

TERMS AND CONDITIONS OF SUPPLY ("Terms") – Messer

1 DEFINITIONS AND SCOPE

"Contract" means collectively these Terms and only those Purchase Order terms that do not conflict with these Terms and are accepted by Messer; "Customer" means the party that buys the Products from Messer and includes, if the context permits, its agents or sub-contractors; "Cylinders" means any Messer-owned containers (e.g., compressed-gas cylinders, dewars) designed for the delivery and storage of gas Products, including their caps, valves, and other fittings; "Delivery Note" means the documentation on the reverse side of these Terms, given by Messer to Customer in connection with a Product delivery; "Equipment" means collectively the Cylinders and any Messer-owned equipment used in connection with bulk gas Products (e.g. tanks and other storage equipment, vaporizers, tube trailers, and ancillary equipment); "Messer" means the Messer Group company named on the Purchase Order; "Products" means the products specified on the Delivery Note; and "Purchase Order" means the order placed by Customer with Messer for the Products. Except as otherwise specified in a written agreement signed by Customer and Messer, the Contract constitutes all of the terms of the contract between Customer and Messer regarding the sale and purchase of Products. These Terms supersede any conflicting terms contained in any Purchase Order, confirmation, acknowledgment, or other documentation used by Customer.

2 SUPPLY

Any dates specified by Messer for the delivery of Products are estimates only. Messer is not liable for any damages arising in connection with any delays in manufacture, delivery, or shipment of Products, or any failure to deliver Products. Customer may not terminate the Contract based upon a delay or failure described in the previous sentence. Delivery of Products is F.O.B. Customer's location if delivered by Messer, or F.O.B. the pickup location or Messer's shipping point if picked up by Customer or delivered by commercial carrier.

3 PAYMENT

Customer shall pay all Messer invoices within the 10-day period starting on the invoice date. Messer may charge interest on past due invoices at the lower of 1½% per month or the highest rate permitted by law. Customer waives any claim or defense that Customer has regarding any Messer invoice unless Customer gives Messer a notice, which describes the basis of the claim or defense, within the 30-day period starting on the invoice date.

4 EQUIPMENT

Messer owns the Equipment at all times, even if Customer affixes the Equipment to any real property owned or used by Customer. Customer shall not cause or permit any person or entity other than Messer or Messer's authorized representative to fill or refill the Equipment with any gas, liquid, or solid, or to modify or repair the Equipment, without Messer's written consent. Customer assumes all risk of loss or damage to the Equipment, except for any loss or damage resulting from Messer's negligence. If any Equipment is lost or cannot be repaired, then Customer shall pay to Messer an amount equal to the then current replacement cost of such Equipment. If Messer elects to repair any damaged Equipment, then Customer shall pay to Messer an amount equal to the cost of making the repairs. Customer shall pay Messer's then current rental charges for the Equipment. Regarding the Cylinders: (a) Customer is deemed to have acknowledged that the Cylinder is in good condition and repair, unless Customer gives notice to the contrary within five days after taking possession of the Cylinder; (b) Customer shall not cause or permit: (1) any foreign material to enter any Cylinder; (2) any change, defacement, or removal of any "D.O.T.," "Messer," or other markings, symbols, or warnings from any Cylinder; (3) the use of oil, grease, or other lubricants on any part of a Cylinder; or (4) the conversion of any Cylinder from one gas service to another; (c) Customer shall pay rent for each Cylinder from the time that Messer delivers the Cylinder to Customer until the time that: (1) Messer receives the returned Cylinder in good condition and repair, ordinary wear and tear excepted, with Cylinder valves tightly closed and Cylinder caps fixed securely in place ("Required Condition"), including any period that the Cylinder is being repaired or replaced; or (2) Customer pays Messer for the Cylinder at its then current replacement cost; (d) the parties shall account for the Cylinders on a unit basis; (e) Customer shall not return another cylinder in substitution of a Cylinder; (f) Messer is not required to identify Cylinders by serial number; (g) Messer may presume that a Cylinder is lost or destroyed, if Messer does not receive the Cylinder in the Required Condition within the 15-day period starting on the earlier of: (1) the date of Customer's receipt of Messer's demand for the Cylinder; or (2) the date of termination or expiration of the Contract as to the Cylinder; and (h) Messer is not required to reimburse or credit Customer for the price of any residual Product contained in a returned Cylinder.

5 TAXES

Customer shall pay or reimburse Messer for all taxes and other impositions (e.g., fees, permits, and other charges) that are charged by any government (except Messer's income taxes), which relate to the Products or the Equipment, including their presence, use, operation, or maintenance.

6 WARRANTY AND SOLE REMEDY

Messer warrants to Customer that Products delivered to Customer conform to the specifications on the Delivery Note, or, if the Delivery Note does not include specifications, Messer's or Messer's supplier's standard specifications. Messer does not make any other express warranty regarding the Products. Customer's sole remedy, and the sole obligation of Messer for a breach of Messer's warranty is for Messer to replace, free of charge, any Products that do not conform to the warranty if, and only if, Customer gives Messer notice of the breach of warranty within the 15-day period starting on the date of delivery of the Products. Messer does not make any express warranty regarding the Equipment. **MESSEER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES FOR THE PRODUCTS AND THE EQUIPMENT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.**

7 LIMITATION ON DAMAGES

In all events, regardless of the legal theory (e.g., breach of contract or warranty, negligence, strict liability, etc.): (a) **MESSEER IS NOT LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL DAMAGES, OR ECONOMIC LOSS, INCLUDING ANY LOSS OF BUSINESS, PRODUCTION, OR PROFITS;** and (b) the total amount of damages that Customer may recover from Messer resulting from any occurrence arising in connection with their relationship contemplated by the Contract is limited to an amount equal to the payments made by Customer to Messer under the Contract during the 12-month period ending on the date of the occurrence.

8 LAWS; HEALTH AND SAFETY

Customer shall comply with all laws, rules, and regulations applicable to the Products, and shall have issued in its name all permits, licenses, authorizations, and certificates required in connection with the Products. Customer is solely responsible for determining the suitability, compatibility, and use of the Products. Customer acknowledges that the Products are hazardous and Customer understands those hazards. Customer shall warn its employees and others who are exposed to the Products of the hazards associated with the Products.

9 MISCELLANEOUS

New Jersey law governs all matters pertaining to the validity, construction, and effect of the Contract, without giving effect to any principles or rules of conflict of laws that apply the laws of another jurisdiction. The parties may amend the Contract only by a writing that Customer and a Messer authorized representative sign. Messer may deliver Product to a customer of Customer ("User"), at Customer's request, in which case Customer and the User are bound by these Terms. If Messer sells and delivers Nitrous Oxide to Customer, then Customer shall exercise extreme caution with respect to the storage and use of the Nitrous Oxide, primarily to prevent theft, misappropriation, or misuse. Customer acknowledges that the misuse of Nitrous Oxide can result in serious bodily injury or death. Customer shall: (a) indemnify Messer for any loss or damage suffered by Messer resulting from the use or misuse of the Nitrous Oxide that was delivered to Customer; and (b) defend Messer against any third-party claims that are based upon the Nitrous Oxide, unless the injury or death results from Messer's negligence.