

## **TERMS AND CONDITIONS**

### **1. TERMS**

Customer agrees that title to merchandise shall remain with United States Welding, Inc., d/b/a Rocky Mountain Air Solution ("RMA") until paid for in full and Customer shall pay all costs and reasonable attorney's fees and/or collection costs should any be incurred in collection of this account. Payment constitutes customer acknowledgement that the invoice is correct. If this document includes the sale or renewal of a lease, then payment is acknowledgement and acceptance of the renewal of the lease including automatic renewal terms. Leases are not transferable. The terms herein survive termination of any agreement.

### **2. CYLINDERS**

The term cylinder is defined as the cylinder, valve, cap and neck rings (collectively referred to as ("Cylinders")). CYLINDERS ARE LOANED TO CUSTOMER ONLY AND NO TITLE PASSES TO CUSTOMER. RMA RETAINS ALLOWNERSHIP RIGHTS OVER ALL LOANED CYLINDERS. CUSTOMER SHALL NOT HAVE ANY CYLINDERS REFILLED EXCEPT THROUGH RMA. REFILLING OF AND TRANSFILLING FROM LOANED CYLINDERS BY CUSTOMER OR ANYONE ELSE WITHOUT THE EXPRESS WRITTEN CONSENT OF RMA IS PROHIBITED. Customer acknowledges that it is highly dangerous and illegal to transport gases in closed spaces or in a closed vehicle due to risk of explosion or fire. Customer assumes all risk of injury or property damage and releases RMA from any liability. Customer agrees to be responsible for all cylinders loaned to Customer and shall return all cylinders to RMA. Customer shall be aware of the location of loaned cylinders at all times and shall provide the information to RMA if requested. Customer is obligated to pay RMA, on demand, all charges for loss or damage to any cylinder resulting from any cause while in Customer's possession. If any cylinder is damaged and can be repaired as determined by RMA, Customer shall be responsible for the repair cost at RMA's standard rates and the daily rental. If any cylinder is damaged beyond repair or not returned, Customer shall pay for loss of use of the cylinder(s) upon receipt of the invoice for such loss. RMA reserves the right to charge daily rental until such invoice is paid in full. Payment by the Customer for any lost cylinder shall not vest title to such cylinder to the Customer. If any lost cylinder so paid for is subsequently returned to RMA, the amount paid for the lost cylinder less the cost of putting the cylinder in repair, cylinder rental accrued to the date of such return, and finance charges, will be credited to Customer's account.

### **3. LIMITATION OF WARRANTIES, REMEDIES AND DAMAGES**

(a) RMA shall not be liable for any special, punitive, indirect or consequential damages (including downtime) caused by its breach of any of the terms or conditions hereof or otherwise arising out of the merchandise (including the use, manufacture, condition, delivery or presence thereof or any other matter, service or activity relating thereto, whether caused by RMA's breach of contract, negligence or other tortious conduct, or otherwise).

(b) RMA warrants all cylinders, equipment, product or merchandise delivered herewith will meet their manufacturer's standard specifications. The liability of RMA for defective or undelivered merchandise and/or the consequences thereof shall be limited solely to (at RMA's option) replacement of the merchandise or giving Customer a credit or refund in the amount of the contracted price of the affected merchandise. Customer shall give written notice to RMA within fifteen (15) days after the arrival of any claim of nonconformity or defective merchandise. A stocking and handling charge will be made on merchandise returned (unless the return is for the nonconformity or defective merchandise as described above). All returned merchandise must be accompanied by its invoice.

(c) Except for the said replacement or refund, RMA shall not be liable to Customer or any other person, and Customer shall indemnify RMA with respect to any loss, injury (including death) or damage to person or property, and all claims and expenses relating thereto, arising out of or relating to the merchandise or product.

(d) THERE ARE NO EXPRESS WARRANTIES BY RMA OR MANUFACTURER OTHER THAN THOSE SPECIFIED HEREIN. NO WARRANTIES BY RMA OR MANUFACTURER (OTHER THAN WARRANTY OF TITLE AS PROVIDED IN THE UNIFORM COMMERCIAL CODE) SHALL BE IMPLIED OR OTHERWISE CREATED UNDER OR BY ANALOGY TO THE UNIFORM COMMERCIAL CODE, INCLUDING BUT NOT LIMITED TO WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

(e) Customer assumes all responsibilities for the suitability and the results of using the merchandise alone or in combination with other articles or substances and in any manufacturing, medical, or other process or procedure. No terms or conditions of any purchase order or other document of Customer shall be part of this Agreement, and RMA expressly rejects any such provisions.

### **4. MISCELLANEOUS**

Executive Order 11246, as amended, and its implementing regulations relating to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, age, or national origin are incorporated herein. The materials covered herein were produced in conformity with the Fair Labor Standards Act of 1938, as amended, and the regulations and orders of the United States Department of Labor. The Hazardous Materials Charge, Delivery Charge, or other related Surcharges are intended to cover the increasing costs faced by RMA in complying with federal, state and local regulations involving the storage, handling, transportation and disposal of hazardous materials. The amount of the Hazardous Materials Charge, Delivery Charge, or other related Surcharges have no specific or fixed relation to actual compliance or transportation costs incurred by RMA, which vary by the type of product or service, time and location. These charges are not a federal, state or local tax and are not required by any federal, state or local agency or authority. RMA retains the entire amount of these charges.