

**AIR PRODUCTS**  
**GLOBAL TERMS AND CONDITIONS OF CONTRACT FOR**  
**EQUIPMENT AND MATERIAL PURCHASES**

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**These Terms and Conditions are an integral part of a Purchase Order which has been transmitted by Buyer to Seller for acceptance by Seller which acceptance shall be made in accordance with these Terms and Conditions.**

1. DEFINITIONS AND PRIORITY OF DOCUMENTS

1.1 The following terms shall have the indicated definitions:

“APCI” means Air Products and Chemicals, Inc.;

“Buyer” and “Seller” means the entities named as such in the Purchase Order;

“Documentation” means all drawings, information, specifications, calculations, parts lists and manuals to be prepared by Seller as are specified in the Purchase Order or, if not so specified, as are reasonably necessary for the full, proper and safe installation, use and maintenance of the equipment;

“Equipment” means the goods (including any related services) which are the subject of the Purchase Order;

“Liquidated Damages” means any damages to be recovered by Buyer in accordance with Section 7, and which are specifically quantified in the Purchase Order;

“Order” means the order form to which these Terms and Conditions are attached and which contains specific information pertaining to the equipment which is the subject of this Purchase Order, e.g., price and payment and delivery terms;

“Owner” means the end user of the plant into which the equipment is to be incorporated;

“Price” means the total value of the Purchase Order, as specified in the Purchase Order;

“Purchase Order” means and shall be comprised of the Order, the Specification, the Documentation, the Terms and Conditions (including any variation or change orders, purchasing notes, side agreements), the Special Conditions, and any other attachments;

“Special Conditions” means those terms and conditions pertaining to the equipment and the sale and purchase thereof, in addition to the Terms and Conditions, which are set forth in a separate document entitled “Special Terms and Conditions” or words to that effect;

“Specification” means the description and specification of the equipment and work (if any) contained in the Purchase Order, of which it shall be deemed an integral part; unless otherwise expressly specified in any attached or referenced specification or the purchase order, the latest edition of the relevant codes and standards listed therein including any addenda in effect on the date of purchase award shall be considered the governing document(s). Any conflict between the requirements of any attached or referenced specification and other related documents shall be referred to Air Products for clarification and resolution before work proceeds.

“Terms and Conditions” means the terms and conditions of purchase contained in this document and includes the Special Conditions;

“Work” means the work necessary for the manufacture and delivery of the equipment to be performed or provided by or at the direction of Seller, details of which shall be given in the documents comprising the Purchase Order;

“Change Order Instruction” means an official instruction from Buyer to Seller to incorporate a mutually agreed change to the Purchase Order.

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1.2 In the event of any conflict among the documents comprising the Purchase Order, the order of precedence shall be as follows: the Order, the Special Conditions, these Terms and Conditions. Notwithstanding the order of precedence, Seller shall check Purchase Order and all other documents upon receipt, and shall advise Buyer of any inconsistencies. Buyer's decision on any inconsistencies referred by Seller shall be final. In the event of any conflict between any other of the documents comprising the Purchase Order, as amended from time to time, the most recent document shall take precedence.

2. ACCEPTANCE OF ENTIRE AGREEMENT; COMMUNICATIONS

2.1 The Purchase Order constitutes the sole and entire agreement between the parties. The Purchase Order shall be binding upon the parties upon the earlier of the receipt of Seller's acknowledgment of Seller's acceptance thereof or commencement of Seller's performance of the work. No terms or conditions contained in Seller's acknowledgment or other communication shall bind Buyer unless expressly accepted by it in writing. Seller shall check the order and any other documents comprising the Purchase Order which are submitted to Seller by Buyer, upon receipt thereof. In case of inconsistency between the documents Seller will revert to Buyer for written clarification prior to acceptance. All communications in connection with the Purchase order shall be in English.

3. SCOPE OF WORK

3.1 Seller shall manufacture, supply and deliver all the equipment and perform all the work required, or necessarily implied, strictly in accordance with the Purchase Order. Where the specification indicates that the equipment as delivered by Seller is required for a particular purpose, the equipment will be fit for that purpose.

3.2 The equipment and all required or necessarily implied work shall be complete in all respects (except in respects expressly excluded by the specification). If any detail shown on drawings which are a part of the documentation is omitted from the text of the specification or vice versa, Seller shall, notwithstanding such omission, supply such detail and shall be deemed to have allowed for the same in the price.

3.3 Unless otherwise agreed in writing by Buyer, all the equipment shall be new and unused and shall be designed and manufactured in accordance with the specification and/or documentation. Where no standard or codes of practice are specified, the equipment and all associated work shall be in accordance with the generally accepted best codes of practice of the industry concerned.

3.4 Seller shall comply with all applicable regulations of the country in which the equipment is to be installed. Buyer will advise country prior to placement of Purchase Order.

4. DOCUMENTATION AND NONDISCLOSURE

4.1 Seller shall prepare and submit to Buyer the documentation. The documentation shall be submitted in accordance with the schedule contained in the Purchase order or, where no such schedule exists, such that reasonable time is available for Buyers review without affecting the delivery date. The cost of such preparation and submission is included in the price.

4.2 All documentation shall show, in a suitable legend block, the Purchase Order number and equipment reference number as indicated in the order.

4.3 Buyer has the right to approve documentation but such approval shall not relieve Seller of any of its responsibilities under the Purchase order. No deviation from or modification to, the specification, or documents supplied to, or approved by Buyer will be made by seller without the prior written agreement of Buyer.

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4.4 The documentation shall become (and remain) Buyer's property from the point of its creation. The documentation and the specification shall not be copied, or shown to any third party (other than sub-contractors in connection with the Purchase Order) without the prior written consent of Buyer. The documentation and the specification shall only be used by Seller, or such sub-contractors, in fulfillment of the Purchase Order.

**5. ASSIGNMENT AND SUBCONTRACTING**

5.1 Except in respect of goods and services bought or procured in the normal course of Seller's business, Seller will not sub-let or sub-contract any material part of the Purchase Order without Buyer's prior written consent. No sub-letting or sub-contracting will relieve Seller of any of its obligations under the Purchase Order. Seller will ensure that all material provisions of the Purchase order as such pertain to the portion of the Purchase Order which is the subject of the sub-letting or sub-contracting are incorporated into each sub-order or subcontract, including preserving the rights and benefits of Buyer as further described in Section 5.4. If requested by Buyer, Seller shall supply un-priced, certified copies of such sub-orders and subcontracts to Buyer immediately when it has been issued.

5.2 If Buyer nominates one or more sub-contractors to perform certain parts of the Purchase Order, seller shall employ such sub-contractor(s) to perform such parts unless Buyer agrees, in writing, otherwise.

5.3 Seller shall not assign or transfer any, or any part, of its rights or obligations under the Purchase Order without Buyer's prior written consent. Any purported assignment or transfer to which Buyer has not granted its consent will be void and of no effect and shall entitle Buyer to terminate the Purchase Order.

5.4 Seller shall be obligated to include in any subcontract or sub-order the rights and remedies which are available to Buyer under the Purchase Order, including in particular but without limitation rights and remedies pertaining to termination of the work on whole or in part; access to Seller's premises for purposes of removing equipment, drawings, and semi-finished work; Seller's warranties, and shall include in all such subcontracts and sub-orders the free assignability of such rights and remedies.

**6. DELIVERY AND EXCUSABLE DELAYS**

6.1 Unless otherwise specified in the Purchase Order, the goods shall be delivered by Seller DDP (intra EU movements) or DAP (external to EU movements) to the destination named by Buyer when and in a manner specified by Buyer. Any trade term in the Purchase Order shall have the meaning given to it by Incoterms (2010). Risk of loss shall pass to Buyer upon delivery; title to the goods shall pass to Buyer upon Buyer's acceptance of the goods. All deliveries are to be made as specified in the Purchase Order, and where such specification is not given, then when and as specified by Buyer. Immediately upon shipment, Seller is to provide shipping confirmation to Buyer's Purchasing Department, Order Control Section, advising complete shipping and routing information. Acceptance of any part of the Purchase Order shall not bind Buyer to accept future shipments, nor deprive it of the right to return goods already accepted.

6.2 The equipment and all required or necessary documentation shall be completed and delivered at the time(s) specified in, and otherwise in accordance with, the Purchase Order. Seller shall not deliver any part of the equipment before the specified delivery date unless Buyer agrees in writing. Seller shall inform Buyer immediately in, or confirm in, writing if it becomes apparent that the specified delivery date will not, or is unlikely to be met.

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6.3 Any failure of performance by either party shall not constitute default hereunder or give rise to any claim for damages or otherwise if, and to the extent, caused by an occurrence beyond the reasonable control of the party affected, including but not limited to, acts of compliance with acts of governmental authority, acts of God, national or official union strikes or other concerted acts of workmen, fires, floods, explosions, riots, war or armed conflict declared or undeclared, rebellion and sabotage. The party affected by any such occurrence shall give notice to the other within five (5) working days of its commencement and shall keep the other informed of action taken to terminate the occurrence.

**7. LIQUIDATED DAMAGES**

7.1 In the event that Seller (a) fails to deliver the equipment or documentation meeting the requirements of the Purchase Order on or before the dates specified, or (b) the equipment, when tested in accordance with the performance requirements of the Purchase Order, fails to meet these performance requirements, Buyer will suffer damages in an amount that is not susceptible to calculation with reasonable certainty. Therefore, any liquidated damages set forth in the Purchase Order represent a reasonable determination of the amount of damages that Buyer will suffer, and are not penalties. Seller hereby waives any defense to Buyer's recovery of such liquidated damages on the basis actual damages are ascertainable or that such liquidated damages do not represent a reasonable determination of Buyer's damages or are penalties.

7.2 Seller will be liable to pay liquidated damages for late delivery of equipment as stated in the Purchase Order. Unless otherwise expressly specified, the rate of liquidated damages for late delivery of equipment shall be at a rate of 1% of the total price per week of delay up to a maximum of 10% of the total price. Such liquidated damages may be deducted by Buyer from any monies due to Seller. Payment of the said liquidated damages shall be in full and final satisfaction of any financial liability Seller may have to Buyer for the late delivery; provided, however, the remedy of liquidated damages is in addition to Buyer's right to cancel for Seller's default under Section 15.1 and exercise the remedy set forth in Section 15.2.

7.3 Seller will be liable to pay liquidated damages for late delivery of documentation as agreed by Buyer and Seller, and as stated in the Purchase Order. The amount of such damages will be clearly defined in the Purchase Order.

**8. VARIATIONS AND CHANGES**

8.1 Buyer has the right at any time by notice in writing, to direct Seller to add to or omit from, or otherwise vary, the Purchase Order. Where Seller receives any such request to change which would occasion an alteration to the price or delivery date then seller will advise Buyer in writing within five working days giving the total price of such alteration and any change in the delivery date. Buyer will decide whether or not the variation will be carried out and will confirm its instructions in writing to Seller in the form of a Change Order Instruction. Seller will take no action in performing the variation in question until such instruction has been given by Buyer.

**9. BUYERS FREE-ISSUE MATERIAL**

9.1 If Buyer free-issues any material to Seller for incorporation into the equipment, Seller shall inspect such material on receipt for any obvious signs of damage and for dimensional compliance with any applicable documentation supplied. If Seller finds material is damaged or does not comply with the documentation, it shall immediately inform Buyer in writing. While free-issue material is under Seller's control, Seller shall bear risk of loss, but title to such material shall remain vested in Buyer.

9.2 Such free issue material shall be properly marked as property of Buyer and be used by Seller, or its sub-contractors solely in connection with the Purchase Order.

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10. EXPEDITING, INSPECTION AND TESTING

- 10.1 The equipment will be subject to expediting, source, site and final inspection and testing, before, during and after manufacture. Buyer, owner or their authorized representatives shall have access at all reasonable times to Seller's premises and those of his subcontractors to expedite, inspect and test the equipment. Seller will give Buyer at least seven (7) working days notice when any part of the equipment is ready for inspection or test. Seller, at his own cost, will provide all tools, instruments, apparatus, equipment, utilities, facilities, services and materials for carrying out safe and convenient inspection and tests.
- 10.2 Buyer will have the right to reject all, or any portion, of the equipment which in Buyer's reasonable opinion is defective or inferior in quality of material, workmanship or design. Seller, at its expense, will immediately replace the rejected equipment to meet the agreed delivery schedule, or the rejected portion, unless in Buyer's reasonable opinion such equipment, or such portion, can be rendered fit for use. No inspection or test made or witnessed, and no release note or other certificate given, by Buyer, owner or their representatives will relieve Seller of its obligation to deliver the equipment in strict accordance with the requirements of the Purchase Order nor relieve Seller of its liability in the event Seller does not fulfill such obligation.
- 10.3 Seller must comply, at time of purchase order acceptance, with the latest revision of the Buyer's worldwide standard 4WPI-M00001 "General Piping Material Purchase Specification" and 4WGN-20001 "Supplier Quality Requirements" related to "Country of Origin" for qualified or acceptable materials used in fabrication. A copy of these standards is available at <http://www.airproducts.com/AboutUs/SupplierInformation/GeneralPurchaseOrderInformation.htm>. The use of materials from unqualified countries requires approval in writing from the Buyer.

11. PROTECTION AND PACKING

- 11.1 Unless stated otherwise in the Purchase Order, Seller shall provide suitable protection and packing for the equipment to ensure its safe delivery in accordance with the Purchase Order. The cost of protection and packing, transportation or storage is deemed included in the price unless expressly stated otherwise.
- 11.2 Any specific packing specifications or requirements will be stated in the Purchase Order or attachments. Effective September 2006, all wood packing materials coming into the United States must comply with the ISPM 15 Standards which defines regulations related to heat treatment or fumigation..
- 11.3 All packing material shall be deemed to be non-returnable unless otherwise stated in the Purchase Order.
- 11.4 Once copy of the detailed packing list is to be forwarded to Buyer's Order Control or Expediting Departments prior to shipment.

12. PROPERTY AND RISK

- 12.1 Risk of loss in the equipment will pass from Seller to Buyer upon delivery in accordance with the Purchase Order save for any damage or loss arising due to defective packing, protection or labeling. Title in all material allocated for inclusion in the equipment will vest in Buyer when such material is so allocated and has been paid for, or is subsequently paid for. Seller will mark such material as the property of Buyer, but it will remain at Seller's risk until delivered in accordance with the Purchase Order. Title to all other portions of the equipment shall pass to Buyer at the point and time of delivery.

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13. WARRANTY

13.1 Seller warrants that the equipment will conform to the Purchase Order, will be fit and sufficient for the purpose intended, of satisfactory quality, merchantable, and free from any defects in design, material or workmanship for a period of twelve (12) months after being placed in operation, or twenty four (24) months from date of delivery of the equipment or completion of the work, whichever occurs first. If Buyer discovers any defect or other failure of the equipment to conform to the warranties contained in the Purchase Order, Seller, upon written notice from Buyer, shall promptly correct such defect or nonconformity by redesigning, repairing or replacing the defective portions of the equipment to the reasonable satisfaction of Buyer. All costs incidental to such remedial action shall be borne by Seller. These shall include but not be limited to costs pertaining to:

- Diagnostics
- Equipment removal, disassembly and reinstallation
- Transportation and transportation insurance
- Repair
- Re-testing of the equipment
- Re-inspection
- Re-performance verification, as may be necessary
- Access to equipment
- Removal and reinstallation of ancillary equipment

Replaced or repaired parts of the equipment shall be warranted as provided herein for a period equal to the greater of (1) the balance of the warranty period or (2) twelve months from the date of completion of the repair or replacement.

13.2 Seller shall designate an emergency point of contact for immediate notification by Buyer of any defect or failure of goods or services. If within twenty-four (24) hours after notification by Buyer of defect or other failure of the equipment, Seller fails to perform or where additional time is necessary, fails to commence and pursue with all diligence, the necessary redesign, repair, replacement, reperformance or tests, then Buyer without prejudice to its other rights or remedies, may perform or cause to be performed the same, and Seller shall reimburse Buyer for all costs incurred by Buyer therefore. Seller shall be excused from its remedial obligations pursuant to this article to the extent it demonstrates that remedial work was made necessary as the result of (a) alteration, accident or abuse by persons other than Seller or those under Seller's supervision, or (b) Buyer's material failure to store, handle, install, operate and maintain the equipment in accordance with any operations and maintenance manual or other written instructions supplied by Seller.

13.3 Where a defect has arisen during the warranty period, or existed at the date of delivery, but is not then apparent, Seller's liability will not cease merely because notice of such defect was not given to Seller within such period.

13.4 Nothing contained in the purchase order shall limit any warranty which Seller is deemed to have made by operation of law.

13.5 The rights and remedies for breach of warranty established by the purchase order will be freely assignable by Buyer to Owner, in whole or in part, and all such rights and remedies will after such assignment is made, be enforceable by owner directly against Seller.

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14. INDEMNITY

- 14.1 Seller warrants that the manufacture, sale, purchase, or use of the equipment or any part of them will not infringe or contribute to the infringement of any letters of patent, trademark or copyright granted by the United States of America, the United Kingdom or by any other country, and agrees to defend, indemnify and hold harmless Buyer, its successors, assigns, customers and users of the equipment, against any claim, demand, loss, and costs including attorneys' fees, arising out of such infringement; and after notice Seller agrees to appear and defend, at its own expense, any suits at law or in equity arising therefrom.
- 14.2 Seller shall defend, indemnify and hold harmless Buyer and Owner, and their directors, officers, employees, agents and representatives (the "Indemnitees") from and against any claim, demand, loss, expense, and cost, including legal fees, arising out of personal injury or impairment of health, including death, or any loss of or damage to property and any economic harm or loss resulting therefrom, suffered by Seller, and subcontractor or sub-supplier of Seller, any director, officer, employee, agent, representative or invitee of Seller or of any subcontractor or sub-supplier of Seller, relating in any way to this Purchase Order, however such injury, impairment of health, or death, or property damage or loss, may be caused including, without limitation, where caused by the negligence or other actionable wrongdoing on the part of any Indemnitees or the condition of the premises of Buyer or Owner.

15. SELLER'S DEFAULT

- 15.1 If Buyer has evidence of Seller's inability to deliver in accordance with the Purchase Order, or if Seller fails promptly to correct any defect or deficiency in the equipment, or if Seller, in Buyer's reasonable opinion, is not making sufficient progress to ensure completion by the delivery date stated in the Purchase Order (or, if such date has passed); or, if Seller has refused to carry out the reasonable instructions of Buyer; or if Seller has breached any provision of the Purchase Order, then Buyer may give Seller written notice of default. If Seller has not made good the default (or taken all reasonable steps towards making good the default) within five (5) working days following the date of issue of such written notice of default, Buyer shall be entitled to terminate the Purchase Order in whole or in part.
- 15.2 If Buyer terminates the Purchase Order, in whole or in part, Buyer shall be entitled to obtain the equipment which was to be supplied under the terminated portion of the Purchase Order from any other source. Seller shall be liable for all costs incurred by Buyer in procuring such substitute equipment which are in excess of what would have been the cost to Buyer if such equipment had been supplied under the Purchase Order.
- 15.3 If Buyer exercises any right to terminate the Purchase Order (in whole or part) as set forth in the Purchase Order or as otherwise available to Buyer, Buyer shall be entitled to enter Seller's premises and, notwithstanding any lien, to take possession of and remove therefrom all equipment, whether complete or not, which has become the property of Buyer pursuant to the Purchase Order. The cost to Buyer of so doing shall at Buyer's option be repaid to Buyer by Seller or shall be deducted from any money due from Buyer to Seller under the Purchase Order.

16. TERMINATION/CANCELLATION

- 16.1 Notwithstanding any other provision in the Purchase Order, Buyer may terminate the Purchase Order in whole or in part at any time by giving notice in writing to Seller, which termination shall be effective upon receipt of Buyer's notice by Seller, which in the case of notice by telefacsimile shall be deemed to have occurred upon the transmission thereof as evidenced by Buyer's written record of transmission, and in the case of notice by registered mail shall be deemed to have occurred two (2) business days from the date of mailing. In the event of termination under this or Article 15, Seller will immediately stop performance of the Purchase Order including any parts being performed under sub-orders and, at Buyer's option, assign all outstanding sub-orders to Buyer. Buyer shall have the right to receive upon demand all documentation, the equipment and other items associated with the purchase order in their then current



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state of completion and Seller shall take all steps necessary so that such receipt by Buyer occurs in a timely manner. Buyer will not be liable for any work done or expenses incurred by Seller after the effective date of termination, unless such work or expenses are authorized in advance by Buyer in writing. In the event of termination under this article, subject to Section 17.1, Buyer will pay Seller for all portions of the equipment completed in accordance with the Purchase Order as of the effective date of termination and shall reimburse Seller for its costs reasonably incurred by Seller in connection with work in progress at the effective date of termination as well as any other costs reasonably incurred by Seller directly in connection with the prompt termination of performance to the extent Seller can provide to Buyer written substantiation of such costs. However, under no circumstances shall the total of the sums payable by Buyer to Seller under the Purchase Order exceed the price.

**17. ADDITIONAL RIGHTS ON TERMINATION FOR CONVENIENCE**

- 17.1 If on termination of this Purchase Order for convenience, Seller has in its possession any completed portions of the equipment Buyer shall elect either to take delivery thereof and pay Seller a proportionate part of the price, or not to take delivery and pay Seller the difference (if any) between the market value thereof and the said proportion of the price at the date of termination.
- 17.2 If, on termination of this Purchase Order for convenience, Seller has in its possession any raw material or part-finished goods, Buyer shall elect either to require Seller to complete and deliver the same to Buyer and pay Seller a proportionate part of the price, or require Seller not to complete and deliver, and pay Seller a proportionate part of the price in respect of work properly completed less the market value thereof at the date of termination.
- 17.3 If, on termination of this Purchase Order for convenience, Seller has placed firm orders for any goods which are not in its possession, Buyer shall elect either to take assignment of Seller's rights and obligations under such orders or pay the cost, if any, of discharging Seller's obligations thereunder. Seller shall keep these costs to a minimum.
- 17.4 Seller shall include in all subcontracts and sub-orders a termination for convenience provision substantially the same as that contained in the Purchase Order.

**18. REMEDIES**

- 18.1 The remedies herein reserved to Buyer shall be cumulative, and additional to any other or further remedies provided in law or at equity. No waiver of a breach of any of the provisions of this contract shall constitute a waiver of any other breach, or of such provision.

**19. NONDISCLOSURE AND ENDORSEMENT**

- 19.1 Seller shall not make use of drawings, specifications, data and other information furnished to it by Buyer, except in performance of Seller's permitted work on behalf of Buyer, including, but not limited to, performance under a Purchase Order and/or Request for Quotation/Proposal. Upon completion, cancellation or termination of the Purchase Order, Seller shall promptly furnish to Buyer all documentation, and shall return to Buyer all information furnished by Buyer in connection with the performance of the Purchase Order, and shall not retain or permit others to retain any reproduction or copy thereof save for an archival copy of the documentation. Seller shall not disclose any documentation, information furnished by Buyer, Buyer's name or Owner's name to any third party and shall make no further use thereof (of any information derived therefrom), either directly or indirectly, without Buyer's prior written consent, except in connection with the performance of the Purchase Order. Seller shall not, without first obtaining Buyer's consent, in any manner advertise or publish the fact that Seller has furnished, or contracted to furnish to Buyer, the material and/or services ordered hereunder.

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20. COMPLIANCE WITH ANTI-CORRUPTION LAWS

20.1 Seller represents, warrants and covenants, on behalf of itself and the Seller Group (defined below):

20.1(a) Seller has read, understands and will comply with all Anti-Corruption Laws. "**Anti-Corruption Laws**" mean any applicable foreign or domestic anti-bribery and anti-corruption laws, regulations, rules, or orders, as amended from time to time, and shall always include for purposes of this Agreement the U.S. Foreign Corrupt Practices Act ("**FCPA**") and UK Bribery Act 2010 ("**UKBA**") as each may be amended irrespective of the location of any performance or nationality or residence of the parties.

20.1(b) No employee, officer, director, representative or agent of Seller, or of any of Seller's parents, subsidiaries, partners, or affiliates (collectively, the "**Seller Group**"), is a "Government Official or Entity". "**Government Official or Entity**" shall include any governmental, military, political or public international organization or entity, or any department, subdivision, agency, or instrumentality of the same, including any state or government-owned or controlled business or entity, any political party, or any officer, employee or candidate for office of any of the foregoing, or any person acting for or on behalf of any of the foregoing.

20.1(c) Seller Group has not and will not, directly or indirectly, pay, give, promise, or offer (or authorize any of the foregoing) any money, gifts or anything of value to any Governmental Official or Entity or to any other person, or accept or receive any money, gifts, or anything of value, for purposes of: obtaining or retaining business for or with, or directing business to, any person, including, without limitation, Air Products; influencing any official act, decision or omission of any Government Official or Entity; inducing any Government Official or Entity to do or omit to do any act in violation of its lawful duty; or securing any improper advantage.

20.1(d) Except as previously disclosed by Seller to Air Products in writing, (i) there have been no accusations, allegations, claims, investigations, informal inquiries, indictments, prosecutions, charges, or other enforcement actions against the Seller Group relating to bribery, corruption, money laundering, fraud, obstruction of justice, racketeering, or any other legal or ethical violation, and (ii) Seller Group has never violated any Anti-Corruption Law or caused any other party to be in violation of any Anti-Corruption Law.

20.1(e) Seller shall promptly notify Air Products in writing in the event that any of the foregoing representations or warranties are not true or are no longer true, or in the event of a breach of any of the foregoing representations, warranties and covenants. Seller shall reaffirm compliance in writing if requested by Air Products at any time.

20.2 Seller will maintain financial books and records that timely, completely, fairly and accurately reflect in reasonable detail all financial transactions, in accordance with all applicable laws including the Anti-Corruption Laws, and shall maintain such books and records for at least three years after the expiration or termination of this Agreement, and Seller agrees that Air Products, or its outside auditors, shall be permitted upon request to audit Seller's books, accounts, records and invoices and accompanying documentation for compliance with any applicable Anti-Corruption Laws. Seller agrees to cooperate fully in any audit or in connection with any investigation regarding any potential violations of the Anti-Corruption Laws in connection with this Agreement.

20.3 Seller shall ensure that all members of the Seller Group comply with the covenants in this Section. Seller additionally agrees that it shall "flow down", for the express benefit of Air Products, all of the provisions in this Section to any Seller or Subcontractor of the Seller performing work in relation to this Agreement. Seller shall ensure that any such Seller or Subcontractor agrees to comply with and be bound by the provisions of this Section, and Seller shall be liable to Air Products for any violations, breach or non-compliance by any of Seller's Sellers or Subcontractors.

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- 20.4 Seller understands and agrees that any misrepresentation, breach, or violation under this Section shall constitute a material breach of the Agreement entitling Air Products to terminate the Agreement and to withhold further performance without prejudice to any other rights or remedies available under this Agreement or at law or in equity. Air Products may also suspend performance or withhold payments if it has a good faith belief that Seller has violated, intends to violate, or may have violated any Anti-Corruption Laws. SELLER SHALL DEFEND, INDEMNIFY AND HOLD AIR PRODUCTS HARMLESS FROM AND AGAINST ANY CLAIMS, COSTS, LOSSES, PENALTIES OR DAMAGES OF ANY KIND, INCLUDING ATTORNEY FEES, ARISING FROM OR RELATING TO ANY MISREPRESENTATION, VIOLATION OR BREACH BY SELLER OR ANY MEMBER OF THE SELLER GROUP OR ANY PERSON OR ENTITY ACTING ON THEIR BEHALF OF ANY OF THE PROVISIONS UNDER THIS SECTION.
- 20.5 Seller agrees to abide by Buyer's Code of Conduct in its dealings with Buyer. The Buyer's Code of Conduct is available for review by accessing [www.airproducts.com/codeofconduct](http://www.airproducts.com/codeofconduct).

**21. COMPLIANCE WITH LAWS**

- 21.1 Seller undertakes to design, manufacture, transport, deliver and sell the equipment in compliance with all applicable statutes, laws, regulations, rules, ordinances, consents, approvals, and any other requirement of any governmental or quasi-governmental entity having jurisdiction where the equipment is to be designed, manufactured, transported, delivered, sold, installed, and operated.
- 21.2 Seller represents that the goods to be furnished or the services to be rendered hereunder have not been or will not be produced or performed and sold in violation of any provisions of the Fair Labor Standards Act of 1938, as amended, the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972, the Rehabilitation Act of 1973, the Occupational Safety and health Act of 1970, the Toxic Substance Control Act, ERA's requirements for accurate labeling of products using ozone depleting substances as contained at 40 CFR Part 82, Subpart E issued under Section 611 of the Clean Air Act Amendments of 1990, or any other applicable Federal, State or Local law, ordinance, rule or regulation, and Seller agrees to make all stipulations required by such laws.
- 21.3 **Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that the Seller take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.**
- 21.4 The provisions of Federal Acquisition Regulation (FAR) 52.219, "Utilization of Small Business Concerns", 48 CFR 52.219-8 are incorporated herein by reference. Seller shall submit to Buyer a company-wide Commercial Subcontracting Plan, which is updated annually and prepared pursuant to Air Products Corporate Policy on purchasing from Small Business, Small Disadvantaged Business, and Women-Owned Business concerns in compliance with FAR 52.219-9, "Small Business Subcontracting Plan", 48 CFR 52.219-9, for government contracts and subcontracts for Commercial Products exceeding \$650,000 in value.

**22. HEALTH AND SAFETY**

- 22.1 Seller will provide full information regarding the use for which the equipment has been designed, and any restrictions and safeguards which should be observed in all stages of its operation. Seller will provide and fix all warning notices to equipment that may be required by in order to comply with the undertaking set forth in Article 21. Seller will provide adequate safety mechanisms, alarms guarding and protection necessary to protect operating personnel.

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23. PRICE, PAYMENT AND TAXES

23.1 Unless expressly stated in the Purchase Order, the price shall be deemed to include any and all taxes arising from the design, manufacture, transport, delivery and sale of the equipment, including without limitation taxes, duties, fees, excises, assessments, and similar government charges howsoever described and howsoever denominated imposed by any governmental entity having jurisdiction over the transactions which are the subject of the Purchase Order and/or the performance of the work. Such taxes, duties, etc. whether they are a part of the price or are separately stated in the Purchase Order, shall be separately stated on any invoice submitted to Buyer. If Buyer furnishes Seller an exemption certificate, or any other similar proof of exemption, with respect to any tax, duty, etc. then Seller shall not include such tax on the invoice. Failure to comply with this requirement will result in Seller's invoice being rejected.

23.2 Payments will be made as specified in the Purchase Order.

24. TECHNICAL ASSISTANCE

24.1 In connection with the equipment, to the extent mutually agreed Seller shall provide technical advisors as necessary to assist Buyer or Owner during installation or testing of the equipment. Additional terms and conditions pertaining to the provision of such services may be set forth in a separate Purchase Order.

25. BANKRUPTCY AND INSOLVENCY

25.1 If Seller shall become bankrupt or insolvent; have a receiving order made against it; compound with its creditors; being a corporation commence a winding up, dissolution, or similar proceeding (such proceeding not being voluntary for the purpose of reconstruction or amalgamation while solvent); or carry on its business under an administrative receiver for the benefit of its creditors or any of them; have an administrator appointed; have any distress levied on Seller's goods, then in any such event Buyer shall have the right to terminate the Purchase Order forthwith by notice in writing to Seller or to the administrative receiver, liquidator, administrator or to any person in whom the Purchase Order may become vested, or give such administrative receiver, liquidator, administrator or other person the option of carrying out the Purchase Order subject to providing a guarantee for the due and faithful performance of the Purchase Order up to an amount to be agreed. References to any of the above events shall, in respect of any jurisdiction in which the Seller is located, shall be deemed to include the legal concept which most nearly approximates it in that jurisdiction.

26. CONFLICT MINERALS

26.1 Seller represents and warrants that (i) Seller has conducted a review of the goods or materials to be sold hereunder to determine if any of them contain Conflict Minerals (as defined herein, "CM"), (ii) Seller maintains a due diligence program with respect to CM and has conducted due diligence on the country of origin of any CM in the goods or materials sold hereunder, and (iii) the goods or materials sold hereunder do not contain CM except as has been disclosed in writing by Seller to Buyer on a current version of the Conflict Minerals Reporting Template ("CMRT") provided by the Responsible Minerals Initiative, <http://www.responsiblemineralsinitiative.org>. Seller shall provide prompt written notice to Buyer in the event of any change with respect to the foregoing representations and warranties and shall provide an updated CMRT promptly in the event of any such change and, in any event, each March 1 during the term of this contract. Notices and CMRT(s) shall be sent to Air Products and Chemicals, Inc., 7201 Hamilton Blvd., Allentown PA 18195, Attn: Corporate Secretary. Seller shall "flow down" the requirements of this paragraph to its vendors, supplier and subcontractors and require that they provide similar representations and warranties (and CMRT's) to Seller with respect to any goods and materials that may be included in the goods and materials sold hereunder. Seller shall maintain complete and accurate records with respect to its obligations hereunder for a minimum period of 7 years, and Buyer shall have the right upon written request to inspect and audit such records. For purposes of this paragraph, the term "Conflict Minerals" shall mean gold, columbite-tantalite (coltan), cassiterite and wolframite, including their derivatives, which are tantalum, tin, tungsten or any mineral determine by the

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Secretary of State of the United States of America to be financing conflict in the Democratic Republic of the Congo or an adjoining country.

**27. GOVERNING LAW; DISPUTE RESOLUTION**

- 27.1 The contract resulting from the acceptance of the Purchase Order shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, U.S.A. for orders placed by APCI, the laws of England for orders placed by any entity controlled by APCI and having its principal place of business in the European Union, and the laws of the Republic of Singapore for orders placed by any entity controlled by APCI and having its principal place of business in any ASEAN country; excluding, however, the United Nations Convention on Contracts.
- 27.2 If any dispute or difference arises out of or in connection with the Purchase Order which the parties are unable to resolve by negotiation the parties shall with the assistance of (i) where Pennsylvania law applies, the American Arbitration Association, Commercial Mediation Rules, Philadelphia, PA, (ii) where English law applies, the Center for Dispute Resolution in London, England, and (iii) where Singapore law applies, the Singapore Mediation Centre, seek to resolve the dispute or difference amicably using an alternative dispute resolution ('ADR') procedure acceptable to both parties before pursuing any other remedies available to them.
- 27.3 If either party fails or refuses to agree to or participate in the ADR process or if in any event the dispute or difference is not resolved to the satisfaction of both parties within 90 days after it has arisen, then either party shall have the right to initiate legal proceedings against the other but only in a court located in Pennsylvania, England, or Singapore, as applicable, it being the intent of the parties that such court shall have exclusive jurisdiction over any legal proceedings initiated by either party against the other in connection with the Purchase Order.

**28. PRODUCT DEFECT AND NONCONFORMANCE NOTIFICATION**

- 28.1 Supplier is responsible for notifying Air Products of all product defects and nonconformances that could result in failure of a component resulting in an unsafe operating condition or reduce the specified performance. Notification shall be by email or phone to the Technical and Commercial contacts listed in Section X of the COC.
- 28.2 Notification shall include at a minimum a clear description of the defect, including all necessary parts affected, serial numbers, part numbers, quantity, dates delivered and customer PO.
- 28.3 Supplier shall document a proposed remedy to the defect including the repair, test and inspection requirements, estimated cost and time required to perform the repair.
- 28.4 Supplier shall submit for approval a formal work process that documents the steps leading to the evaluation of the defect and the notification of the customer.

**29. CERTIFICATES OF ORIGIN AND SELLER'S DECLARATION**

- 29.1 Upon request, Seller shall promptly provide, free of charge: a Certificate of Origin; (if U.S. origin) a Manufacturer's Affidavit; or, if qualified, a Free Trade Certificate of Origin that states the good(s) originate in a beneficiary country and qualifies for preferential treatment (e.g. Free Trade Agreement Certificates, Long Term Supplier Declarations).