



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) LINDA will supply the CUSTOMER requirements of the GASES in gaseous or liquid form in suitable containers such as gas cylinders, liquid cylinders or dewars or small bulk oxygenic vessels (collectively, "CYLINDERS").
- (b) The CUSTOMER agrees to give reasonable notice to LINDA whenever it expects its consumption of PRODUCTS to increase or decrease beyond usual limits, in order to enable LINDA to regulate its production and supply facilities accordingly.
- (c) If delivery of any PRODUCTS is at a LINDA location, then CUSTOMER shall pick up the PRODUCTS at such LINDA location and at such time as LINDA advises.
- (d) LINDA may at any time modify or discontinue selling (or renting) any PRODUCT without notice to CUSTOMER and CUSTOMER shall have no claim against LINDA for failure to furnish any PRODUCT.
- (e) The performance of LINDA's obligations hereunder is subject to and equipment upon flood, strike or other labour disruptions, fires, accidents, war, delays of carriers, inability to obtain raw materials, transportation breakdown, abnormal demand, failure of normal sources of supply, resistance of government, or any other similar or disastereous cause beyond LINDA's reasonable control. Deliberate trade during a strike or other labour disturbance affecting CUSTOMER shall be at CUSTOMER'S sole risk. CUSTOMER hereby indemnifies LINDA from and against all claims, costs, losses and damages arising out of any such delivery, which are not normally received by LINDA in the normal delivery of PRODUCT.

3. DELIVERIES

- (a) TITLES TO ALL PRODUCTS sold to the CUSTOMER shall pass to CUSTOMER when loaded F.O.B. LINDA'S location or F.O.B. CUSTOMER'S LOCATION if LINDA delivered the PRODUCTS.
- (b) Notwithstanding anything else herein, title to the CYLINDERS shall remain at all times with LINDA.

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 LINDA 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 LINDA may for a period of 60 days hereafter, elect in its sole discretion, to:
 - (i) meet the lower prices or rent as quoted by such manufacturer or supplier;
 - (ii) restate the price(s) or rent in effect under this Agreement at the end of said notice; or
 - (iii) terminate this Agreement with respect to the AFFECTED PRODUCTS.If LINDA 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 the 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. LINDA 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 (due to energy and other national costs) of PRODUCTS; (ii) a fee for LINDA's shipment 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 relates to the fees incurred by LINDA in order to comply with laws and regulations applicable to LINDA. However, these costs are difficult to calculate and dependent upon the provision. Therefore, the amount of the Environmental Fee is not related to actual compliance costs incurred by LINDA, which may vary by the type of PRODUCT, service, geographic location, or time. The Environmental Fee is not a tax, and LINDA 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 F.O.B. CUSTOMER LOCATION, LINDA may charge a delivery fee ("Delivery Fee"). If CUSTOMER requests a delivery F.O.B. a CUSTOMER LOCATION that is not scheduled, then LINDA 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 increase 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 LINDA for all accounts rendered by LINDA within thirty (30) days of the date of LINDA invoice, unless otherwise specified, and all amounts owing thereafter shall bear interest at the lower of 1.5% per month or the highest rate permitted by law.
- (g) In the event CUSTOMER fails to pay any invoice when due, or if LINDA reasonably believes that CUSTOMER will be unable to make payment when due, LINDA may require the CUSTOMER to pay for delivery of PRODUCT in advance and pay any outstanding indebtedness before LINDA makes any further deliveries. LINDA may apply towards the payment of any amount owed to LINDA any credit or amount which may be owed by LINDA 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 LINDA and shall promptly return to LINDA 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 rent 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, fillings or valves, CUSTOMER shall promptly pay LINDA on demand for the actual cost to LINDA of making all necessary repairs and of replacing all missing parts, or LINDA's then current replacement value for the CYLINDERS if they are damaged beyond repair.
- (c) LINDA may at any time demand that CUSTOMER return all CYLINDERS rented to CUSTOMER by LINDA. Upon receiving a demand therefor from LINDA, CUSTOMER shall return all CYLINDERS to LINDA and shall promptly make payment to LINDA, all LINDA's then current replacement value, for any or all CYLINDERS which are not returned to LINDA within 10 days after demand therefor by LINDA. However, ownership of all CYLINDERS so paid for shall remain in LINDA, and if such CYLINDERS shall be subsequently returned to LINDA by CUSTOMER, LINDA agrees to return to CUSTOMER any paid therefor, less accrued rental for such CYLINDER at the rate specified in LINDA's published price list from the date payment was made by CUSTOMER until the date of return thereof to LINDA and less the cost of any necessary repairs, except that LINDA 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 LINDA.
- (d) LINDA may at any time, upon reasonable notice, order the presence of the CUSTOMER to verify the existence and condition of any or all CYLINDERS rented by CUSTOMER.

6. LIABILITY

- (a) LINDA warrants that all GASES furnished hereunder shall conform to the description thereof published by the manufacturer, supplier, or LINDA, as the case may be, at the time of sale. LINDA 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. LINDA 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 LINDA's warranty for the GASES shall be to receive replacement of the GASES that do not conform to LINDA's warranty, or a refund of the purchase price thereof.
- (b) LINDA 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 WHENEVER SUCH DAMAGE RESULTS FROM ANY NEGLIGENCE, ACT OR OMISSION OF LINDA OR IS RELATED TO STRICT LIABILITY. All claims by CUSTOMER having anything to do with any LINDA invoice, any GASES furnished hereunder by LINDA that do not conform to LINDA's warranty, or any shipment 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 LINDA against all such claims.
- (c) CUSTOMER acknowledges receipt from LINDA of historical 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 wearing the appropriate and any other protective equipment for such hazards. CUSTOMER shall indemnify and hold harmless LINDA from and against any and all claims, costs, losses or damages of any kind and whatsoever, including for fines or penalty 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 LINDA.

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 hereof.
- (b) This Agreement shall be deemed to be renewed upon expiration of the original term for a renewed 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, discharge 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 favor prices for PRODUCTS in accordance with Section 4(c).
- (d) Upon termination of this Agreement for any reason:
- (i) CUSTOMER shall return to Linde return air CYLINDERS. CUSTOMER's obligations with respect to damaged CYLINDERS or CYLINDERS not returned shall be in accordance with Section 2 hereof.
 - (ii) All amounts owing by CUSTOMER to Linde shall become immediately due and payable.
 - (iii) All amounts owing by Linde, set forth in (e) 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 those 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

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 hereto. No change, modification, discharge or waiver of 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 for such change, modification, discharge or waiver of or addition to any of said provisions shall be effected by any acknowledgment or acceptance by Linde of any purchase order, acknowledgment or other form submitted by CUSTOMER specifying delivery dates, quantities or locations and also containing either of additional provisions.

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

(b) 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. If any term or provision of this Agreement or the application thereof to any person or circumstances 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.

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

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

CUSTOMER

LINDE CANADA LIMITED

By:

By:

Date:

Date:

Date:

This addendum is made part of the agreement dated
Linde Canada Limited

between

and

Product*
Product Customer
Price Location **

Material UOM
Number

Cylinder Rental

Description	Rate	Period	Description	Rate	Period

_____ (Customer Name)
By: _____

LINDE CANADA LIMITED

By: _____

Title: _____ (Print name)
Date: _____

Title: _____ (Print name)
Date: _____