

Terms and Conditions

- 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 unfulfilled 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 or any other modifications 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 and Payment:** 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. Payment terms shall be net 30 days after shipment by Seller.
- 3. 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.
- 4. Inspection:** 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 shall fail 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.
- 5. 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.
- 6. 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.
- 7. Indemnification Against Infringement:** The Buyer warrants that any instructions, plans or designs furnished or given by it shall not be such as will cause the Seller to infringe any letters patent, copyright, registered design, right of confidence or trade mark in execution of the Buyer's order and agrees to indemnify the Seller against all claims, costs or other expenses incurred by the Seller in respect thereof.
- 8. Repairs, Alterations and Modifications:** Any repairs made 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.
- 9. 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.
- 10. 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.
- 11. Trade Compliance:** Any quotation is legally binding upon us only after you have received a written acceptance from us of any order from you based on that quotation and we can at any point in time withdraw our quotation. By placing the order you certify that the order will not be used for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons, nor any other purpose prohibited by applicable law. Furthermore, you certify that you will comply with applicable local and international foreign trade and customs requirements or any embargos or other sanctions. You will immediately notify us in writing of any breach of this statement. We shall not be obligated to fulfill a binding order or agreement or any part thereof or related to it, nor liable for its non-fulfillment, if such fulfillment is prevented by any impediments arising out of applicable local and/or international foreign trade and customs requirements or any embargos or other sanctions. We shall have the right to terminate a binding order or agreement or any part thereof or related to it, with immediate effect and without prior notice, if fulfillment is prevented by any impediments arising out of applicable local or international foreign trade and customs requirements or any embargos or other sanctions. The customer shall indemnify us for any direct or indirect damages arising in consequence of any breach of this statement.
- 12. 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. Buyer is responsible for complying with all laws and regulations applicable to the purchase, export or import of the product of any state or country. 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.
- 13. Seller:** For purposes herein, the term Seller shall mean, as applicable, Air and 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.