

AIR PRODUCTS GENERAL TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS

1.1 In these Conditions, the following definitions apply:

Buyer: Prodair Air Products India Pvt. Ltd.

Buyer Materials: has the meaning set out in clause 5.3(j).

Conditions: these terms and conditions as amended from time to time.

Contract: the contract between the Buyer and the Seller for the supply of Goods and/or Services in accordance with these Conditions and the Order.

Deliverables: all documents, products and materials developed by the Seller or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Buyer and the Seller.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Buyer's order for the supply of Goods and/or Services, as set out in the Buyer's purchase order form.

Services: the services, including without limitation any Deliverables, to be provided by the Seller under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing by the Buyer and the Seller.

Seller: the person or entity from whom the Buyer purchases the Goods and/or Services.

1.2 In these Conditions, a reference to **writing** or **written** includes by fax and e-mail.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Buyer to purchase Goods and/or Services from the Seller in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of (i) the Seller issuing written acceptance of the Order; or (ii) any act by the Seller consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Seller seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing even in the case where Buyer is aware that such other terms conflict with these Conditions.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. SUPPLY OF GOODS

3.1 The Seller shall ensure that the Goods shall:

(a) correspond with their description and any applicable Goods Specification in all respects and, where applicable, to any samples or drawings;

(b) be of satisfactory quality and fit for any purpose held out by the Seller or made known to the Seller by the Buyer, expressly or by implication, and in this respect the Buyer relies on the Seller's skill and judgment;

(c) be free from defects in design, materials and workmanship and remain so until the earlier of (i) 12 months after operation; or (ii) 24 months from the delivery date of the Goods;

(d) comply with all applicable statutory and regulatory requirements relating to the manufacture, sale, labelling, packaging, storage, handling and delivery of the Goods; and

(e) be new and unused and of sound materials and workmanship.

3.2 Where a defect has arisen during the warranty period set out in clause 3.1(c) above, or existed at the date of delivery, but is not apparent, the Seller's liability will not cease merely because notice of such defect was not given to the Seller within such period.

3.3 The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.4 The Buyer shall have the right to inspect and test the Goods at any time before delivery at the Seller's premises or at any other location.

3.5 If, following such inspection or testing, the Buyer considers that the Goods do not conform or are unlikely to comply with the Seller's undertakings at clause 3.1, the Buyer shall inform the Seller and the Seller shall immediately take such remedial action, at the Seller's own expense, as is necessary to ensure compliance with the Specification and delivery schedule.

3.6 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Seller's obligations under the Contract, and the Buyer shall have the right to conduct further inspections and tests after the Seller has carried out its remedial actions.

3.7 The Seller shall comply 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/company/supplier-information/general-conditions-of-purchase.aspx>. The use of materials from unqualified countries requires approval in writing from the Buyer. The Buyer has the right to require certificates of raw materials and test certificates for materials used in the sourcing and manufacturing of the Goods. The Seller shall provide such certificates within 5 days after receipt of such request.

4. DELIVERY OF GOODS

4.1 Unless otherwise specified in the Order, the goods shall be delivered by the Seller DDP (intra EU movements) or DAP (external to EU movements) to the destination named by the Buyer when and in a manner specified by the Buyer. Any delivery term in the Order shall have the meaning given to it by the latest version of the Incoterms currently in force.

4.2 Risk of loss of the Goods shall pass to the Buyer upon delivery. Title to the Goods shall pass upon the earlier of (i) the Buyer's acceptance of the Goods; or (ii) payment for such Goods or part thereof.

4.3 All deliveries are to be made as specified in the Order, and where no specification is given, then when and as specified by the Buyer. Immediately upon shipment, the Seller is to provide shipping information to the Buyer's Purchasing Department advising detailed packing list and complete shipping and routing information. Acceptance of any part of the Order shall not bind the Buyer to accept future shipments, nor deprive it of the right to return goods already accepted.

4.4 The Goods and all required or necessary documentation shall be completed and delivered at the time(s) specified in, and otherwise in accordance with, the Order. The Seller shall not (i) deliver any

part of the Goods before the specified delivery date or (ii) partially ship the Goods, unless the Buyer agrees in writing. The Seller shall inform the Buyer immediately in, or confirm in, writing if it becomes apparent that the specified delivery date will not, or is unlikely to, be met.

- 4.5 The Seller shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition. The cost of protection and packing, transportation or storage is deemed included in the purchase price unless expressly agreed otherwise. Any specific packing specifications or requirements will be stated in the Order or attachments.
- 4.6 All packing material shall be deemed to be non-returnable unless otherwise stated in the Order. Any such packing material shall be returned to the Seller at the Seller's cost.
- 4.7 The Seller shall notify the Buyer of all product defects and non-conformances that could result in a failure of a component resulting in an unsafe operating condition or reduction in the specified performance. Notification shall include, at a minimum, a clear description of the defect including all parts affected, serial numbers, part numbers, quantity, date delivered and Order number. The Seller shall document a proposed a remedy to the defect including the repair, test, inspection requirements, estimated cost and time to perform the repair.

5. SUPPLY OF SERVICES

- 5.1 The Seller shall from the date set out in the Order and for the duration of this Contract provide the Services to the Buyer in accordance with the terms of the Contract.
- 5.2 The Seller shall meet any performance dates for the Services specified in the Order or notified to the Seller by the Buyer.
- 5.3 In providing the Services, the Seller shall:
- (a) co-operate with the Buyer in all matters relating to the Services, and comply with all instructions of the Buyer;
 - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Seller's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Seller's obligations are fulfilled in accordance with this Contract;
 - (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Seller by the Buyer;
 - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Buyer, will be free from defects in workmanship, installation and design;
 - (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
 - (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Buyer's premises;
 - (i) upon the request of the Buyer, promptly remove from the Buyer's premises or from any involvement with the Services any personnel, subcontractors or agents of the Seller who, in Buyer's reasonable opinion, are unsuitable; and
 - (j) hold all materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Seller (**Buyer Materials**) in safe custody at its own risk, maintain the Buyer Materials in good condition until returned to the Buyer,

and not dispose or use the Buyer Materials other than in accordance with the Buyer's written instructions or authorisation.

6. REMEDIES

- 6.1 If the Seller fails to perform the Services in accordance with the Contract, the Buyer shall, without limiting its other rights or remedies under the Contract or in law, have one or more of the following rights:
- (a) to require the Seller to re-perform the Services free of charge and as soon as reasonably practicable;
 - (b) to terminate the Contract with immediate effect by giving written notice to the Seller;
 - (c) to refuse to accept any subsequent performance of the Services which the Seller attempts to make;
 - (d) to recover from the Seller any costs incurred by the Buyer in obtaining substitute services;
 - (e) where the Buyer has paid in advance for Services that have not been provided by the Seller, to have such sums refunded by the Seller; and
 - (f) to be indemnified by the Seller for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to perform the Services in accordance with the Contract.
- 6.2 If the Goods are not delivered by the applicable date, the Buyer may, without prejudice to any other rights or remedies that it may have, at its sole option, claim or deduct 0.5% per cent of the price of the Goods for each week's delay in delivery by way of price reduction, up to a maximum of ten per cent (10%) of the total price of the Goods.
- 6.3 If any Goods are supplied that are not in accordance with the Contract then, without limiting its other rights or remedies under the Contract or in law, the Buyer shall be entitled, in its sole option:
- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Seller at the Seller's own risk and expense;
 - (b) to terminate the Contract with immediate effect by giving written notice to the Seller;
 - (c) to require the Seller to repair or replace, at the Seller's cost, the rejected Goods within 7 days, or to provide a full refund of the price of the rejected Goods (if paid);
 - (d) to refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
 - (e) to recover from the Seller any expenditure incurred by the Buyer in obtaining substitute goods; and
 - (f) to be indemnified by the Seller for any additional costs, loss or expenses incurred by the Buyer arising from the Seller's failure to supply Goods in accordance with the Contract.
- 6.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Seller.
- #### 7. PRICE AND PAYMENT
- 7.1 The price for the Goods and/or Services shall be the price set out in the Order and, unless expressly stated otherwise, shall be deemed to include any and all taxes arising from the design, manufacture, transport, delivery and sale of the Goods and/or Services, including without limitation, taxes, duties, fees, excises, assessments and similar governmental charges howsoever described and howsoever denominated imposed by any governmental entity having jurisdiction over the transactions contemplated by the Order. Such taxes, duties, etc. whether they are part of the price or are separately stated in the Order shall be separately stated on any invoice submitted by the Seller to the Buyer. If the Buyer furnishes the Seller with an exemption certificate, or any other similar proof of exemption, with respect to any tax, duty, etc. then the Seller shall

not include such tax on the invoice. Failure to comply with this requirement will result in the Seller's invoice being rejected.

- 7.2 The price for the Goods shall be inclusive of the costs of packaging, insurance and carriage of the Goods. The price for the Services shall be the full and exclusive remuneration of the Seller in respect of the performance of the Services unless agreed otherwise in writing by the Buyer.
- 7.3 Payments will be made as specified in the Order.
- 7.4 The Seller shall maintain complete and accurate records of the time spent and materials used by the Seller in providing the Services, and the Seller shall allow the Buyer to inspect such records at all reasonable times on request.
- 7.5 The Buyer may withhold payment of any disputed or insufficiently documented amounts included in any invoice. The Buyer may also at any time, without limiting any of its other rights or remedies, set off any liability of the Seller to the Buyer against any liability of the Buyer to the Seller, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.
- 8. INTELLECTUAL PROPERTY RIGHTS**
- 8.1 In respect of the Goods and any goods that are transferred to the Buyer as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Seller warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Buyer, it will have full and unrestricted rights to sell and transfer all such items to the Buyer.
- 8.2 The Seller assigns to the Buyer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 8.3 The Seller shall, promptly at the Buyer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Buyer may from time to time require for the purpose of securing for the Buyer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Buyer in accordance with clause 8.2.
- 8.4 All Buyer Materials are the exclusive property of the Buyer.
- 9. INDEMNITY**
- 9.1 The Seller warrants that the manufacture, supply or use of the Goods, or receipt, use or supply of the Services will not infringe or contribute to the infringement of a third party's intellectual property rights and agrees to defend, indemnify and hold harmless the Buyer, its successors, assigns, customers and users of the Goods against any claim, demand, loss and costs, including attorneys' fees and other legal costs, arising out of such infringement; and after notice of any infringement the Seller shall defend, at its own expense, any claims at law or in equity arising therefrom.
- 9.2 The Seller shall keep the Buyer and its employees, officers, agents, customers and successors and assigns indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to costs for its own employees, attorneys' fees and other legal costs) suffered or incurred by the Buyer as a result of or in connection with personal injury, death or damage due to (a) Goods and or Services that do not meet the applicable Specification; (b) any breach by the Seller or its suppliers or subcontractors of the Contract (including late delivery of Goods or performance of Services); or (c) any negligence, wilful default or wrongful act or omission of the Seller or its suppliers or subcontractors.
- 9.3 This clause 9 shall survive termination of the Contract.
- 10. INSURANCE**
- 10.1 During the term of the Contract and for a period of 12 months thereafter, the Seller shall maintain in force, with a reputable insurance company, professional indemnity insurance, product

liability insurance and public liability insurance, as appropriate, to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Buyer's request, produce the insurance certificate giving details of cover.

- 10.2 When performing Services at the Buyer's premises, the Seller shall have in force the following insurances which shall indemnify the Buyer against any claim for which the Seller may be legally liable under the Contract:
- (a) Employers Common Liability Insurance and Workmen's Compensation;
- (b) Public Liability insurance for minimum sum insured U.S. Dollar 1,000,000 per occurrence;
- And as applicable:
- (c) Professional Indemnity Insurance for the minimum sum insured U.S. Dollar 1,000,000 per occurrence; and Insurance of the Works (CAR) Insurance with a Sum Insured US\$50,000.
- 11. CONFIDENTIALITY**
- 11.1 The Seller shall not make use of drawings, specifications, data and other information furnished by the Buyer except in performance of the Order. Upon completion, cancellation or termination of the Order, the Seller shall promptly furnish to the Buyer all Deliverables and shall return to the Buyer all information furnished by the Buyer in connection with the Order and shall not retain or permit others to retain any reproduction or copy thereof. The Seller shall not disclose any Deliverable, information furnished by the Buyer or the Buyer's name to any third party and shall make no further use thereof, either directly or indirectly, without the Buyer's prior written consent, except in connection with the Order. The Seller shall not in any manner advertise, publish or use the fact that the Seller has provided, or contracted to provide, the Goods and/or Services ordered hereunder.
- 11.2 This clause 11 shall survive termination of the Contract.
- 12. TERMINATION**
- 12.1 Without limiting its other rights or remedies, the Buyer may terminate the Contract, in whole or in part, at any time and for any reason by giving written notice to the Seller at whereupon the Seller shall immediately cease all work under the Contract. The Buyer shall pay the Seller fair and reasonable compensation for any work in progress on the Goods or Services at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss and shall never be greater than the price of the Goods or Services. At the Buyer's option, the Seller shall assign to the Buyer any outstanding sub-orders to the Buyer and the Buyer shall have the right to receive promptly all Deliverables and any Goods, all in their then current state of completion.
- 12.2 Without limiting its other rights or remedies, the Buyer may terminate the Contract without liability to the Seller, with immediate effect by giving written notice to the Seller if:
- (a) the Seller commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of receipt of notice in writing to do so;
- (b) the Seller repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- (c) the Seller files a petition in bankruptcy or has such a petition filed against it or is subject to an insolvency proceeding or a proceeding giving protection against creditors, or if an order is issued appointing a receiver or trustee or a levy or attachment is made against a substantial portion of its assets, or if any assignment for the benefit of its creditors is made.
- 12.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at

termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

- 12.4 On termination of the Contract for any reason, the Seller shall immediately deliver to the Buyer all Deliverables whether or not then complete, and return all Buyer Materials. If the Seller fails to do so, then the Buyer may enter the Seller's premises and take possession of them. Until they have been returned or delivered, the Seller shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

13. COMPLIANCE

- 13.1 The Seller shall comply with the Buyer's policy which prohibits the giving or receiving of gifts or personal favours to or from anyone in connection with the Buyer's business as well as all applicable anti-bribery legislation including, but not limited to, the U.S. Foreign Corrupt Practices Act 1977 and the UK Bribery Act.
- 13.2 The Seller agrees to abide by the Buyer's Code of Conduct in its dealing with the Buyer. The Buyer's Code of Conduct is available at www.airproducts.com/codeofconduct.
- 13.3 The Seller undertakes to design, manufacture, transport, deliver and sell the Goods and Services in compliance with all applicable statutes, law, regulations, codes, rules, ordinances and any other requirement of any governmental or quasi-governmental entity having jurisdiction over the Seller's performance of the Order or the country in which the Goods are to be used.

14. GENERAL

14.1 Assignment and subcontracting.

- (a) The Seller may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Buyer.
- (b) The Seller shall not sub-let or subcontract all or any part of the Contract without the prior written consent of the Buyer. Any such consent shall not relieve the Seller of its obligations or liabilities under this Contract. The Seller shall ensure that its subcontractors comply with all the provisions of this Contract.

- 14.2 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- 14.3 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by the Buyer to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 14.4 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

- 14.5 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Buyer.

- 14.6 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of India.

- 14.7 **Jurisdiction.** Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration

administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The place of arbitration shall be Mumbai, India. The language of arbitration shall be English. The number of arbitrators shall be one for disputes with a value of less than US\$5million otherwise the number of arbitrators shall be three.