

**ROCKFORD INDUSTRIAL WELDING SUPPLY, INC. ("RIWS")**  
**Terms, Conditions & Warranty**

**THESE TERMS APPLY TO ALL ORDERS FOR GASES AND PRODUCTS FROM AND/OR SERVICES PROVIDED BY RIWS. ALL SALES ARE MADE ONLY ON THE EXPRESS UNDERSTANDING AND CONDITION THAT THESE TERMS, CONDITIONS, AND WARRANTY APPLIES TO ANY SALE, LEASE, OR SERVICES; AND THAT INsofar THAT ANY OF THESE TERMS CONFLICT WITH ANY TERMS AND CONDITIONS OF PURCHASER, THEN THESE TERMS SHALL GOVERN. THESE TERMS AND CONDITIONS MAY BE MODIFIED FROM TIME TO TIME WITHOUT FURTHER NOTICE BY RIWS SOLELY BY PUBLICATION OF THE MOST CURRENT VERSION AT WWW.RIWS.COM.**

1. **Applicable Terms.** The acceptance of any delivery of gases, products, or services from RIWS constitutes Purchaser's/Lessee's agreement to the provisions hereof.
2. **Taxes.** Any taxes or additional costs due to the federal, state, or municipal law to which the sales are subject will be paid by the Purchaser. Purchaser will promptly pay to RIWS any and all taxes, fees or charges that RIWS pays, plus interest, in terms of such taxes.
3. **Delivery & Quantity.** Except as otherwise agreed in writing, delivery shall be F.O.B. RIWS's facility. Purchaser is deemed to have agreed to extend delivery date if delay is result of Purchaser's failure to provide in timely fashion information as may be requested by RIWS.
4. **Returns, Changes, and Cancellations.** No returns for gases; any other returns are subject to preapproval by RIWS and are subject to a restocking charge. Special order items may not be returned.
5. **Delays.** RIWS shall not be liable to Purchaser for any default or delay in performance of any obligations hereunder which are due to an Act of God, accident, fire, flood, storm, riot, war, sabotage, explosion, strike, labor disturbance, national defense requirement, governmental law, ordinance, rule or regulation (valid or invalid), inability to obtain electricity or other needed energy form, lack of raw material, labor, equipment or transportation means, or by reason of "Force Majeur" which shall be deemed to mean all other causes or reasons beyond RIWS's reasonable control, which would render performance commercially impractical, whether or not of the same nature as those listed, it being expressly agreed that said listing shall be non-exclusive
6. **Warranties and Remedies.** As to gases or products manufactured directly by RIWS, or services provided directly by RIWS, RIWS warrants that the same will meet RIWS's specifications. As for gases or products not directly manufactured by RIWS, and services not directly provided by RIWS, RIWS makes no warranty of any kind. RIWS reserves the right to check the tests of Purchaser for all rejected gases or products. **THERE IS NO OTHER EXPRESS WARRANTY. ANY AND ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, ARE HEREBY SPECIFICALLY DISCLAIMED AND EXCLUDED BY RIWS.**
7. **Damages.** RIWS shall not be liable under any circumstances for cost of substitute gases or products or services, loss of business, lost profits or goodwill, or any other special, incidental, consequential or exemplary damages arising in whole or in part from any breach by RIWS, **AND ALL SUCH INCIDENTAL AND CONSEQUENTIAL DAMAGES ARE HEREBY SPECIFICALLY DISCLAIMED AND EXCLUDED BY RIWS.** No claim of any kind with respect to the gases or products, or services provided, whether based on negligence, warranty, strict liability or any other theory of law, shall be greater than the price paid by Purchaser for the gases, products or services with respect to which such claim is made.
8. **Security Interest.** RIWS retains a security interest in all gases and products delivered to Purchaser, and the products and proceeds thereof, for the purpose of securing payment of any and all indebtedness of Purchaser to RIWS arising out of the sale of the gases or products, together with all costs and expenses in connection therewith, including, but not limited to, expenses of retaking, preserving, repairing, maintaining, preparing for sale, and selling said collateral as well as reasonable attorney's fees, court costs, and other legal expenses.
9. **Costs, Attorney's Fees, Applicable Law, and Venue.** Any and all claims shall be governed by the laws of the State of Illinois and any action brought relating to the same, or to enforce the terms hereof, shall be brought in the 17<sup>th</sup> Judicial Circuit for the State of Illinois or the United States District Court for the Northern District of Illinois, if

jurisdiction exists. RIWS shall be awarded its costs and attorney's fees incurred in connection with enforcing its right and remedies as to and against the Purchaser.

10. **Indemnification.** Purchaser shall indemnify, hold harmless, and defend RIWS and its employees, agents, successors, officers, and assigns, from any suits, losses, claims, demands, liabilities, costs and expenses (including attorney, consultant, and accounting fees) that RIWS may sustain or incur arising from: (a) Purchaser's use of the gases or products (including, without limitation to, storage, handling and transportation of products); (b) use of the gases or products by a third party with Purchaser's knowledge, with Purchaser's actual or constructive notice, or with Purchaser's authorization; (c) use of the gases or products by a third party without Purchaser's authorization, where such unauthorized use is due in some part to Purchaser's negligent act or omission or willful misconduct; (d) Purchaser's failure to comply with any applicable laws and regulations (including, without limitation, those regarding the export of products or technology abroad, the Toxic Substance Control Act, and the Emergency Planning and Community Right-to-Know Act of 1986, or to obtain any licenses or approvals from the appropriate government agencies necessary to purchase and use the gases or products); or (e) the Purchaser's breach of any of its obligations set forth in these terms or in the agreement. RIWS will provide Purchaser with: (i) prompt written notice of such claim of which RIWS is aware; (ii) control over the defense and settlement of such claim; and (iii) proper and full information and assistance at Purchaser's expense to settle and/or defend any such claim. Notwithstanding the foregoing, Purchaser shall not settle any such claim, suit or proceeding without the written consent of RIWS, which shall not be unreasonably withheld.

11. **Trade Uses, Compliance, Governing Law.** All trade uses and customs of RIWS's industry shall apply to this sale and shall constitute part of the agreement between RIWS and Purchaser to the extent not inconsistent herewith. It is the responsibility of the Purchaser to comply with all relevant reporting obligations under the Emergency Planning and Community Right-to-Know Act of 1986. 42 U.S.C. §§ 11001-11049 (EPCRA, also commonly known as Title III of the Superfund Amendments Reauthorization Act of 1986 (SARA Title III) resulting from the presence of the chemical supplied under the agreement. Further, it is a responsibility of the Purchaser to warn and protect its employees and others exposed to the hazard posed by the Purchaser's storage and use of the gases or products. Except as modified herein, the Illinois Uniform Commercial Code shall govern this transaction. Typographical and clerical errors are subject to correction.

12. **Modifications and Severability.** These terms and conditions may be modified from time to time without further notice by RIWS solely by publication of the most current version at [www.RIWS.com](http://www.RIWS.com). No additions, modifications, or changes of the foregoing terms by Purchaser in connection with any order relating hereto shall be binding upon RIWS unless specifically agreed to by RIWS in writing. If any provision hereof shall be deemed unenforceable, such unenforceability shall not affect the validity and enforceability of other provisions hereof, unless such unenforceability shall destroy the underlying business purpose of these terms and conditions.

13. **Payment Terms.** Purchaser shall pay all invoices net thirty (30) days from date of invoice, unless otherwise agreed in writing executed by both parties hereto. Purchaser agrees to pay on any invoice not paid within said time a FINANCE CHARGE computed by a periodic rate of 1.5% per month, which is an ANNUAL PERCENTAGE RATE of 18%. Invoices shall be deemed accurate and correct unless Purchaser notifies RIWS in writing within 10 days from the invoice date stating the specific inaccuracy. All credit is subject to prior approval by RIWS.

14. **Liability.** Purchaser acknowledges associated hazards with the use of products and gases and agrees that all its personnel assumes all responsibility for the warning of its employees, personnel and independent contractors of all hazards to persons and property in any way connected with products and gases. Purchaser also assumes all responsibility for the results of using products or gases in combination with other articles and/or substances and in any manufacturing process it now or in the future may use.

15. **Assignment.** Purchaser may not assign this agreement without the prior written consent of the RIWS, which may not be unreasonably withheld.

16. **Impaired Credit.** RIWS may terminate this agreement upon written notice to Purchaser; (1) if a petition is filed seeking relief under federal bankruptcy law or any other federal, state or insolvency statute; (2) if Purchaser seeks a non-judicial reorganization, dissolution, readjustment or similar relief; (3) if a receiver is appointed or assignment for the benefit of creditors is made; (4) if in RIWS's sole opinion, Purchaser is insolvent or credit is impaired.

17. **Shortages.** Any claim of Purchaser for shortage of gases or products shall be made in writing within ten (10) days after receipt of delivery, and Purchaser's failure to timely provide such notice shall be deemed a full and complete waiver of any and all claims relating to such shortage.

18. **Cylinders and Other Equipment.** Title to all cylinders or other equipment leased or rented to Purchaser by RIWS and all replacements or substitutions thereto (the "Equipment") shall at all times remain with RIWS and is subject to Purchaser's limited, terminable license to use the Equipment strictly in accordance with these terms. Purchaser agrees and warrants to RIWS that Purchaser shall: (a) inspect the Equipment upon receipt and notify RIWS immediately if the Equipment is not in good operating condition; (b) assume all risk of loss or damage to the Equipment upon delivery to Purchaser until Purchaser, at its expense, returns the Equipment to RIWS; (c) ensure that the Equipment remains free and clear of any claim or lien by any third party; (d) at its expense, return any damaged or malfunctioning Equipment to RIWS for repairs; (e) not cause the Equipment to be filled with any liquid, gas or solid or make any repair, alteration, modification or improvement to the Equipment by anyone other than RIWS, without RIWS's prior written consent; (f) furnish RIWS with a written report concerning any accident involving the Equipment (in such detail as RIWS may require), and make all other reports concerning such accident as may be required by applicable law; (g) 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 (h) at RIWS's request, promptly return the Equipment to RIWS in the same condition as when it was received by Purchaser, ordinary wear and tear excepted. In the event the Purchaser fails to fulfill its obligations, RIWS is entitled to immediate possession of the cylinders at any time and without notice to the Purchaser, may reclaim all of its cylinders, whether empty or filled, and wherever located, including Purchaser's place of business and the places of business of Purchaser's accounts. RIWS is not responsible for damages caused by RIWS's reclaiming of the cylinders. Any Equipment not timely returned to RIWS shall be deemed lost. Purchaser shall, upon request, immediately pay RIWS the current market price in effect on the date payment is due, for a lost cylinder plus the cylinder rental charges to the date of payment. If Equipment is damaged while in the possession of Purchaser, the Purchaser is responsible for the cost of repair or current market price of the cylinder as of the date returned, whichever cost is less. The refilling of cylinders, except by RIWS, is prohibited. Purchaser shall keep possession and control of the cylinders at all times until they are returned by RIWS.