equipment that in Seller's judgment is unsafe for any reason or fails to comply with any applicable statute rule, regulation ordinance or code. Buyer is responsible for ensuring that Bulk and MicroBulk storage sites are accessible for delivery 24 hours a day, 7 days a week and Buyer Sites without Telemetry must order product a minimum of 48 hours before the desired delivery date.
- INTERPRETATION.** These Terms and any signed Industrial Gas Agreement ("IGA") between Seller and Buyer (including all exhibits or attachments to the foregoing) constitutes the entire agreement between Seller and Buyer and supersedes any previous oral or written communication, understanding or agreement with respect to their subject matter. These Terms and any IGA are intended by the parties to be complementary and should be construed to avoid inconsistencies or conflicts to the extent possible. However, in the event of inconsistencies or conflicts between any provision of these Terms and the provisions of any IGA, the provisions of the IGA shall control. In these Terms, words and defined terms or phrases importing the singular include the plural and vice versa, and the use of any gender is applicable to any other gender.

