

Matheson Tri-Gas, Inc.

TERMS AND CONDITIONS OF SALE

"MATHESON" means, collectively, Matheson Tri-Gas, Inc. and/or its various affiliates. "PURCHASER" means the buyer, and those in privity with buyer, of the Products from MATHESON.

1. *Sale Terms.* PURCHASER's offer to buy and MATHESON's subsequent sale to the PURCHASER, of the cylinder or specialty gases and/or equipment (the "Product" or "Products") listed in MATHESON's Quotation or PURCHASER's order is expressly subject to and governed by the following terms and conditions. These terms govern PURCHASER's past and future purchases from MATHESON of Products, if those purchases are not covered by another written document that both parties have signed.

2. *Price.* All quotations are subject to the terms and conditions stated herein as well as any additional terms and conditions that may appear on the face of the quotation. In case of a conflict between the terms and conditions stated herein and those appearing on the face of the quotation, the latter shall control. The prices of Products are MATHESON's published prices and/or as stated in the quotation, however, MATHESON reserves the right to change the prices to PURCHASER. All prices are listed F.O.B. shipping point, MATHESON standard domestic packaging, insurance and freight not included. Title and risk of loss for the Products shall pass at the F.O.B. point unless delivered in a MATHESON vehicle. Payments by PURCHASER shall be due net cash fifteen (15) days from the date of MATHESON's invoice. Minimum invoice billing is \$50.00 excluding cylinder deposits. For international shipments, all prices are Ex Works, MATHESON's production or shipping facility, unless otherwise expressly agreed upon and separate pricing and shipping instructions are accepted by MATHESON. Under no circumstances does the sale of any Products include any technical data or proprietary rights of any kind.

3. *Taxes.* The PURCHASER shall pay to MATHESON, in addition to the price or prices specified, the amount of all governmental sales, personal property, excise, import or export duties, or other similar taxes or charges, present or future, that MATHESON may be required to pay or collect from the PURCHASER with respect to the production, sales, transportation or use of any gases or equipment sold or furnished by MATHESON to PURCHASER, except taxes imposed upon or measured by net income and taxes for which the PURCHASER shall have furnished MATHESON with applicable exemption certificates.

4. *Delinquent Accounts.* If MATHESON must make efforts to collect amounts due from PURCHASER, MATHESON shall be entitled to collect as an additional charge all expenses of the collection effort, including (i) reasonable attorneys' and expert witness fees; and (ii) interest on the amount due from the date due at the prime interest rate plus five percent, or up to the maximum rate permitted by law, whichever is less. MATHESON reserves the right to (i) change credit terms to PURCHASER; (ii) cancel; or (iii) delay delivery of Products, in the event PURCHASER fails to make prompt payment therefore, or in the event of an arrearage in PURCHASER's account. MATHESON reserves, and PURCHASER grants to MATHESON, a purchase money security interest in all Products shipped to PURCHASER (and all resulting proceeds) until MATHESON receives payment in full for those Products and any related charges. MATHESON may file a financing statement with appropriate state and local authorities to perfect MATHESON's security interest. At MATHESON's request, PURCHASER will promptly execute all documents necessary to protect MATHESON's interest in the secured property; alternatively, MATHESON may file a copy of these terms and the other applicable contract documents.

5. *Delivery and Cylinder Care.* All gas Products furnished by MATHESON shall be delivered in MATHESON cylinders, FOB shipping point. MATHESON may fill a customer owned cylinder provided such a cylinder and valve satisfies all industry, Compressed Gas Association, State and/or Federal requirements and those of MATHESON. MATHESON cylinders used for the delivery of Products furnished hereunder shall be manufactured in accordance with the rules and regulations of the U.S. Department of Transportation or Transport Canada, as applicable. PURCHASER may not loan or refill any MATHESON cylinder. Whenever the pressure of the compressed gas in said cylinders is reduced to the minimum required working pressure, the PURCHASER shall close the valves of said cylinders before detaching them from the PURCHASER's apparatus and shall return said cylinders, complete with valves closed and all fittings attached, in good condition and repair and with the protective cap in place securely tightened, to the shipping point of MATHESON from which the cylinders were originally shipped to the PURCHASER, with all transportation and delivery charges prepaid by the PURCHASER.

6. *Gas Cylinder Rental Terms.* The PURCHASER shall pay the cylinder rental charge specified in MATHESON's cylinder rental terms (the "Gas Cylinder Rental Terms") in effect and as may be modified from time to time. Products are generally

not returnable; however, if a Product is returnable, in MATHESON's sole discretion, a restocking charge will be applied to all Products accepted for return to MATHESON. No portion of the purchase price will be returned if any returned Product has been used or damaged. No credits will be allowed for gases or equipment returned without MATHESON'S express prior written authorization. Credit memos will be issued when cylinders are returned. Current payments for invoices may be reduced by the amount of each credit memo. When they are so reduced, include the credit memo number with your payment. No reductions in payments will be allowed without reference to a credit memo number. If PURCHASER does not claim credits within one year of issuance of credit memo, the credit shall be deemed void and revert to MATHESON. In the event of termination for any reason, PURCHASER shall purchase any unused or expired non-standard products held in inventory at MATHESON locations specifically for PURCHASER. MATHESON reserves the right to change the Gas Cylinder Rental Terms to PURCHASER.

7. *Cylinder Return.* PURCHASER'S obligation to pay accrued but unpaid cylinder charges shall survive termination and cylinder demurrage charges shall continue to accrue after termination until all MATHESON cylinders have been returned or if not returned, on the date PURCHASER pays MATHESON for the value of such cylinders as provided herein. PURCHASER shall immediately utilize best efforts to return to MATHESON all of MATHESON'S cylinders and other containers (herein collectively called "cylinders"). All cylinders not returned to MATHESON within three hundred sixty-five (365) days of termination shall be deemed lost or destroyed, and PURCHASER shall pay MATHESON the value of the cylinder at MATHESON'S then prevailing applicable cylinder replacement charge. However, if a cylinder so paid for is subsequently returned to MATHESON within an additional three hundred and sixty-five (365) day period, MATHESON shall credit PURCHASER'S account with the amount PURCHASER paid, less expenses and any necessary repair charges incurred by MATHESON.

8. *Purchaser Obligations.* The PURCHASER shall instruct its employees, agents and representatives to comply, and at all times the PURCHASER shall strictly comply, with all applicable federal, state and local statutes, regulations and orders regarding the safe handling, transportation and use of the Products. PURCHASER acknowledges that it understands the hazardous nature of the Products and that PURCHASER shall warn, protect, and train, as appropriate, all employees, customers, and other persons who may be exposed to those hazards. PURCHASER also acknowledges and agrees that MATHESON has provided PURCHASER with all relevant Material Safety Data Sheets and that additional Material Safety Data Sheets are available upon request. PURCHASER is aware that OSHA regulations may require PURCHASER to develop and implement a written chemical hazard communications program for PURCHASER'S employees, customers and/or others with respect to the Products. PURCHASER understands that the Products must not be used without first consulting the Material Safety Data Sheets. PURCHASER shall ensure that all employees, customers, and other persons who might become exposed to the Products receive and refer to copies of the Material Safety Data Sheets. PURCHASER agrees to comply with all U.S. export regulations which control the Products it purchases from MATHESON, including, but not limited to, the Export Administration Regulations administered by the U.S. Department of Commerce and the International Traffic in Arms Regulations administered by the U.S. Department of State.

9. *Termination.* MATHESON may immediately terminate any order upon written notice to the PURCHASER if any proceeding in bankruptcy or for receivership shall be instituted by or against the PURCHASER, or if the PURCHASER shall make an assignment for the benefit of its creditors or shall become insolvent or admit its inability to pay its debts as and when they become due. In addition, MATHESON may immediately terminate upon written notice to the PURCHASER, if the PURCHASER is in breach of any material condition or obligation hereunder and such breach has not been remedied within thirty (30) days (or such longer period as shall be reasonably necessary to effect a cure, provided that all reasonable efforts to effect a cure shall have been commenced within such thirty (30) day period and are continuing) after written notice of such breach has been given to the PURCHASER. Without limiting the generality of the foregoing, for purposes hereof, the PURCHASER shall be deemed to be in breach of a material condition hereof, and no cure shall be permitted, and MATHESON shall be entitled to immediately terminate, if any amount due and owing to MATHESON for Products, cylinder charges, or other goods or services shall be past due for more than thirty (30) days after written notice thereof has been given to the PURCHASER, or if the PURCHASER violates any technical or safety directions given by MATHESON with respect to any Product or breaches Paragraph 8 above. In the event of cancellation

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or termination, for any reason, the full amount of the PURCHASER's order shall be immediately due and owing to MATHESON less MATHESON's ability to reasonably mitigate damages, if at all, however, payment to MATHESON shall be not less than 50% of order value.

10. **Warranty.** MATHESON warrants that the Products when delivered to the PURCHASER shall conform to MATHESON's standard specifications. MATHESON also warrants that the Products shall be lawfully sold to give PURCHASER good title thereto. If any Product delivered hereunder shall not be as warranted, PURCHASER'S sole and exclusive remedy shall be to reject the non-conforming Product and to require MATHESON to repair (if repair is reasonably feasible) or replace it at no cost to the PURCHASER; provided that the PURCHASER shall give MATHESON notice of its claim within thirty (30) days of the date of delivery of the non-conforming Product to PURCHASER or the end user (whichever is earlier) and shall also permit MATHESON to inspect and/or test the Product to confirm that it is non-conforming by returning the Product to MATHESON freight prepaid. This warranty is void for any Product that has been repaired or altered by anyone other than an authorized employee of MATHESON, or that has been subject to corrosion, erosion, abuse, misuse, negligence, accident, or improper installation or operation. In no event shall MATHESON's liability exceed the value of the Product purchased for which a claim is made. THE WARRANTIES AND REMEDIES STATED IN THIS SECTION ARE EXCLUSIVE. ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, ARE HEREBY EXCLUDED.

11. **Indemnification and Limitation.** MATHESON shall not be liable for, and the PURCHASER hereby indemnifies and agrees to defend MATHESON from and against any claims arising from, the death or injury to any persons or damage to any property (i) attributable to the negligence or willful misconduct of the PURCHASER or any end user or of the respective employees or agents of either and whether joint or concurrent; or (ii) the use by the PURCHASER or any end user of any Products in combination with other substances. The PURCHASER shall not be liable for, and MATHESON hereby indemnifies and agrees to defend the PURCHASER, subject to the limitations of Paragraph 10 above, from and against any claims arising from, the death or injury to any persons to the extent attributable to the negligence or willful misconduct of MATHESON or its employees or agents. In no event shall MATHESON or the PURCHASER be liable for any incidental, special, indirect or consequential damages, including, without limitation, loss of profits or business opportunity arising out of any purchase order or its breach, even if advised of the possibility of those damages. Notwithstanding the foregoing or anything to the contrary in PURCHASER's order or any other document, except for personal injury caused by MATHESON's sole negligence, MATHESON's liability for any damages howsoever occurring, whether based in tort, warranty, strict liability, negligence or any other theory of law shall be limited to and not exceed the payment, if any, received by MATHESON for the specific unit of Products or service furnished or to be furnished, as the case may be, which is the subject of any claim or dispute, even if a term of any agreement fails of its essential purpose. PURCHASER agrees the forgoing exclusion and limitation is a reasonable allocation of risk. No action, regardless of form, arising out of, or in any way connected with, the Products furnished by MATHESON, may be brought by PURCHASER more than one (1) year after the cause of action has accrued.

12. **Force Majeure.** Shipping dates are estimates and not guaranteed. Neither party shall be responsible in damages or otherwise for any failure or delay in the performance of any of its obligations hereunder caused by strike, lockout or other industrial disturbance, fire, earthquake, explosion, flood, storm, Act of God, accident, governmental action or regulation, armed conflict, civil disturbance, terrorism, curtailment or failure to obtain sufficient raw material, labor or utilities, machinery or equipment breakdown, lack of transportation or distribution facilities, or any other causes whatsoever (whether or not of the same class or kind as those set forth above) beyond its reasonable control and which, by the exercise of reasonable diligence, it is unable to overcome.

13. **Law.** These terms shall be governed by and construed in accordance with the law of the State of New Jersey, without regard to its law concerning conflict of laws. These terms, together with Product specifications and the applicable quotation by MATHESON, if any, is the entire agreement between the parties with respect to the subject matter hereof and supersedes all existing agreements and understandings, oral or written, relating to the subject matter hereof. No waiver of any breach of any provision hereof shall be deemed to be a waiver with respect to the breach of such provision or any other provision of these terms on any subsequent occasion. Both parties hereto hereby waive all right or entitlement to trial by jury in connection with any dispute that arises out of or relates in any way hereto. All notices required or permitted and all requests for approvals, consents, and waivers must be in writing and must be delivered to the parties at their respective addresses by a method providing for proof of delivery. Any notice or request will be deemed to have been given on the date of receipt.

14. **Controlling Terms of Sale.** MATHESON desires to provide you with prompt and efficient service. However, to negotiate individually, the terms and conditions of each sales contract would substantially impair MATHESON's ability to provide such services. Accordingly, products furnished and services rendered by MATHESON are sold only on the terms and conditions stated herein and notwithstanding any terms or conditions on PURCHASER's order or order acknowledgment form, which are expressly rejected. MATHESON's performance of any contract is expressly made conditional on PURCHASER's agreement to and acceptance of MATHESON's terms and conditions. Commencement of performance, shipment and/or delivery shall not be deemed or construed to be acceptance of PURCHASER's terms and conditions, or any of them. PURCHASER's acceptance of any Product furnished hereunder shall be deemed assent to and acceptance of all the terms and conditions stated herein. MATHESON shall not be bound by any provision in the PURCHASER's orders, confirmation or order acknowledgment notices or other business forms. Any conflict between the terms and conditions of a purchase order, confirmation notice or other business form and the terms herein shall be resolved in favor of the terms herein. No modification of any of the provisions of these terms shall be effective unless made in a writing signed by both parties and specifically identifying the provisions of these terms to be modified. Each term hereof is severable. If a court having jurisdiction determines that any term is invalid or unenforceable under applicable law, that determination will not affect the other terms hereof and/or any contract, as the case may be, which other terms will continue to be enforced as if the invalid or unenforceable terms were omitted.

15. **Surcharges.** Surcharges are intended to cover the increasing costs faced by MATHESON, including, but not limited to, complying with federal, state and local regulations involving the storage, transportation and disposal of hazardous materials, energy/fuel price spikes, loss of local production facilities, raw material or commodity supply dislocations, and other similar or dissimilar events. The amount of the Surcharge may not be specifically related to actual costs incurred by MATHESON, which may vary by the type of product or service, geographic location, and time. The Surcharge, unless specifically identified otherwise, is not a federal, state or local tax and it is not required by any federal, state or local agency or authority. MATHESON retains the entire amount of the Surcharge. See Gas Cylinder Rental Terms for other applicable Surcharges. A hazardous material surcharge of \$14.95 will be added to each invoice. Ozone Depleting Chemicals (ODC's) as defined by the Federal Government shall carry a surcharge per pound. This applies to ODC's that are purchased as pure products as well as those purchased in mixtures.

16. **Confidential Information.** Unless covered by a separate Nondisclosure Agreement executed by the parties, PURCHASER acknowledges that all information and materials which come into PURCHASER's possession or knowledge in connection with its purchase of Products and which is marked, identified, or accepted as confidential or proprietary ("Confidential Information"), consists of confidential or proprietary information the improper disclosure or use of which will be damaging to MATHESON. Therefore, PURCHASER agrees to hold all Confidential Information in confidence, to disclose Confidential Information only to those of its employees having a need to know, not to disclose Confidential Information to any other party, and not to use Confidential Information other than for PURCHASER's performance pursuant to these terms.

17. **Headings.** The headings contained herein are for convenience of reference only and are not intended to have any substantive significance in interpreting these terms.

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