



TERMS AND CONDITIONS

Definitions.

"Metaloids" means Metaloid Precursor's Inc. and its employees. "Buyer" means the entity to which Metaloids is providing Products under the Contract. "Contract" means documents that comprise the agreement between the Buyer and Metaloids for the sale of Products, rental of Returnable Cylinders, including these "Terms and Conditions" and any other documents incorporated therein by reference, such as, the final quotation, the agreed composition of product mixture in the scope of supply, and Metaloids' order acknowledgement. "Returnable Cylinders" means Metaloids' owned cylinders, cylinder caps, valves and valve caps used to deliver Products to Buyer. "Products" means specialty gases and chemicals.

TERMS AND CONDITIONS FOR SALE OF PRODUCTS AND LEASE OF EQUIPMENT

NOTICE: Sale of any Products and Lease of Equipment is expressly conditioned on Buyer's assent to these Terms and Conditions. Any additional or different terms proposed by Buyer are expressly objected to and will not be binding upon Metaloids unless agreed to in writing by Metaloids. No order issued by Buyer shall be binding on Metaloids unless approved in writing. Any oral or written representation or warranty not contained herein, shall not be binding on either party. An order to perform work and Metaloids' performance thereof shall constitute Buyer's assent to these Terms and Conditions. Any quotation by Metaloids shall expire after 30 days from the date of the quote and may be modified or withdrawn at anytime, unless specified otherwise in the quote.

1. Cost and Attorneys Fees

Buyer shall reimburse Metaloids reasonable cost and legal fees associated with commencing or defending claims arising under this Contract.

2. Payments. Except as otherwise agreed to by Metaloids in writing, and upon approved credit, the following payment terms apply:

2.1 Buyer shall pay Metaloids all invoiced amounts in U.S. dollars, without right of set-off, within 30 days from date of invoice. For any product costing U.S. \$1,000 or more, a partial payment of 50% or more of the contract price may be required in advance of shipment. Buyer shall pay a monthly late payment charge computed at the rate of 2%, or the maximum interest rate permitted by applicable law, whichever is less, on any past-due amount for each month (or fraction thereof) that the payment is overdue.

2.2 If at any time during the contract, Metaloids reasonably believes that Buyer has become financially unstable, Metaloids may demand further assurance, full or partial payment in advance or otherwise be entitled to suspend or end the Contract.

3 Returnable Cylinders: There is a daily charge on Returnable Cylinders used for shipping Products to Buyer and the applicable amount is specified in quotation to Buyer. A deposit may be required to cover rental charges for the expected rental period. If Returnable Cylinder is not returned in the period paid for, Metaloids will invoice Buyer at standard rates for charges in excess of the deposit, unless Buyer has purchased a new rental period.

3.1 Buyer shall return empty Returnable Cylinders, charges pre-paid, to Metaloids facility and is responsible for any damage to cylinder beyond normal wear and tear.

3.2 Metaloids can supply Products in Buyer owned cylinder, supplied by Buyer or sold to Buyer by Metaloids. Acceptance of a Buyer supplied and pre-cleaned cylinder is subject to a technical review, covering issues including but not limited to compliance with D.O.T. testing codes, internal cleanliness, passivation and fitness of cylinder valve.

3.3 Buyer shall not refill or permit any fluid to re-enter any Metaloids owned cylinder at all times.

4. Delivery; Title Transfer; Risk of Loss; Storage.

4.1 Metaloids shall deliver Products to Buyer EXW (Incoterms 2000) 226 Metro Drive, Metrocrest Industrial Park, Terrell, TX 75160-9169. Metaloids shall not be liable for damages resulting from handling and delivery. Buyer will notify Metaloids within 10 business days of receipt of shipment, of any nonconformities existing at the time of delivery. Metaloids may deliver some or all products in advance of the delivery schedule. Delivery times are approximate and contingent upon Metaloids'



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ability to obtain all materials, including cylinders and associated components for product packaging and information needed to complete work.

4.2 Title to Products shipped within the U.S. shall pass to Buyer when Products are made available for shipment from the manufacturing or storage facility utilized by Metaloids.

4.3 If any Products cannot be shipped to or received by Buyer when ready due to any cause not attributable to Metaloids, Metaloids will notify Buyer to optionally ship Products to an agreed freight forwarder. If Metaloids passes Products to the said freight forwarder, the following conditions shall apply: (i) title and all risk of loss or damage shall immediately pass to Buyer; (ii) any amounts otherwise payable to Metaloids upon delivery or shipment shall be payable upon presentation of Metaloids' invoices; (iii) all expenses and charges incurred by Metaloids in relation to handling, inspection, preservation, insurance, storage, demurrage, removal and any taxes shall be payable by Buyer upon submission of Metaloids' invoices; and (iv) when conditions permit and upon payment of all amounts due hereunder, Metaloids shall resume delivery of Products to the originally agreed point of delivery.

5. Excusable Delays. Metaloids shall not be liable nor in breach or in default of its obligations under the Contract to the extent that performance of such obligations was delayed or prevented, directly or indirectly, due to circumstances beyond Metaloids' reasonable control, including, but not limited to, acts of God, fire, terrorism, declared or undeclared war, epidemics, material shortages, insurrection, acts (or omissions) of Buyer, any act or omission by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of the delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay.

6. Compliance with Laws, Codes and Standards.

6.1 Metaloids represents that the Products will be produced in compliance with applicable fair labor standards laws, occupational safety and health laws.

6.2 The Contract price, delivery and performance dates and any performance guarantees will be equitably adjusted to reflect additional costs or obligations incurred by Metaloids resulting from hikes in raw material prices and a change in industry specifications, codes, standards and applicable regulations.

6.3 Metaloids' obligations are conditioned upon Buyer's compliance with all applicable trade control laws and regulations. Buyer shall not transship, re-export, divert or direct Products other than in and to the ultimate country of destination specified on Buyer's order or declared as the country of ultimate destination on Metaloids' invoice, except as permitted by applicable laws and regulations.

7. Warranty.

7.1 Metaloids warrants to Buyer that the Products shall be shipped free from defects in material, workmanship and title and in accordance with mutually agreed specifications. Unless Metaloids expressly agrees otherwise in writing, any items not manufactured by Metaloids shall carry only their original manufacturer's warranty and Metaloids gives no added warranties. Unless otherwise stated in the Contract, the warranty period for germane and silicon Products shall be two years from delivery. The warranty period for all other Products shall be stated in product specifications.

7.2 If Products do not meet the above warranties, Buyer shall promptly notify Metaloids in writing within 20 working days warranty period. Metaloids shall thereupon issue a return authorization number and proceed to replace the defective Products. If in Metaloids' reasonable judgment the Product cannot be replaced, Metaloids shall refund or credit monies paid by Buyer for such portion of Products that do not meet the above warranties. The parties shall mutually agree on the specifications of any test to determine the presence of a defect.

7.3 These warranties and remedies are conditioned upon (a) the proper storage, installation, operation, and maintenance of the Products and conformance with the material safety datasheet provided by Metaloids and (b) Buyer keeping proper



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records of operation and maintenance during the warranty period and providing Metaloids access to those records. Metaloids does not warrant Returnable Cylinders against normal wear and tear or damage caused by misuse, accident, or use against the advice of Metaloids. Any modification of Returnable Cylinders or dilution of Products shall render the warranty null and void.

7.4 This Article provides the exclusive remedies for all claims based on failure of or defect in Products, whether the failure or defect arises before or during the applicable warranty period and whether a claim, however described, is based on contract, warranty, indemnity, tort/extracontractual liability (including negligence), strict liability or otherwise. The warranties provided in this Article are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory. No implied statutory warranty of merchantability or fitness for a particular purpose applies.

8. Limitation of Liability.

8.1 The total liability of Metaloids for all claims relating to the performance of the Contract or use of any Products shall not exceed (a) the Contract price or (b) if this Contract is in the form of a master agreement under which Buyer places an order with Metaloids for the Products to be purchased, (i) the final price of the particular order under which the specific Products giving rise to the claim are supplied or (ii) ten thousand US dollars (US\$10,000) if the claim is not part of any particular order. Metaloids' liability shall terminate upon the expiration of the applicable warranty period, provided that Buyer may enforce a claim that accrued prior to that date by commencing an action or filing an arbitration, as applicable under the dispute resolution clause, before the expiration of the applicable statute of limitations, but not later than one year after the expiration of such warranty period.

8.2 Metaloids shall not be liable for loss profits or revenues, loss of product, loss of use of Products or any associated equipment, interruption of business, cost of capital, cost of cover, downtime costs, increased operating costs, claims of Buyer's customers for such damages, or for any special, consequential, incidental, indirect, punitive or exemplary damages.

8.3 If Buyer is supplying Metaloids' Products to a third party as, Buyer shall require the third party to agree to be bound by this Article. In the absence of such third party agreement to protect Metaloids, Buyer shall indemnify, defend and hold Metaloids harmless for any and all claims made by the third party in excess of the limitations and exclusions of this Article.

8.4 Buyer's and Metaloids' rights, obligations and remedies arising out of or relating to the Products are limited to those rights, obligations and remedies described in this Contract. This Article shall prevail over any conflicting terms in the Contract, except to the extent that such terms further restrict Metaloids' liability.

9. Dispute Resolution

9.1 Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be resolved in accordance with this paragraph and will be settled, if possible, by negotiation between the parties. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate management of each party, to be held within twenty (21) business days after giving notice. If the dispute is not resolved within thirty (45) business days after the date of the meeting of management, or any later date to which the parties may agree, either party may submit to arbitration. Any claim, legal action or proceeding (including without limitation claims for set-off or counterclaim) regarding the dispute shall be brought in the appropriate state courts of Texas, and the parties irrevocably consent to the exclusive jurisdiction of those courts for such claims. Each party submits to and accepts unconditionally the jurisdiction of those courts with respect to its legitimate business interest, person and property.

9.2 Notwithstanding the terms above, each party may where legally available, commence an action or proceeding in a court of competent jurisdiction to apply for interim or conservatory measures, but not monetary damages.

9.3 The validity, performance and all matters relating to the interpretation and effect of the Contract and all further documents executed pursuant to it shall be construed and interpreted in accordance with the laws of the State of Texas.



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10. Termination and Suspension and Restitution.

10.1 Buyer may terminate the Contract for cause if Metaloids: (i) becomes insolvent or (ii) breaches a material obligation which does not have a specified contractual remedy, provided that: (a) Buyer shall first provide Metaloids with detailed written notice of the breach and of Buyer's intention to terminate the Contract, and (b) Metaloids fails within 30 days after receipt of the notice (or such extended period as is considered reasonable by the parties), to either commence and diligently pursue cure of the breach or provide reasonable evidence that the breach has not occurred.

10.2 Metaloids shall have the right to suspend or terminate the Contract (or any portion thereof) immediately for cause if (i) Buyer becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; (ii) Buyer materially fails to comply with any term of the Contract, including but not limited to, failure to make any payment when due.

10.3 If the Contract is terminated for any reason other than those set forth in Section 9.1 above, Buyer shall pay Metaloids for all Products completed or partially completed, Lease Fees incurred before the effective date of termination.

10.4 Buyer shall pay any reasonable expenses incurred by Metaloids in connection with a suspension or termination, including expenses for repossession, fee collection and costs of storage during suspension, upon submission of Metaloids' invoice(s).

10.5 The following Articles shall survive termination or cancellation of the Contract: 2, 3, 4, 6, 7, 8, 9, 10, 11, 12 and 13.

11. Intellectual Property Indemnification.

Subject to the terms of the Contract, Metaloids shall indemnify Buyer against any damages, costs and expenses arising out of any suit, claim, or proceeding (a "Claim") alleging that Products infringe a patent in effect in the U.S. or country of delivery, or U.S. copyright or copyright registered in the country of delivery; provided that: (a) Buyer promptly notifies Metaloids in writing of any such Claims; (b) Buyer makes no admission of liability and gives Metaloids sole authority, at Metaloids' expense, to direct and control all defense, settlement, and compromise negotiations; and (c) Buyer provides Metaloids with full disclosure and assistance that may be reasonably required to defend any such Claim.

12. Inspection and Factory Tours. The quality control exercised by Metaloids in its manufacture of Products shall be in accordance with Metaloids' normal quality control policies, procedures and practices. Metaloids shall attempt to accommodate Buyer's requests to witness Metaloids' factory testing of Products, if such witnessing can be arranged without delaying the work. Such access shall be limited to areas directly concerned with Products ordered by Buyer and shall not include restricted areas where work of a proprietary nature is being conducted.

13. General Clause

13.1 If any provision of the Contract is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will replace any such void or unenforceable provision with a new valid and enforceable provision that achieves substantially the same practical or economic effect and is valid and enforceable.

13.2 The Contract represents the entire agreement between the parties. No modification, amendment or waiver shall be binding on either party unless agreed in writing by the parties' or their authorized representatives.

13.3 For direct and indirect U.S. government contracts only, all Products provided by Metaloids shall be considered "commercial items" as defined in FAR Part 2, 2.101 and in accordance with FAR 52.244-6. If the reasonableness of the price cannot be established, if cost or pricing data is required for any other reason, or if the Products cannot be considered "commercial items," Metaloids may cancel the Contract without liability.

13.4 This Contract may be executed in multiple counterparts that together shall constitute one agreement.