

TERMS AND CONDITIONS

1. **Applicability.** These Terms and Conditions including the terms on the Sales Order (collectively, “**Terms**” or “**Agreement**”) are the only terms that govern the sale of the goods (“**Goods**”) by All Safe Global, LLC, and American Cylinder, LLC d/b/a All Safe and d/b/a All Safe Global (collectively, “**Seller**”) to the buyer named in the Sales Order (“**Buyer**”). These Terms prevail over any general terms and conditions of purchase submitted by Buyer. A sales order document denoting pricing, quantities, Buyer’s name, delivery details and other information is generated by the Seller for each transaction (“**Sales Order**”).
2. **Shipping Terms.** Seller will deliver the Goods FCA Seller’s facility in Wyoming, Minnesota (INCOTERMS 2010) (the “**Delivery Point**”) using Seller’s standard methods for packaging and shipping such Goods unless otherwise specified in the Sales Order. The cost of shipping and insurance (if requested by Buyer) will be prepaid by Seller and added to the invoice Goods.
3. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Minnesota Uniform Commercial Code.
4. **Inspection and Rejection of Nonconforming Goods.**
 - a. Buyer will inspect the Goods within two business days of receipt (“**Inspection Period**”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. “**Nonconforming Goods**” means only the following: (i) product shipped is different than identified in Buyer’s purchase order; or (ii) product’s label or packaging incorrectly identifies its contents.
 - b. If Buyer timely notifies Seller of any Nonconforming Goods, Seller will, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer will ship, at its expense and risk of loss, the Nonconforming Goods to Seller’s facility located in Wyoming, Minnesota. If Seller exercises its option to replace Nonconforming Goods, Seller will, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer, at Buyer’s expense and risk of loss, the replaced Goods FCA Delivery Point.
 - c. Buyer acknowledges and agrees that the remedies set forth in Section 4(b) are Buyer’s exclusive remedies for the delivery of Nonconforming Goods.
5. **Price.**
 - a. Buyer will purchase the Goods from Seller at the price(s) (the “**Price(s)**”) set forth in this Agreement.
 - b. The Price is Seller’s confidential information and will not be disclosed to any third party. Unless otherwise stated on this Sales Order, all Prices are stated in US dollars and do not include shipping, transportation, storage, special packaging or services, insurance, sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer will be responsible for all such charges, costs and taxes; provided, that, Buyer will not be responsible for any taxes imposed on, or with respect to, Seller’s income, revenues, gross receipts, personnel or real or personal property or other assets.
6. **Payment.**
 - a. Buyer will pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer will reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller will be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder.
 - b. Buyer will not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller’s breach, bankruptcy or otherwise.
7. **No Warranty on Goods; Service Warranty.**
 - a. Products manufactured by a third party (“**Third Party Product**”) constitute substantially all of the Goods. **The SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
 - b. Seller warrants to Buyer that for a period of 30 days from the date of shipment of the Goods (“**Valve Service Warranty Period**”), that any valve installation services performed by Seller will be free from material defects in workmanship. In case of breach of the warranty in this Section, Seller will, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer will, at Seller’s expense, return such Goods to Seller. **THE REMEDIES SET FORTH IN SECTION SHALL BE THE BUYER’S SOLE AND EXCLUSIVE REMEDY AND SELLER’S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION.**
8. **Limitation of Liability.**
 - a. **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
 - b. **IN NO EVENT SHALL SELLER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.**
9. **Warning; Buyer’s Duty to Warn; Indemnification of Seller.** Compressed gas equipment is dangerous and poses a risk of explosion, fire, suffocation, poisoning, extreme temperature, crushing and related injuries. Misuse, using the wrong equipment, or using equipment under unsafe conditions can result in bodily injury, and/or death. Buyer alone is responsible for determining what equipment to use. Buyer acknowledges that Seller does not customarily affix to Goods warnings labels that set forth hazards related to use of Goods themselves or intended contents (“**Product Warnings**”), because, as Buyer hereby acknowledges, Seller is not aware of the ultimate use of Goods or contents with which Goods will be filled. Buyer further acknowledges that Buyer has a duty to warn end-users about dangers inherent in filling and using high-pressure gas cylinders, including a duty to warn end-users about dangers related to filling cylinders with certain gases (including those designated as hazardous substances), and that Seller has no such duty. Buyer will be solely responsible for, and assumes all obligations for and liability associated with, determining the use of Goods and the foreseeable maintenance and refilling risks, as well as affixing to Goods all appropriate warning labels, including those warning labels required by law and any appropriate Product Warnings. Buyer will defend, indemnify and hold Seller harmless against all claims and losses arising out of or related to (i) failure or alleged failure to provide or affix warning labels, including Product Warnings, on Goods, (ii) any deficiencies in warning labels provided or affixed to Goods, or (iii) Seller’s act of providing or/and affixing warning labels to Goods in accordance with Buyer’s specifications, including causes of action in negligence, tort, product liability, strict liability or warranty.
10. **Force Majeure.** The Seller is not responsible for any failure or delay in performing this Agreement if caused by acts or circumstances beyond the reasonable control of Seller.
11. **Governing Law.** All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Minnesota without giving effect to any choice or conflict of law provision or rule.