

**WORTHINGTON CYLINDER CORPORATION**  
**COMPLETE TERMS AND CONDITIONS OF SALE**

Acceptance of any order by Worthington Cylinder Corporation (hereinafter "Worthington") is expressly made conditional on Buyer's acceptance of the provisions stated herein. Buyer's acceptance of each shipment of products shall be deemed to be an acceptance of the provisions hereof notwithstanding any act of Worthington, including shipment, acceptance of payments, and notwithstanding any term or condition contained in any form of Buyer. Any proposal for additional or different terms or any attempt of Buyer to vary any of the provisions herein is hereby deemed a material alteration and rejected. The provisions herein may not be added to, modified, superseded or altered except by written agreement or modification signed by the General Manager of Worthington or an officer of Worthington Enterprises, Inc., notwithstanding any terms which may now or in the future appear on Buyer's forms or communications, all of which are rejected without further action of Worthington. No person (except the General Manager of Worthington or an officer of Worthington Enterprises, Inc.) is authorized to bind Worthington to any order for any products except according to the provisions herein.

**1. PRICES.** All prices for Worthington products are subject to change or withdrawal without notice. Unless otherwise stated by Worthington, prices, terms of payment and pricing policies will be those of Worthington in effect at the time of shipment. Worthington reserves the right to make price changes within the periods of contracts, including installment contracts or blanket orders. To obtain the lowest total quantity pricing, unless otherwise agreed to in advance in writing by Worthington, Worthington reserves the right to deviate from the specified quantity by ten percent. Worthington and buyer will specify the party paying for the cost of packing and crating, but if not cost specified, cost will be added to the sales price(s). Worthington also reserves the right to divide Buyer's order into separate shipments and to invoice and otherwise treat each shipment as a separate contract subject to these terms and conditions. All sales and shipments are subject at all times to credit approval by Worthington.

**2. TRANSPORTATION AND RISK OF LOSS.** Unless otherwise agreed in advance in writing by Worthington, delivery of products hereunder shall be F.O.B. point of shipment, with transportation expenses paid by Buyer, and the risk of loss or damage to products in transit shall fall upon Buyer (whose responsibility it shall be to file claims with carrier at delivery to Buyer at Buyer's premises) upon delivery (a) to Buyer's designated representative, or (b) to a common carrier or other designated shipper (not including Worthington), whichever of the foregoing occurs earlier. If no carrier instructions are provided by Buyer, Worthington may use its discretion in selecting the appropriate transportation method and routing. All orders, unless otherwise agreed in writing, are for shipment at Worthington's earliest convenience. Stated delivery dates are approximate and will be calculated from the date that Worthington has received all information necessary to permit Worthington to proceed with work immediately and without interruption. If any or all products are not delivered when ready due to the request of Buyer, Worthington reserves the right to invoice Buyer at any time thereafter and to place such products in storage with all risk of loss or damage borne by Buyer and with all expenses and costs attributable thereto for the account of Buyer, which shall be payable by Buyer upon submission of Worthington's invoices to Buyer.

**3. DELAYS.** Worthington shall not be liable for any failure or delays in delivery due to or resulting in whole or in part from or made impossible or impractical by any cause beyond the control of Worthington including, but not limited to, fire, explosion, epidemics, accident, material and significant breakdown, strike or labor disputes, adverse weather conditions, loss or damage in shipment, failure or refusal of any carrier to transport material, delay in transport thereof, failure of any source of supply to honor orders within time periods customarily or heretofore experienced by Worthington, shortage or lack of material, fuel or power, sale or transfer of manufacturing facilities, embargo, acts of God, acts (including delay or failure to act) of any governmental authority (de jure or de facto) or any other contingency or delay or failure or cause beyond Worthington's control. If, due to any such occurrence, Worthington is unable to supply total demands for any goods specified, Worthington may allocate production, inventory and deliveries (in any manner fair and reasonable to the extent that goods are not special or unique) and will notify Buyer seasonably that there will be delay or nondelivery.

**4. TAXES.** All prices are exclusive of any applicable U.S.A. federal, state or local sales, use, excise or other taxes, which Worthington may be required to pay or collect, under any existing or future law, upon or with respect to the sale, delivery, storage, processing, use or consumption of any of the products covered hereby, which shall be for the account of Buyer, who shall promptly pay the amount thereof to Worthington upon demand.

Any taxes (including income, stamp and turnover taxes), duties, fees, charges, or assessments of any nature levied by any governmental authority other than the U.S.A., or by the U.S.A. in connection with this transaction, whether levied against Buyer, against Worthington or against its employees, will be for Buyer's account and will be paid directly by Buyer to the governmental authority concerned. If Worthington is required by law or otherwise to pay any such levy and/or fines, penalties or assessments in the first instance as a result of Buyer's failure to comply with any applicable laws or regulations governing the payment of such levies by Buyer, the amount of any payments so made by Worthington will be reimbursed by Buyer to Worthington upon demand.

**5. PAYMENT TERMS AND SECURITY INTEREST.** Unless otherwise agreed in advance in writing by Worthington, payment terms are cash in advance, but in any event due no later than thirty (30) days net. All payments not made within such time shall be subject to a carrying charge of one and one-half percent (1-1/2%) per month on the unpaid balance or the highest rate permitted by applicable law, whichever is the lesser. Until the entire amount due hereunder is paid, Worthington reserves a security interest in all products sold, with all rights, privileges and remedies of a selling secured party in the jurisdiction to which the products may be shipped or within which they may be kept at any time and, in pursuance thereof, buyer agrees to timely execute any documents which Worthington may request from time to time in order to give notice of, perfect or otherwise give effect to the existence of said security interest.

**6. INSPECTION.** Any claim by Buyer based upon or relating to any claimed defect in the products ascertainable upon visual inspection thereof, including without limitation any claim relating to size, type, quantity or shipping damage and the like, must be presented to Worthington, or its representative, within fifteen (15) days following the date of receipt of the product by Buyer. Buyer's receipt of any product delivered hereunder shall be an unqualified acceptance, and a waiver by Buyer, of any and all such claims with respect to such product unless Buyer gives Worthington notice of claim within fifteen (15) days after such receipt. **Such claims must be made within said time and are not within those items covered by the Warranty herein.** Unless otherwise agreed in advance in writing by Worthington, variations in the products as to composition, dimensions, quantity and the like shall be permissible and not cause for Buyer's rejection or revocation if within prevailing industry standards. Buyer assumes all risk and liability for results obtained by the use of any product delivered hereunder in its manufactured or final use or purpose for which purchased.

**7. TRADE SECRETS.** Buyer shall not divulge, disclose, reveal or communicate to any business entity or other person any trade secrets or other information which Buyer may obtain by virtue of Buyer's relationship with Worthington, including without limitation, any of its customers (including customer lists), sales prices (including price lists), costs, plans, technology, formulas, processes, policies, techniques, trade practices, trade secrets, or other data considered by Worthington to be confidential information.

**8. WARRANTY, DISCLAIMERS, LIMITATIONS OF REMEDIES AND WARNING.** Worthington warrants its products as provided herein only to Buyers who buy directly from Worthington solely for resale or for commercial or industrial use in the ordinary course of each Buyer's business, and Worthington makes no written warranty to any purchaser who purchases for personal, family or household use and authorizes no person to make any such written warranty on its behalf. No employee or agent of Worthington is authorized to vary the terms of this Warranty.

Worthington will repair or (at its option) replace, subsequent to its inspection and F.O.B. its plant, any product manufactured by it which is found by it to be defective due to faulty workmanship or material within three years (one year on filled and cryogenic products and all hand torches and accessories) from the date manufactured, Vacuum integrity of cryogenic products will be warranted for a period of 5 years. And Worthington will exchange any valves or fittings furnished by it and found by it to be defective due to faulty workmanship or material within twelve months from the date manufactured. Except to the extent that (1) descriptions of size, quantity and type, which may appear on Worthington invoices and other documents, and (2) statements of conformity of cylinders and fittings with specifications of certain industry, government or professional organization standards, which may appear as product information disclosures in Worthington literature and documents from time to time may be construed as express warranties under applicable states' laws, **this warranty is in lieu of and excludes all other warranties, express or implied, including merchantability and fitness for a particular purpose.**

Buyer is authorized to return to Worthington, freight prepaid, at a location specified by Worthington's authorized personnel, any such warranted product, and that product will be repaired or replaced at Worthington's expense if a defect is found to exist. **Any claim of defect or failure of performance under this Warranty must be made within ninety (90) days after failure or defect is discovered.** **The liabilities of Worthington are limited solely and exclusively to repair or replacement as provided herein and exclude all consequential or other damages of any kind whatsoever, whether any claim is based upon theories of contract, negligence or tort,** and without any limitation do not include shipping charges, labor, installation, loss of product, or any other losses or expenses incurred in operation or installation of any repaired or replaced materials and products. Worthington assumes no liability for damage resulting from normal wear, improper installation, misuse or neglect, or the effects of internal or external corrosion. Worthington does not warrant any aspect of product installation, modification or manufacturing carried out by parties other than Worthington. Buyer hereby indemnifies Worthington for any loss, cost or expense to which Worthington may be exposed as a result of any such activities by Buyer.

**WARNING:** Cylinder products manufactured by Worthington are designed to contain substances under pressure, some of which may be combustible. When such cylinder products are filled with combustible substances or compressed gases, the cylinder and its contents become potentially dangerous and are subject to various federal, state and local laws and regulations including various Department of Transportation safety regulations found in Title 49 of the Code of Federal Regulations. **It is imperative that anyone using or charging cylinder products be warned of and be aware of the dangerous potential of pressurized and combustible gases in such cylinder products and handle them in accordance with all applicable governmental regulations. Worthington is not responsible for ensuring the compliance of others, and does not warrant the compliance of others, with any law or regulation pertaining to the use or charging of the cylinder product it manufactures.**

This Warranty may be supplemented or changed in whole or in part from time to time. The applicable Warranty is the Warranty in effect at the time of shipment.

**9. LIMITATION OF LIABILITY.** Worthington's total liability on any claim arising out of this contract will not exceed the price allocable to the product or part which gives rise to such claim. In no event will Worthington be liable for any incidental or consequential damages including, but not limited to, damages for loss of revenue, cost of capital, loss of contents, claims of customers for service interruptions or failure of supply, and costs and expenses incurred in connection with labor, overhead, transportation, installation or removal of products or substitute facilities or supply sources.

**10. CHANGES OR CANCELLATION.** Worthington cannot accept cancellations or change orders after portions of the manufacturing have been begun. Charges for cancellation or change orders during processing will be pro-rated to the selling price. Prior to the return of any products, written approval from authorized Worthington personnel for credit or replacement must be obtained. Returned products must be sent back in their original packaging, freight prepaid, and are subject to a handling charge. Additional charges will be made if the products are damaged, obsolete or in an unsaleable condition.

**11. OTHER.** (a) Worthington accepts no responsibility to Buyer, or to any person claiming by or through Buyer, for compliance with any statute, governmental rule or regulation made applicable to this contract by reason of Buyer's intended use of the products unless Worthington has received from Buyer prior timely written notification of such statute, rule or regulation and has accepted the same by a separate writing signed by an authorized representative of Worthington.

(b) Worthington may forthwith cancel this contract or any portion hereof if any of the following events occur: insolvency of Buyer; the initiation of a case by or against Buyer under any chapter of the Bankruptcy Code, as amended; the failure of Buyer after request to give adequate assurance; the appointment of a receiver or trustee for Buyer or for all or part of Buyer's property; or the termination of business operations by Buyer.

(c) Worthington's forbearance or failure to enforce any of these conditions to exercise any right accruing from any default of Buyer shall not affect, impair or waive Worthington's rights if such default continues, or if any subsequent default of Buyer occurs.

(d) All orders are subject to acceptance at Worthington's offices. Any contract hereunder shall be construed in accordance with the laws of the State of Ohio.

(e) The provisions herein constitute the entire agreement between Buyer and Worthington, and no terms or conditions other than those stated herein and no agreement or understanding, oral or written, in any way purporting to modify these conditions shall be binding on Worthington unless hereafter made in writing and signed by Worthington's authorized representative.

**Acceptance of the products sold hereunder shall constitute assent to these conditions and Worthington hereby objects to and rejects any and all additional or different terms proposed by Buyer, whether contained in Buyer's purchasing or shipping release forms, or elsewhere. All proposals, negotiations and representations, if any, made prior and with reference hereto are merged herein. Any proposed additions, modifications, deletions or changes not in separate writings signed by Worthington are rejected without further action of Worthington.**