TERMS & CONDITIONS: IMPORTANT! LEGALLY BINDING, PLEASE READ BEFORE SIGNING!

1. SELLER. The term “SELLER” as used herein means Complete Welders Supply. SELLER REQUIRETHAT THIS DOCUMENT BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER/CUSTOMER (“BUYER”). THE PERSON SIGNING THIS FORM CONFIRMS THAT HE OR SHE IS AUTHORIZED TO BIND BUYER TO THESE TERMS & CONDITIONS, AND THAT SELLER IS RELYING ON THAT CONFIRMATION.

2. WARRANTIES: ALL GAS PRODUCTS DELIVERED HEREUNDER SHALL COMPLY WITH COMPRESSED GAS ASSOCIATION STANDARDS AND THE STANDARD PUBLISHED SPECIFICATIONS OF SELLER’S SUPPLIERS. SELLER MAKES NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER’S SOLE LIABILITY AND BUYER’S SOLE REMEDY FOR THE NON-DELIVERY OF PRODUCT, OR FOR THE DELIVERY OF NON-CONFORMING PRODUCT, OR FOR ANY CLAIM CONCERNING THE RENTAL EQUIPMENT SHALL BE SOLELY LIMITED TO AND SHALL NOT EXCEED THE PURCHASE/RENTAL PRICE OF THE PRODUCT/EQUIPMENT.

3. INDEMNITY: BUYER SHALL AND DOES HEREBY AGREE TO DEFEND, INDEMNIFY, AND HOLD SELLER, ITS EMPLOYEES, OFFICERS, DIRECTORS, AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, LIABILITY, CLAIM OR EXPENSE RELATED TO THIS AGREEMENT AND/OR THE PRODUCTS, SERVICES, AND EQUIPMENT THAT ARE THE SUBJECT OF THIS AGREEMENT, HOWSOEVER ARISING, WHICH SHALL INCLUDE BUT NOT BE LIMITED TO ALL LOSS ARISING OUT OF INJURY TO OR DEATH OF PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY, PROVIDED SAID LOSS IS NOT DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER.

4. LIMITATION OF LIABILITY: BUYER ACKNOWLEDGES THAT THERE ARE HAZARDS ASSOCIATED WITH THE USE AND/OR STORAGE OF THE PRODUCTS THAT ARE THE SUBJECT OF THIS TRANSACTION, AND BUYER SHALL BE RESPONSIBLE FOR WARNING AND PROTECTING BUYER’S EMPLOYEES AND OTHERS WHO MAY BE EXPOSED TO SUCH HAZARDS DUE TO BUYER’S STORAGE AND/OR USE OF SUCH
PRODUCTS, AND/OR THE PRESENCE OR USE OF THE PRODUCT WHETHER USED SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES. BUYER ASSUMES ALL LIABILITY FOR LOSS, DAMAGE, OR INJURY TO PERSONS OR TO PROPERTY. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWSOEVER ARISING, WHICH SHALL INCLUDE BUT NOT BE LIMITED TO ANY LOSS RESULTING FROM A CAUSE OF ACTION IN TORT AND/OR CONTRACT.

5. EXCLUSIVE REMEDY: In the case of Manufacturer’s breach of warranty or any other duty with respect to the quality of products and accessories including equipment, materials or services furnished by SELLER, the exclusive remedy therefore shall be against the Manufacturer.

6. This invoice shall be conclusively deemed to be accurate for all purposes unless disputed by BUYER in writing within fifteen (15) days of the date of the invoice.

7. INTENDED USERS. SELLER’S PRODUCTS ARE INTENDED FOR ULTIMATE PURCHASE BY COMMERCIAL INDUSTRIAL USERS AND FOR OPERATION BY PERSONS TRAINED AND EXPERIENCED IN THE USE AND MAINTENANCE THEREOF. SELLER’S PRODUCTS ARE NOT INTENDED FOR CONSUMERS OR CONSUMER USE. SELLER’S WARRANTIES, IF ANY, DO NOT EXTEND TO ANY CONSUMER. BUYER CONFIRMS THIS TRANSACTION IS NOT FOR CONSUMER USE.

8. CYLINDERS. Cylinders remain the property of the SELLER at all times. BUYER shall return each cylinder when empty to the location from which the same was shipped not later than 90 days after its delivery to BUYER. BUYER agrees to pay on demand a cylinder rental invoice which delineates the movement and balances of cylinders in BUYER’s possession, and calculates appropriate charges, including charges for any cylinders held over the above noted 90 day period. Rental (“demurrage”) charges shall be determined in accordance with the customary method of the SELLER. BUYER shall pay promptly on demand to the SELLER, at SELLER’S then established valuation and rates, for the loss of or damage to any of said cylinders or fittings resulting from any cause after delivery thereof to BUYER and until return to the SELLER. Refilling of or the loan of SELLER’S cylinders to third parties is prohibited.

9. RETURN MERCHANDISE. No returns without prior authorization from SELLER. Special order items are not returnable. Returns must be accompanied by the original written receipt. A 20% re-stocking charge is applicable to all returned merchandise.
10. PAYMENT. For commercial credit transactions, payment shall be made by BUYER within thirty (30) days from the date of this invoice. If the account is not paid in full within the above terms, a finance charge will be imposed at the rate of one and one-half percent (1.5%) per month.

11. OTHER IMPORTANT TERMS. The prevailing party in any action or proceeding against the other party arising from or related to this invoice shall be entitled to recover an award of attorney’s fees and costs incurred in such matter in addition to any other relief. **ARBITRATION:** ALL DEBT COLLECTION CLAIMS IN EXCESS OF TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500) ARISING OUT OF OR RELATING TO THIS INVOICE SHALL BE SETTLED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, BEFORE ONE ARBITRATOR IN NAPA COUNTY, CALIFORNIA, AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. BUYER AND SELLER ALSO AGREE THAT THE AAA OPTIONAL RULES FOR EMERGENCY MEASURES OF PROTECTION SHALL APPLY TO THE PROCEEDINGS. THIS ARBITRATION AGREEMENT ONLY INCLUDES DEBT COLLECTION CLAIMS. BUYER AND SELLER AGREE THAT THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA, WILL HAVE EXCLUSIVE JURISDICTION OVER ALL OTHER CLAIMS AND CONTROVERSIES OF ANY NATURE BETWEEN BUYER AND SELLER.