

THRADD, LLC by and on behalf of its subsidiary and affiliate companies
Terms of Sale

Terms of Sale refers to the terms and conditions contained herein. "Seller" refers to THRADD, LLC, by and on behalf of its subsidiary and affiliate companies. "Buyer" refers to the applicant in the account application to which these Terms of Sale are affixed, or in which these Terms of Sale are referenced. Each Contract of sale of Goods between Seller and Buyer ("Contract") shall include these Terms of Sale, together with any other material describing the Goods being sold, their price, delivery terms, and all other special provisions. "Goods" refers to any items of tangible personal property described in any Contract.

1. *Delivery.* Seller may deliver the Goods or ship the Goods by a carrier of Seller's selection, F.O.B. shipping point to the Buyer's address in the Contract, unless the Contract provides otherwise. Unless otherwise specifically provided in a Contract, Seller shall have no obligation to arrange for any valuation of the Goods over and above the valuation provided in the carrier's tariffs or other rate schedules at the lowest rates of carriage.

2. *Delivery Date(s).* Delivery date(s) are determined from the date of each Contract and are estimates of approximate dates of delivery, not a guarantee of a particular day of delivery.

3. *Buyer's Delay of Acceptance.* If Buyer delays acceptance of the Goods when delivered or ready for shipment, Buyer shall forthwith pay to Seller the full price of the Goods and shall also pay Seller such warehousing and pier charges and other expenses as Seller may incur as a result of Buyer's delay.

4. *Claims for Shortages, Non-conformity, and Damage in Transit; Returns.* Seller shall have no obligation with respect to any shortages, failure of Goods to conform to a Contract, or damage in transit, unless Buyer gives Seller written notice of the same within 10 days after such Goods arrive at the point of delivery and Seller is given a reasonable opportunity to investigate. No Goods shall be returned to Seller without Seller's written authorization. Buyer shall pay a 15% restocking charge on all Goods returned to Seller, except for returns required under Section 11 hereof.

5. *Terms of Payment.* Unless otherwise specified in a Contract, Buyer shall make payment in full within 30 days after the date of Seller's invoice. Interest at 1.5% per month, or the maximum lawful rate of interest allowable in the state where the Goods are delivered, whichever is less, shall accrue on all past due payments. If the interest rate is later found to be usurious, the Seller will reduce the rate and refund all excess interest payments remitted upon request of Buyer. If a contract provides for payment other than cash immediately or cash on delivery (COD), Buyer represents that the goods are being purchased for business, commercial or agricultural purposes and not for personal, household, or family use. If Seller employs any collection agency or attorney-at-law to collect any amount due Seller, Buyer shall pay all collection fees, attorneys' fees, and court costs, in addition to the amount otherwise unpaid. Seller may bring suit for the collection of any such amount in any jurisdiction or venue Seller may select.

6. *Taxes.* Any taxes imposed by federal, state, or other governmental authority on the sale or use of the Goods referred to in this Order shall be paid by Buyer in addition to the purchase price.

7. *Security for Price.* Until Buyer pays Seller in full for the Goods, title to the Goods shall remain in Seller's name and Seller shall have a purchase money security interest in the Goods. If Buyer shall default in such payments, Seller shall have all the rights as holder of such title or as such secured party under the Uniform Commercial Code and/or any other law then in force; and Seller may, in addition, retain as rental any payments received by Seller on account of the purchase price of the Goods, whether Buyer's default shall have occurred before or after delivery. If Seller repossesses the Goods, Seller may resell the Goods after 10 days' prior written notice to Buyer. Seller may file one or more financing statements to perfect such security interests. If necessary, Buyer shall execute such financing statements upon the request of Seller.

8. *Warranty of Quality.* (a) Seller warrants that, at the time of shipment the Goods shall be free from defects in material and workmanship and in accord with any written warranty extended by the manufacturer of the Goods and delivered with the Goods. Seller also warrants that the Goods shall be fit for their intended purposes only to the extent that (i) Buyer shall have advised Seller of such purpose in writing and (ii) Seller shall have represented to Buyer in writing that the Goods shall be fit for such purpose. (b)

Sellers obligations under the said warranty shall be limited to repairing or replacing (at Seller's option) F.O.B. point of shipment of the Goods or for any components of the Goods which, if Buyer uses, operates, and maintains the Goods strictly in accordance with the applicable operating instructions and within the applicable published performance specifications and as otherwise provided in the Contract, shall prove defective in material or workmanship within six months after the date of delivery by Seller to Buyer, provided that the Buyer gives Seller notice of any such defect and satisfactory proof thereof promptly after the defect first becomes known to Buyer. (c) The warranty stated above does not apply to Goods or components thereof normally consumed in operation or which have a normal useful life of less than six months. (d) Except for the warranties expressly set forth above, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED; NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY WHICH EXCEEDS THE FOREGOING WARRANTY; AND ALL SUCH IMPLIED WARRANTIES ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM ANY CONTRACT RESULTING OR ARISING FROM, OR OTHERWISE EVIDENCED BY ANY CONTRACT.

9. *Patents.* (a) Seller shall defend any claims which allege in a suit or proceeding against Buyer that the Goods or their use, if the Goods were manufactured by Seller to any design not furnished to Seller by Buyer, constitute an infringement of any patent of the United States of America, if notified promptly in writing and given authority, information, and assistance for such defense; and Seller shall pay all damages and costs awarded against Buyer in such suit or proceeding for patent infringement. In case any of the Goods are in such suit or proceeding held to constitute infringement and the use of such of the Goods is enjoined, Seller, at its own expense, shall, as Seller may elect, either (i) procure for Buyer the right to continue using such of the Goods, or (ii) replace any of the Goods with non-infringing Goods, or (iii) modify those Goods so they become non-infringing, or (iv) remove the Goods and refund the purchase price plus the transportation costs thereof. (b) Seller makes no express warranty, and no warranty shall be implied, with respect to the infringement of patents issued by countries other than the United States of America. (c) The foregoing states the entire liability of Seller for patent infringement.

10. *Limitation of Liability.* Seller's liability on any claim, whether in contract, tort (including negligence) or otherwise, for any loss or damage arising out of, connected with, or resulting from the manufacture, sale, delivery, resale, repair, replacement, or use of the Goods shall in no case exceed the price allocable to the Goods, or component thereof, which gives rise to the claim, except as may otherwise be specifically provided in Section 9 above. In no event shall Seller be liable for consequential or incidental damages. Seller shall not have any liability, whether in contract, tort (including negligence), or otherwise, as the result of furnishing any advice or assistance to Buyer concerning any Goods supplied hereunder or concerning any system or equipment in which any such Goods may be installed unless the Contract provides separate compensation to Seller for such advice or assistance.

11. *Special Provisions Relating to Containers.* If any Contract includes the sale of gases in cylinders, dewars, and/or the sale of dry ice in reusable boxes (both such cylinders, dewars, and boxes, together with all fittings, caps, and other equipment associated therewith, being "Containers" herein), the provisions of this Section 11 will apply: (a) The Containers are and will remain the property of Seller. Buyer will not cover, modify, remove or otherwise disturb any identification or other indicia of Seller's ownership on any Container. (b) Buyer will pay, in addition to the price of the goods covered by the Contract, a charge for each day between the date on which Seller delivers a



Container to Buyer and the date on which Buyer returns that Container or pays for it at the price set forth in Subsection (c) below, at the rates stated in Seller's Schedule of Cylinder/Dewar Rates or Schedule of Box Rates, previously provided by Seller to Buyer. If Seller has not provided such Schedule to Buyer, the daily charge shall be \$1 per day for each Container. (c) Buyer shall inspect each Container promptly after delivery to Buyer and shall advise Seller within five business days after the delivery of any alleged defect therein. In the absence of such advice regarding any Container, it shall be conclusively presumed to be free of defects at the time of delivery. Buyer will exercise due care in its possession and use of the Containers and return them to Seller in the same condition as when Buyer received them, ordinary wear and tear only accepted. If Buyer shall fail to return any Container, when required, or if Buyer shall return any Container without the fittings and other equipment Seller shall have provided therewith, Buyer shall pay Seller, on request, an amount equal to the then-current retail price of the Container or fitting or other equipment, as the case may be. (d) Buyer will use the Containers only for dispensing gases or dry ice purchased from Seller. Buyer shall not have any other gases or other substances introduced into any Container. Buyer shall return the Containers to Seller when empty and in any event no later than 90 days after delivery of such Containers to Buyer, without credit for residual gases. Buyer shall keep all the Containers at the address of Buyer set forth in the Contract. (e) Seller may periodically furnish Buyer with written statements setting forth the number of Seller's Containers which, according to Seller's records, shall have been delivered to Buyer and not returned by Buyer to Seller. If Buyer shall not object to any such statement within 15 days after Seller shall have mailed it to Buyer, the statement shall be conclusively presumed to be correct in all respects. If Buyer disagrees with Seller's statement, Buyer shall so notify Seller in writing forthwith, and in any event, within 10 days after receipt of Seller's statement; and Buyer shall state in such notice the number of Containers for which Buyer accepts responsibility. Upon receipt of such notice, Seller will perform an internal paperwork audit of the most recent 12 months' history of delivery tickets, without any charge to Buyer for such audit. If an audit of records earlier than twelve months prior to the date of notice is to be performed, Buyer will pay Seller a research fee of \$20 per hour. Records older than 24 months will be conclusively presumed correct, and will not be audited. If no errors are found in Seller's records, then Buyer shall pay Seller forthwith the full replacement value of all Containers for which Buyer is then responsible. (f) If required by Seller, Buyer shall provide a deposit for each Container upon taking possession. If upon return of said Containers, Buyer has any outstanding balances with Seller, Seller can use Buyer's deposit funds to clear the outstanding balance before returning any residual amount to Buyer.

12. Cancellation. Seller may cancel any Contract without liability to Buyer if (i) Buyer shall become insolvent; or (ii) a petition under the Bankruptcy Act or any other insolvency law shall be filed by or against Buyer; or (iii) at any time Buyer is generally not paying its debts as such debts become due; or (iv) Buyer shall make an assignment for the benefit of creditors; or (v) Buyer shall fail to make timely payment of any obligation owed by it to Seller or any affiliate of Seller; or (vi) for any reason a good faith doubt arises as to Buyer's ability to make prompt payment of any obligation owed by it to Seller. Buyer represents and warrants that Buyer is and shall remain solvent until Seller receives payment in full for the Goods.

13. Period of Limitation of Action. No action shall be brought by Buyer for any breach of any contract arising or resulting from a Contract more than one year after the cause of action therefore accrues.

14. Safety and Notice of Accidents; Compliance with Legal Requirements. Buyer shall use and shall require its employees to use in the operation of the Goods all safety devices, guards, and proper safe operating procedures and to comply with all legal

Requirements, federal, state or local, regulating the use and/or possession of the Goods. Buyer shall not remove or modify any safety device, guard or warning sign. No oil or lubricant of any kind shall be applied to Cylinder valves, regulators or fittings. Buyer shall notify Seller promptly, and in any event within 30 days, of any accident or malfunction involving the Goods which results in personal injury or damage to property and shall cooperate fully with Seller in investigating and determining the cause of such accident or malfunction. If Buyer shall at any time resell the Goods, Buyer shall cause its purchaser to undertake the same obligations to Seller as Buyer has undertaken in this section, including without limitation the obligation stated in this sentence. If Buyer fails to strictly observe each and every one of the obligations set forth in this section with regard to use of the Goods, the giving of such notice and cooperation, and causing Buyer's purchaser to undertake such obligations, Buyer agrees to defend and indemnify Seller and save Seller harmless from any liability or obligation incurred by Seller for persons or property injured directly or indirectly in connection with the operation of such Goods.

15. Force Majeure. Seller shall not be liable for delays or failures in performance resulting directly or indirectly from: (a) natural phenomena, including but not limited to weather conditions, floods, droughts, earthquakes, epidemics and pandemics; (b) acts or failure or omissions to act on the part of any Governmental authority, domestic or foreign, including but not limited to war, declared or undeclared, priorities, quarantines, pandemics, embargoes, licensing controls, or production or distribution restrictions; (c) accidents and disruptions, including but not limited to fires, explosions, breakdowns of machinery or equipment and power shortages; (d) transportation or storage delays, accidents or shortages; (e) labor difficulties including but not limited to strikes, slowdowns, lockouts, sabotage, and labor shortages; (f) failure or delay in Seller's sources of supply; (g) acts or omissions of Buyer; or (h) any other cause which is beyond Seller's control. Dates of delivery shall be extended for a period equal to the time lost by reason of any cause set forth above even though such cause may occur after Seller's performance of its obligations has been delayed for other causes. If, at any time, it shall appear that any delay resulting from any such cause shall exceed 60 days, Seller may cancel the Contract otherwise requiring such delivery without further obligation hereunder.

16. Errors. Stenographic and clerical errors are subject to correction. If any drawings, illustrations, or descriptive matter are furnished by Seller regarding any Contract, they are approximate only and are submitted only to show the general style, arrangement, and dimensions of the Goods offered.

17. Amendments; Entire Agreement; No Variations Permitted. No promise, condition, agreement, representation or warranty with respect to any Contract or the Goods, or any component thereof, shall bind Seller or Buyer unless expressed in the Contract. Each such Contract shall supersede and cancel all other promises, conditions, agreements, representations and warranties; and shall also supersede and cancel any terms of sale in any purchase order or other document of Buyer, so that all such terms of Buyer will be disclaimed and excluded, so that no terms of sale inconsistent with these Terms of Sale shall govern any Contract, except to the extent Seller may agree in writing. The written portion of each Contract supersedes and cancels all other promises, conditions, agreements, representations and warranties. No Contract, and no amendment to any Contract, shall bind Seller unless and until approved for Seller in writing by an executive officer of Seller. No person other than an executive officer of Seller has any authority to agree on Seller's behalf to any Terms of Sale not set forth herein or elsewhere in a Contract. If the Seller has provided more than one version of terms of sale applicable to a contract, Seller shall have the right to take advantage of either or both provisions.

