

CYLINDER GAS AND WELDING PRODUCTS AGREEMENT

THIS AGREEMENT, made as of the _____ day of _____ by and between **LINDE CANADA LIMITED**, having an office at 5860 Chedworth Way, Mississauga, Ontario, L5R 0A2 (hereinafter referred to as "Linde")

and _____ having a location or locations at _____
(Name of Customer)

_____ (hereinafter referred to as "CUSTOMER") hereby agree as follows:
(Address)

1. **PRODUCT**

(a) Linde agrees to sell to the CUSTOMER and the CUSTOMER agrees to buy from Linde upon the terms and conditions herein set forth all the CUSTOMER's present and future requirements of the products listed below ("PRODUCTS") in whatever quantities, and as to gas PRODUCTS ("GASES") in whatever form (e.g., liquid or gaseous), for the CUSTOMER's consumption at the related CUSTOMER location listed below ("CUSTOMER LOCATION"). CUSTOMER shall not purchase from any person or entity any goods or materials for use at the CUSTOMER LOCATIONS that CUSTOMER could substitute for the PRODUCTS. CUSTOMER shall notify Linde if CUSTOMER expands or relocates the operations of a CUSTOMER LOCATION or ADDITIONAL LOCATION (defined in the next sentence). Linde may elect to satisfy CUSTOMER'S requirements, under the terms of this Agreement, for PRODUCTS at a location where CUSTOMER expands or relocates the operations of a CUSTOMER LOCATION ("ADDITIONAL LOCATION"), or at a location where CUSTOMER expands or relocates the operations of an ADDITIONAL LOCATION.

(b) Linde agrees to rent to the CUSTOMER and the CUSTOMER agrees to rent from Linde upon the terms and conditions herein set forth the CYLINDERS (defined in Section 2(a)) and related equipment containing the CUSTOMER's requirements of gas PRODUCTS ("GASES").

PRODUCTS, PRICES AND OTHER CHARGES, AND CUSTOMER LOCATIONS. The PRODUCTS, PRODUCT prices, CYLINDER rental rates and other charges, and CUSTOMER LOCATIONS are as outlined in attached proposal # _____:

*If a PRODUCT is described as "exempt", then it is exempt from Section 4(c).

**If no CUSTOMER LOCATION is listed for a PRODUCT, then the CUSTOMER LOCATION for that PRODUCT is the same as the CUSTOMER address listed in the opening paragraph of this Agreement.

THE TERMS AND CONDITIONS ON THE REVERSE SIDE ARE A PART OF THIS AGREEMENT AND HAVE BEEN READ FULLY BY CUSTOMER.

LINDE CANADA LIMITED

(CUSTOMER NAME)

By:

By:

(PRINT NAME)

(PRINT NAME)

Title: _____

Title: _____

Date: _____

Date: _____

Submitted by: _____

2. ORDERS AND SUPPLY OF PRODUCT

(a) Linde will supply the CUSTOMER's requirements of the GASES in gaseous or liquid form in suitable containers such as gas cylinders, liquid cylinders or dewars or small bulk cryogenic storage vessels (collectively, "CYLINDERS").

(b) The CUSTOMER agrees to give reasonable notice to Linde whenever it expects its consumption of PRODUCTS to increase or decrease beyond usual limits, in order to enable Linde to regulate its production and supply facilities accordingly.

(c) If delivery of any PRODUCTS is at a Linde location, then CUSTOMER shall pick up the PRODUCTS at such Linde location and at such time as Linde advises.

(d) Linde may at any time modify or discontinue selling (or renting) any PRODUCT without notice to CUSTOMER and CUSTOMER shall have no claim against Linde for failure to furnish any PRODUCT.

(e) The performance of Linde's obligations hereunder is subject to and contingent upon flood, strikes or other labour disturbances, fires, accidents, war, delays of carriers, inability to obtain raw materials, machinery breakdown, abnormal demand, failure of normal sources of supply, restraints of government, or any other similar or dissimilar cause beyond Linde's reasonable control. Deliveries made during a strike or other labour disturbance affecting CUSTOMER shall be at CUSTOMER's sole risk. CUSTOMER hereby indemnifies Linde from and against all claims, costs, losses and damages arising out of any such delivery, which are not normally incurred by Linde in the normal delivery of PRODUCT.

3. DELIVERIES

(a) Title to all PRODUCTS sold to the CUSTOMER shall pass to CUSTOMER when loaded F.O.B. Linde's location or F.O.B. CUSTOMER'S LOCATION if Linde delivered the PRODUCTS.

(b) Notwithstanding anything else herein, title to the CYLINDERS shall remain at all times with Linde.

4. PRICES AND PAYMENT

(a) The price(s) per cubic meter of the GASES and per unit of any PRODUCTS comprised of welding or industrial equipment or supplies (collectively, "WELDING PRODUCTS"), shall be as set forth herein.

(b) The amount payable for rental of the CYLINDERS shall be at the rate as specified on the reverse side of this document.

(c) The PRODUCT prices and CYLINDER rent specified herein may be increased by Linde at any time or from time to time, by giving the CUSTOMER at least thirty (30) days prior notice of such increase stating the amount or amounts thereof. The CUSTOMER shall be deemed to have agreed unless, within such thirty (30) days, the CUSTOMER furnishes satisfactory evidence of lower prices or CYLINDER rent for the PRODUCTS affected by an increase ("AFFECTED PRODUCTS") quoted by a bona fide manufacturer or supplier; in which case Linde may for a period of 60 days thereafter, elect in its sole discretion, to:

(i) meet the lower prices or rent as quoted by such manufacturer or supplier;

(ii) reinstate the price(s) or rent in effect under this Agreement at time of said notice; or

(iii) terminate this Agreement with respect to the AFFECTED PRODUCTS.

If Linde elects either (i) or (ii) herein, it shall have the right to extend the term of this Agreement for an additional five (5) year period. However, increases to the PRODUCT prices for PRODUCTS that are identified as exempt from this Section on the reverse side of this document do not, in any case, constitute a price increase as contemplated by this Section.

(d) Any and all taxes, present or future, on the sale, rental or shipment of PRODUCTS hereunder, whether by virtue of Federal, Provincial, Municipal or other law applicable thereto, shall be payable by CUSTOMER and may be added to the price of PRODUCTS hereunder. Linde may also charge CUSTOMER the following charges and fees, and may increase such charges and fees by giving CUSTOMER a notice of the increase: (i) a surcharge for increases in distribution or production costs (e.g., energy and other raw material costs) of PRODUCTS; (ii) a fee for Linde's deployment of its hazardous materials personnel to CUSTOMER's LOCATION, in response to CUSTOMER's request ("Emergency Response Fee"); and (iii) a governmental regulation compliance and environmental fee ("Environmental Fee"). The Environmental Fee results from the costs incurred by LINDE in order to comply with laws and regulations applicable to Linde. However, those costs are difficult to calculate and apportion with precision. Therefore, the amount of the Environmental Fee is not related to actual compliance costs incurred by Linde, which may vary by the type of PRODUCT, service, geographic location, or time. The Environmental Fee is not a tax, and Linde need not collect and pay the Environmental Fee to any government. The taxes, surcharges, and fees described in this Section, and increases or changes to those items, do not, in any case, constitute a price increase as contemplated in Section 4(c).

(e) Where the delivery is FOB a CUSTOMER LOCATION, Linde may charge a delivery fee ("Delivery Fee"). If CUSTOMER requests a delivery FOB a CUSTOMER LOCATION that is not scheduled, then Linde may charge a delivery fee in addition to the Delivery Fee ("Emergency Delivery Fee"). Increases in the cost of fuel required for the transportation and delivery of PRODUCT may increase these fees. No such increases or changes in the foregoing fees constitute, in any case, a price increase as contemplated in Section 4(c).

(f) CUSTOMER shall make full payment to Linde for all accounts rendered by Linde within thirty (30) days of the date of Linde invoice, unless otherwise specified, and all amounts owing thereafter shall bear interest at the lower of the rate of 1.5% per month or the highest rate permitted by law.

(g) In the event CUSTOMER fails to pay any invoices when due, or if Linde reasonably believes that CUSTOMER will be unable to make payment when due, Linde may require the CUSTOMER to pay for deliveries of PRODUCT in advance and pay any outstanding indebtedness before Linde makes any further deliveries. Linde may apply towards the payment of any amount owed to Linde any credit or amount which may be owed by Linde to CUSTOMER.

5. CYLINDERS

(a) CUSTOMER shall not fill or refill any CYLINDER with any gas, liquid or solid, or permit any of them to be so filled or refilled except by Linde and shall promptly return to Linde all empty CYLINDERS, in good condition, with valves tightly closed. Credit will not be given for residual PRODUCT in any cylinder.

(b) CUSTOMER shall at no time part with possession of or dispose of any CYLINDERS. CUSTOMER shall under no circumstances make or cause to be made any repairs or additions to CYLINDERS or their accessories, but if any are returned in a damaged condition or without any caps, fittings or valves, CUSTOMER shall promptly pay LINDE on demand for the actual cost to LINDE of making all necessary repairs and of replacing all missing parts, or Linde's then current replacement value for the CYLINDERS if they are damaged beyond repair.

(c) Linde may at any time demand that CUSTOMER return all CYLINDERS rented to CUSTOMER by Linde. Upon receiving a demand therefor from Linde, CUSTOMER shall return all

CYLINDERS to Linde and shall promptly make payment to Linde, at Linde's then current replacement value, for any or all CYLINDERS which are not returned to Linde within 10 days after demand therefor by Linde. However, ownership of all CYLINDERS so paid for shall remain in Linde, and if such CYLINDERS shall be subsequently returned to Linde by CUSTOMER, Linde agrees to refund to CUSTOMER all amounts paid therefor, less accrued rental for such CYLINDER at the rate specified in Linde's published price list from the date payment was made by CUSTOMER until the date of return thereof to Linde and less the cost of any necessary repairs, except that Linde is not obligated to refund any amount paid by CUSTOMER for a CYLINDER that is damaged beyond repair at the time of its return to Linde.

(d) Linde may at any time, upon reasonable notice, enter the premises of the CUSTOMER to verify the existence and condition of any or all CYLINDERS rented by CUSTOMER.

6. LIABILITY

(a) Linde warrants that all GASES furnished hereunder shall conform to the description thereof published by the manufacturer, supplier, or Linde, as the case may be, at the time of sale. Linde does not make any other express warranty with regard to the GASES, and does not make any express warranty with regard to the WELDING PRODUCTS or CYLINDERS. Linde SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES FOR THE PRODUCTS OR THE CYLINDERS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER'S exclusive remedy for a breach of Linde's warranty for the GASES shall be to receive replacement of the GASES that do not conform to Linde's warranty, or a refund of the purchase price thereof.

(b) Linde SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING ANY LOSS OF BUSINESS, PRODUCTION, OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCTS SOLD HEREUNDER OR ANY CYLINDER RENTED HEREUNDER WHETHER SUCH DAMAGE RESULTS FROM ANY NEGLIGENT ACT OR OMISSION OF LINDE OR IS RELATED TO STRICT LIABILITY. All claims by CUSTOMER having anything to do with any LINDE invoice, any GASES furnished hereunder by LINDE that do not conform to Linde's warranty, or any shortage of PRODUCT or failure to deliver a PRODUCT shall be made in writing within ten (10) days after the delivery thereof, or of the date on which such delivery was to have been made, as the case may be, and failure of CUSTOMER to give such notice shall constitute a complete defense for Linde against all such claims.

(c) CUSTOMER acknowledges receipt from Linde of Material Safety Data Sheets, which describe the PRODUCT. CUSTOMER acknowledges that it has full knowledge of the hazards associated with the storage, distribution and use of the PRODUCT and hereby assumes all responsibility for warning its employees and any third parties exposed to the PRODUCTS of such hazards. CUSTOMER shall indemnify and hold harmless Linde from and against any and all claims, costs, losses or damages of any kind whatsoever, including for loss or injury to property or persons at any time caused directly or indirectly by or through the use, possession or maintenance by CUSTOMER of any PRODUCT or CYLINDER, or the failure by CUSTOMER to make necessary warnings with respect to the hazardous nature of the PRODUCT, other than those claims, costs, losses or damages arising from the negligence of Linde.

7. TERM AND TERMINATION

(a) This Agreement shall commence on the date of execution by both parties and shall continue for a period of five (5) years thereafter, unless terminated earlier in accordance with the provisions herein.

(b) This Agreement shall be deemed to be renewed upon expiration of the original term for a renewal period of five (5) years and for successive renewal periods of five (5) years each thereafter unless terminated by either party upon written notice to the other at least twelve (12) months prior to the end of any such period.

(c) Notwithstanding the above, Linde may discontinue further shipments or cancel the Agreement immediately by written notice to the CUSTOMER, should the CUSTOMER fail to perform any of its obligations to Linde, whether arising under this Agreement or any other existing agreement or contract or otherwise, or should the CUSTOMER's financial position, in the opinion of Linde, become impaired or unsatisfactory or should CUSTOMER furnish evidence of lower prices for PRODUCTS in accordance with Section 4(c).

(d) Upon termination of this Agreement for any reason:

(i) CUSTOMER shall return to Linde forthwith all CYLINDERS. CUSTOMER's obligations with respect to damaged CYLINDERS or CYLINDERS not returned shall be in accordance with Section 5 herein.

(ii) All amounts owing by CUSTOMER to Linde shall become immediately due and payable.

(e) In order to enforce its rights, set forth in (d) above, upon termination, Linde shall have the right to enter upon CUSTOMER's premises and remove from such premises any of the items required to be returned to Linde as provided above. Linde, without prejudice to its other rights hereunder, and without any previous notice, may take immediate possession with or without legal process, of all its CYLINDERS whether or not these CYLINDERS contain GASES, and without being obliged to give credit to the CUSTOMER for the price of any GASES remaining in CYLINDERS at the time possession is taken.

8. GENERAL

(a) This Agreement contains the entire understanding of the parties hereto relating to the subject matter and shall supersede all other agreements or communications between the parties relating to the subject matter herein. No change, modification, discharge or waiver or addition to any of said provisions shall be binding upon Linde, unless set forth in writing, specifically identified as such and accepted by duly authorized representative of Linde, and no such change, modification, discharge or waiver or addition to any of said provisions shall be effected by any acknowledgement or acceptance by Linde of any purchase order, acknowledgement or other form submitted by CUSTOMER specifying delivery dates, quantities or locations and also containing different or additional provisions.

(b) This Agreement shall enure to the benefit of Linde and CUSTOMER and their respective successors and assigns.

(c) Notices hereunder shall be mailed to the address on the reverse side of this document or such other addresses as may be designated by notice.

(d) If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected hereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

(e) This Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

(f) This Agreement shall not be binding upon LINDE unless it has been accepted in writing by a duly authorized representative of Linde.

CUSTOMER
CANADA LIMITED

LINDE

By: _____

By: _____

Date: _____

Date: _____

Submitted by: _____