

# Terms and Conditions

**1) Warning:** Sellers equipment, goods and services are potentially dangerous and are intended only for commercial use by persons trained and qualified in use, maintenance and operations of commercial industrial and medical gases and related equipment, supplies and procedures.

**2) Payment Terms:** All accounts are due and payable 30 days following delivery. A finance charge at the rate of 2% per month, which is an annual percentage rate of 24%, with a minimum charge of \$2.25, will be charged on all unpaid accounts. Payments and credits shall be applied first to the payment of finance charges, and the remainder, if any, shall be applied to the payment of the principal. The account may be paid in full any time prior to the 25th of each month to avoid further finance charge. Buyer shall pay Seller's reasonable attorney's fees and expenses incurred in connection with any and all disputes between Buyer and Seller, including but not limited to those arising out of this contract and other contracts between the parties.

In addition to the price of all goods the amount of any present or future sales, use, value-added, excise or other similar tax applicable to the sale or use of the equipment sold hereunder shall be paid by the Buyer, or in lieu thereof the Buyer shall provide the Seller with a tax exemption certificate acceptable to the taxing authorities.

**3) Inspection:** Upon arrival of the goods at the place which Buyer has ordered the goods delivered, Buyer shall immediately inspect the goods at his own cost and, if Buyer finds that the goods do not conform to the description herein, Buyer shall give written notice to Seller within ten (10) days after their arrival of any claim to that effect, specifically setting forth the details of claim. Failure of Buyer to give Seller such notice shall constitute an irrevocable acceptance of the goods by Buyer, and Buyer shall be bound to pay the full price of the goods. If, after irrevocable acceptance of the goods by the Buyer, Buyer returns the goods with the Seller's written consent, a handling charge will be levied on all such goods returned for credit.

**4) Product Specifications:** All products, equipment, materials or industrial gases sold hereunder ("goods") as well as Seller's industrial gas containers used in the sale of gases, shall conform to the standard specifications and shall comply with applicable compressed gas association standards required by law.

**5) Limitations of Warranty:** Except for the express warranty provided in paragraph 4 above, SELLER MAKES NO OTHER WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. IN FACT OR BY LAW INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. No agent, employee or representative of Seller has any authority to bind Seller to any affirmation, representation or warranty relating to goods other than as specifically provided herein. Seller makes no warranty whatsoever with respect to goods manufactured by others. Buyer is not authorized to extend Seller's warranty to any third party.

**6) Limitation of Damages:** Seller shall not be liable for any incidental or consequential damages caused by its breach of any of the terms and conditions hereof. The liability of Seller for defective or undelivered goods shall be limited solely (in Seller's discretion) to replacing the goods or to granting Buyer a credit or refund in the amount of the contracted price of those goods. Seller shall not be liable to any other person for damage, loss, injury or exposure, whether direct, special or consequential, and whether in the form of personal injury, pecuniary loss, increased expenses or otherwise. The remedies provided for herein shall be exclusive and sole remedies of the Buyer.

**7) Indemnity:** Buyer shall indemnify and save Seller harmless from any and all liability, loss, damage, expense, causes of action, suits, claims or judgements arising from the injury to person or property resulting or alleged to result from or based upon the ownership, use, maintenance, delivery or transportation of any or all of the cylinders, equipment, goods or products of seller, or their location or condition; and Buyer shall, at its own cost and expense, defend any and all judgements and fines that may be recovered against Seller in any such actions or action provided, however, that Seller shall give Buyer written notice of any such claim or demand. Such indemnity shall include all of Seller's reasonable attorney's fees in defending against any such liability or claim and in requiring indemnity herein.

**8) Title:** The cylinders recorded in this delivery ticket are the property of Seller and are loaned to Buyer subject to the terms and conditions hereof. Unless otherwise agreed to in writing, Buyer agrees to return said cylinders in good condition, with valves tightly closed to Seller. And Buyer further agrees to pay Seller, as rental, an amount payable monthly for so long thereafter as the said cylinder shall be used by the Buyer, which rental shall be computed in accordance with Seller's prevailing rental billing system. Buyer agrees to pay Seller, at Seller's then prevailing cost, for the loss, destruction or damage beyond repair of said cylinders or fittings resulting from any cause while such cylinders are on loan to Buyer. In the case of damage permitting repair, Buyer agrees to pay the actual cost of repair incurred by Seller. Rental referred to in the preceding paragraph will be applicable until the cylinder is returned, or, if the cylinder cannot be returned until Seller is paid in accordance with this paragraph. Until such cylinders are returned, or until Buyer states in writing that Buyer is unable for any reason whatsoever to return such cylinders Buyer shall be conclusively presumed to have possession or control of such cylinders. No claim that cylinders have been returned by Buyer will be honored unless Buyer holds a valid signed receipt on the form provided by Seller evidencing such return.

**9) Refilling Cylinders:** Refilling, in whole or in part, of leased cylinders or containers, except by the Seller, or loan or delivery of cylinders or containers, without the prior written consent of the Seller is expressly prohibited.

**10) Transportation of Hazardous Material:** Transportation of any amount of hazardous materials must comply with all relevant statutes and regulations.

**11) Cylinders Markings:** All cylinders shipped to Buyer hereunder are marked, at the time they are filled, with legible labels identifying the contents of said cylinders. The Buyer shall not use any cylinders that are not so marked when received, but shall return said cylinders to the Seller for an exchange to a properly marked cylinder.

**12) Alteration of Contract:** The terms hereof cannot be altered, changed or waived unless accomplished in writing and signed by an authorized executive officer of the Seller.

**13) Applicable Law:** This contract shall be governed by, and construed in accordance with the laws of the State where the Seller's administrative offices are located.

## Release and Assumption of Risk

If the customer is buying industrial, specialty, or medical gases from **EWS Welding Supply** (the "Company" which he/she will move by car or closed van;

Company has informed the customer that:

1. Putting gas cylinders in cars or vans can be dangerous and should be avoided.
2. Gas cylinders **must never** be moved in closed spaces such as car trunks.
  - It is **EXTREMELY DANGEROUS** and could cause **EXPLOSION OR FIRES**.
3. Gas cylinders should be moved in fixed upright position, with windows open for ventilation.
4. If cylinders are moved on their side, they **must be fastened** so they can't move, with window open
5. It would safer to wait and move the cylinder(s) by open truck, or to let Company do it.

If the customer still wants to carry the gas cylinder(s) by car or van now and for himself/herself and his/her employer (if any), the customer:

ASSUMES THE RISK of **bodily injury** to the customer or others in the car or van, or of **loss** of or **damage** to the **vehicle** or other **property**, and

RELEASES the company and its employees, officers and directors from any liability for bodily injury or loss or damage to any property resulting from his/her transporting any gas cylinder(s) by car or van.