

## TERMS OF PRODUCT SUPPLY AND SERVICE AGREEMENT

### Forming part of the Product Supply and Service Agreement Between Linde Canada Inc. ("Linde") and the Customer.

**Agreement** – These terms of the Product Supply and Service Agreement are in addition to other written agreement(s) which may exist between the Customer and Linde (collectively, the "PSS Agreement") for purchase by the Customer of gas in gaseous or liquid form ("Gas"), dry ice and/or welding consumables ("Consumables"), and/or lease of cylinders (collectively, a "Product"). If there is any ambiguity in interpreting these terms or any prior applicable agreement(s), the terms of the PSS Agreement shall govern unless the other agreement is explicitly stated to be in priority to these terms.

**Purchase of Products** – Linde agrees to sell and the Customer agrees to buy the Products described on the face of the delivery ticket, at the prices set out in the PSS Agreement or on the face of the delivery ticket. Within seven days of receipt, depending upon the Product, (Statutory provisions may limit the return of some products e.g. Medical) the Customer may return for credit a stock item that is unused and in its original packaging, but the credit shall be reduced by a restocking charge of 20%.

**Leased or Owned Cylinders** – If the Customer owns a Cylinder, prior to Linde's first filling and at Linde's request any time thereafter, Customer shall provide Linde with proof of ownership. The Customer shall ensure that all the Customer's cylinders delivered to Linde for filling shall be clean and in good repair. Linde may refuse to fill any cylinder owned by the Customer. If the Customer leases Cylinders from Linde, the following provisions apply:

**Lease:** Subject to the terms of the PSS Agreement, Linde agrees to lease the cylinders (the "Cylinders") to the Customer for the term and lease payments set out in the PSS Agreement. The Customer agrees to pay the associated lease payments for the leasing of the Cylinders. The Customer acknowledges that Linde owns the Cylinders and the Customer has no ownership interest in the Cylinders. If the Customer breaches any provision of the PSS Agreement, Linde may terminate the lease of the Cylinders and demand their immediate return.

**Use and Care:** Upon receipt of the Cylinders and until their return to Linde, the Customer shall be responsible for the Cylinders. Without limitation, the Customer shall ensure that Cylinders are not damaged by arc burns, that the surface of Cylinders remain free from oil, and that the valves are not damaged. The Customer shall not permit any person other than Linde or its authorized agent to fill the Cylinders. The Customer shall not loan or transfer the Cylinders to any person. If a Cylinder becomes lost or damaged, the Customer shall notify Linde forthwith and shall pay on demand the cost of replacing or repairing the Cylinder.

**Lease Extension:** If the Customer fails to return a Cylinder at the end of the term or any renewal term, Linde may (but shall not be required to) extend the lease term for the Cylinder for a period equal to the original term or one year (at Linde's option) and may bill the Customer's credit card forthwith following such extension.

**Payment** – Unless the PSS Agreement provides otherwise, payment in full is due upon demand at any time following delivery of the Products to the Customer. Payments from the Customer shall be applied to charges in the following order: interest charges, service charges, and charges for product purchases, from earliest to most recent.

**Late Payment** – The Customer shall pay interest at the rate of 1.5% per month (18% per annum) on any outstanding balance for each day which is late. If an account remains outstanding for 30 days beyond the due date, Linde may bill the Customer's credit card. If a cheque of the Customer is returned unpaid by the bank for any reason, a \$25 service charge will be added to the Customer's account.

**Remedies for Default** – If the PSS Agreement expires or the Customer fails to remit any payment when due, fails to perform any obligations or breaches a covenant given to Linde, whether contained herein or otherwise, is subject to a proceeding in bankruptcy, receivership (including court appointment and privately appointed receivers), insolvency, reorganization, or winding up, becomes the subject of an execution or any process of any court or distress or analogous process, makes a general assignment for the benefit of the Customer's creditors, makes or attempts to make any bulk sale without complying with the provisions of the relevant statute respecting such sales in the jurisdiction in which the Customer is situated, or ceases to carry on business as a going concern, then all amounts due to Linde shall become immediately due and payable without notice to the Customer and Linde may take immediate possession of the Cylinders without demand or other notice and without legal process and without limiting the generality of the foregoing, may collect all debts, accounts, monies and choses in action which may be due or owing to or owned by the Customer respecting the Cylinders or otherwise. For the purpose of removal of the Cylinders, Linde may enter the premises of the Customer and proceed to remove the Cylinders without notice, without judicial process and without being considered guilty of trespass or becoming liable or responsible for any injury to persons or damage to property, and the Customer hereby releases Linde from any claims incurred as a result of such removal. The Customer agrees to pay for all legal costs for recovery of debts, on a solicitor and client basis.

**Liability and Indemnity** – The Customer agrees to release, indemnify and hold harmless Linde and its affiliates from and against any and all claims and demands of any nature whatsoever, for loss or damage to property or injury to persons, including death resulting therefrom, at any time caused directly or indirectly by, or through the presence or use of any goods, Products or Cylinders, except any such loss, or damage resulting from the negligence of Linde, its employees or agents. No claim of the Customer of any kind arising from the PSS Agreement whether or not based on negligence, breach of warranty or condition shall exceed the price paid for Product delivered in the twelve months preceding such claim. Neither party shall be liable to the other for any special, indirect or consequential damages, however caused. Except as provided in the PSS Agreement, no representations, conditions or warranties, express or implied, statutory or otherwise, shall apply with respect to the lease, purchase or sale of goods or Products, without limitation, any representation, condition or warranty as to merchantability, quality or fitness of products for a particular purpose.

**Specifications** – If the purity of the Gas hereunder does not meet the specifications as per this Agreement, or in the absence of any such specifications, does not meet the standards as published by the Compressed Gas Association, the Gas may be rejected by the Customer. Linde shall not be liable to Customer for any claim or loss whatsoever by reason of the Gas or Product not conforming to the said specifications including, without limitation, liability for any special, indirect or consequential damages. The foregoing constitutes Customer's exclusive remedy and Linde's sole obligation with respect to any such claim.

**Advice Given** - It is expressly understood that any advice furnished by Linde with respect to the Gas, the Consumables and/or Products is given gratis and Linde assumes no obligation or liability for the advice given or results obtained, all such advice being given and accepted at Customer's risk.

**Manufacturer's Warranty** – Notwithstanding any other warranty provision, in relation to any items or equipment covered by the PSS Agreement which is not manufactured by Linde, Linde shall provide reasonable assistance to Customer in obtaining the benefit for Customer of any applicable manufacturer's warranty. No claim of any kind with respect to any item or equipment and/or Consumables covered by the PSS Agreement and/or delivered hereunder, whether based on contract, negligence, warranty to the Consumables, strict liability or otherwise, shall be greater than the price paid for the Product and/or Consumable(s) in respect to which such claim is made.

**Hazards** - The Customer acknowledges that there are hazards associated with the Product. Customer assumes the responsibility for warning its employees, agents and independent contractors of all hazards of which it is or may become aware or which are or may in future be disclosed in the SDS to persons in any way connected with the Product and/or Consumable(s).

**Other Provisions** – The PSS Agreement is governed by the laws of the province in which the sales office from which Linde sells Products to the Customer is located. Any provision of the PSS Agreement prohibited by any of the applicable laws, by-laws or regulations of any municipality, province or federal government shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of the PSS Agreement. The PSS agreement is subject to delays and non-delivery caused by strikes, riots, wars, fires, acts of God, accidents, government orders or regulations, curtailment of or failure in obtaining suitable raw materials and other similar or different contingencies beyond the reasonable control of either party.

### SAFETY BULLETIN

The best way to transport Cylinders is in an open truck.

Linde delivers Cylinders – Please enquire about our delivery rates.

Transporting Cylinders in cars or vans may be hazardous – Avoid if possible.

If it is necessary to transport Cylinders in your car or van, ensure that:

- Cylinders are firmly secured;
- Maximum ventilation is maintained in the area where Cylinder is stored (e.g., by keeping windows or storage compartments open); and
- No unsecured items are stored beside Cylinders.

Read the product label to ensure that you have the proper product and have identified the potential hazards and precautions to be taken.

Linde has prepared a brochure summarizing the precautions and safe practices that should be used when handling Cylinder gases – ask for a free copy.