

Terms and Conditions

Air & Gas Solutions LLC

- 1. Acceptance:** All orders are subject to approval and acceptance by Seller. A written acknowledgement sent to Buyer of orders so approved shall constitute such acceptance by Seller. Seller may at any time alter or suspend credit, refuse shipment or cancel unfilled orders when, in Seller's opinion, the financial condition of the Buyer warrants it, when delivery is delayed by fault of Buyer or Buyer is delinquent in any payment. No order accepted by Seller will be subject to cancellations except with Seller's prior written consent. Any such modifications may be subject to a charge as determined by Seller. The terms of this contract shall supersede any conflicting terms contained on Buyer's purchase order or any document or instrument submitted by Buyer.
- 2. Prices, Taxes and Payment:** Minimum order value is \$250. All prices are firm unless otherwise agreed in writing. Seller reserves the right to change the prices and specifications of its Products at any time without notice. Any tariff, tax, duty, custom or other fee of any nature imposed upon this transaction by any international, export, import, federal, state or local governmental authority shall be paid by Buyer in addition to the price quoted or invoiced. In the event Seller is required to prepay any such tax, Buyer will reimburse Seller... Any amount due to Seller that is not paid when due shall bear interest at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is lower, from the date such amount became due until paid in full. Buyer shall be liable for all costs and expenses incurred by Seller in collecting any overdue amounts, including reasonable attorneys' fees and collection costs. If any payment is more than ten (10) days past due, Seller may suspend performance, cancel unfilled orders, declare all amounts immediately due and payable, and/or refuse new orders.
- 3. Payment Terms:** Payment terms shall be net 30 days after receipt of invoice and in accordance with the payment schedule set out on the PO, if any All orders with a total value of \$75,000 or greater and all custom orders, require a 30% downpayment due immediately at the time of order entry. Such orders shall not be released for production or shipment until the required downpayment has been invoiced and received.

The remaining 70% balance shall be paid by Buyer in accordance with the standard payment terms upon receipt of Seller's invoice.

Exception: Orders placed as stock orders under the Distributor Stocking Program, when approved by the Sales Manager, are exempt from the downpayment requirement.
- 4. Delivery and Shipment:** Seller will make every effort to ship the Products or provide the services hereunder in accordance with the requested date provided Seller accepts no liability for any losses or for general, special or consequential damages arising out of delays in delivery. Shipment of all Products shall be F.O.B point of distribution by Seller. Identification of the Products shall occur when they leave Seller point of distribution, at which time title and risk of loss shall pass to Buyer. All shipment costs shall be paid by Buyer and if prepaid by Seller the amount thereof shall be reimbursed to Seller within thirty (30) days after notice of such payment to Buyer.
- 5. Inspections:** Buyer shall inspect all items upon arrival and shall give written notice to Seller within ten (10) days of arrival of any claim for shortage or non-conformance with the terms hereof. If Buyer fails to give such notice, all items shall be deemed to conform, and Buyer shall be bound to accept and pay for items in accordance with the terms hereof.
- 6. Returns:** No product may be returned without Seller's prior written approval. Transportation charges are to be prepaid by Buyer. Returned goods are subject to the Seller's inspection and acceptance. Seller may, at its discretion, either (a) refund to Buyer the amount paid for the returned items, (b) repair the returned items or (c) replace one or all returned items within a reasonable time after Seller determines that the returned goods are not in accordance herewith, and in such event Seller shall not be liable for any damages arising from the defective delivery or delay caused thereby. When expressly authorized by Seller in writing, unused products may be returned to Seller subject to service handling, restocking charges and rebuilding charges to "as new" condition.
- 7. Force Majeure:** Seller shall not be liable for any delays in the delivery of orders, due in whole or in part, directly or indirectly, to fire, acts of God, strike, shortage or unavailability of raw materials, supplies or components, retooling or upgrading of technology by Seller's suppliers, delays of carriers, embargo, government order or directive, or any other circumstance beyond Seller's reasonable control.
- 8. Intellectual property:** As between Seller and Buyer, Seller shall retain and own all patents, copyright, trademarks, trade secrets, and other intellectual property embodied in or associated with the product. Without limiting the generality of the foregoing, Seller shall retain and own all right, title and interest in and to all inventions, discoveries, know-how, works of authorship, drawings, designs, processes, and ideas developed, discovered or conceived by Seller or its employees in connection with the manufacture of the ordered products. No drawings, designs, or anything else provided by Seller shall be deemed to be "work made for hire" as that term is used in connection with the U.S. Copyright Act.
- 9. Indemnification Against Infringement:** Seller agrees to defend, indemnify and hold harmless Buyer for a claim by any third party alleging that any product or service furnishes by Seller hereunder infringes any United States patent, trademark, or copyright. Seller's obligations in this Section are conditioned upon Buyer promptly (i) notifying Seller in writing of the third party's claim; (ii) giving Seller full authority to control the defense and settlement of the suit or proceeding; and (iii) providing Seller with full information and reasonable assistance at Seller's expense. Seller shall ensure that no such settlement intending to bind Buyer shall be entered into without Buyer's prior written consent, which consent shall not be unreasonably withheld or delayed. In case the product (or any portion thereof) as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Seller will, at Seller's option and expense: (i) procure for Buyer the right to continue using the product; (ii) replace the product with substantially equivalent non-infringing product; (iii) modify the product so it becomes non-infringing; or (iv) take back the product and refund or credit monies paid by Buyer to Seller for such product less a reasonable allowance for use. Seller will have no duty or obligation to Buyer under this Section to the extent that the product is (i) supplied according to Buyer's design or instructions wherein compliance therewith has caused Seller to deviate from Seller's normal designs or specifications, (ii) modified, (iii) combined with items, systems, methods, or processes not furnished by Seller and by reason of said design, instruction, modification, or combination a claim is brought against Buyer. If by reason of such design, instruction, modification or combination, a claim is brought against Seller or its Affiliate, Buyer shall protect Seller and its Affiliate in the same manner and to the same extent that Seller has agreed to protect Buyer under the provisions above in this Section. THIS SECTION 8 STATES SELLER'S AND ITS AFFILIATES' EXCLUSIVE LIABILITY FOR INFRINGEMENT OF ANY THIRD PARTY'S PATENT, COPYRIGHT AND/OR TRADEMARK.
- 10. Repairs, Alterations and Modifications:** Any repairs made out of warranty to the products shipped by the Seller shall be at the expense of the Buyer unless specifically authorized by the Seller in writing. Alterations or modifications to the product involving welding, soldering, drilling or machining by the Buyer are not permitted or approved by the Seller without specific authorization in writing by the Seller. Any unauthorized alterations or modifications by the Buyer will void the warranty.
- 11. Warranty:** Seller warrants its product against defects in workmanship and material for a period (see specific product warranty period) from the date of shipment from Seller or Seller's distributor. Warranty applies under normal use and service and otherwise when such products are used in accordance with instructions furnished by Seller and for purposes disclosed in writing at the time of purchase, if any. Seller's liability under this warranty shall be limited to repair or replacement, F.O.B point of distribution, of any defective products or part which, having been returned to the factory with transportation charges prepaid, has been inspected and determined by the Seller to be defective. THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, OR CONDITIONS, WRITTEN OR ORAL, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES, OR CONDITIONS, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE DISCLAIMED. Correction of non-conformities as set forth herein and in Seller's Warranty Guide shall be Buyer's exclusive remedy and shall constitute fulfillment of all liabilities of Seller whether in warranty, strict liability, contract, tort, negligence, or otherwise with respect to the quality of or any defect in products or associated services delivered or performed hereunder. Under no circumstances shall the Seller be liable to Buyer or any other third party for any loss of profits or other direct or indirect costs, expenses, losses or consequential damages arising out of or as a result of any defects in or failure of its products or any part or parts thereof or arising out of or as a result of parts or components incorporated in Seller's products but not supplied by the Seller.



- 12. Arbitration:** Any and all disputes or controversies arising under, out of or in connection with this contract or the sale or performance of the products shall be resolved by final and binding arbitration in the State of North Carolina. This Agreement and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of products (CISG) shall not apply to this Agreement or any transactions hereunder.
- 13. Trade Compliance:** Buyer confirms compliance with all applicable local and international foreign trade and customs requirements, embargos, and trade sanctions (“Foreign Trade Obligations”), and certifies that neither the Buyer nor its end customers are subject to any Foreign Trade Obligations. Buyer certifies that the items ordered, or any intellectual property rights, know-how or trade secrets related to them, will not be sold or transferred to restricted regions (Iran, North Korea, Syria, Russia, Belarus, Crimea, or contested regions of Ukraine or Russia), nor for any purpose connected with chemical, biological or nuclear weapons, missiles capable of delivering such weapons, nor to any other purpose prohibited by applicable law. Buyer will not take any action that violates Foreign Trade Obligations and will inform Seller immediately of any suspected violations. For the avoidance of doubt, this clause does not provide Buyer any right related to any intellectual property rights, know-how or trade secrets. Seller is not obligated to fulfill orders if impeded by Foreign Trade Obligations and may terminate orders immediately upon indication of such impediments. Buyer shall indemnify Seller for any costs or damages from breaches of this statement.
- 14. General:** Seller reserves the right to make changes in design at any time without incurring any obligation to make such changes in any items previously purchased, whether or not delivered. SELLER’S LIABILITY TO BUYER UNDER THIS AGREEMENT SHALL BE LIMITED TO THE VALUE OF THE PRODUCTS THAT ARE SUBJECT TO SUCH CLAIM. IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR LOST PROFITS OR REVENUES, CLAIMS OF BUYER’S CUSTOMERS OR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES. The failure of the Seller to enforce at any time any of the provisions of this contract, to exercise any election or option provided herein or to require at any time performance by Buyer of any of the provisions herewith shall in no way be construed to be a waiver of any such provisions or the right of Seller thereafter to enforce each and every provision.
- 15. Seller:** For purposes herein, the term Seller shall mean, as applicable, Air & Gas Solutions LLC. For purposes of Sections 7, 8 and 11, the term Seller shall apply to and inure to the benefit of the applicable Seller.

