



PRODUCT SALE AGREEMENT

**Mississippi Welders Supply Co., Inc. (Seller), of 5150 West 6th Street, Winona, MN 55987 and
City of La Crosse Wastewater (Purchaser), of 905 Joseph Houska Drive, La Crosse, WI 54601** hereby agree that:

- 1.) Purchaser shall buy from Seller, its present and future requirements of industrial, food grade and/or medical gases in gaseous and/or liquid form in suitable containers including without limitation, cylinders, liquid containers, and/or bulk and microbulk, and on-site generation equipment, upon the terms and conditions set forth in this agreement, including, without limitation, any rider, exhibit, amendment, or addendum to this Agreement. Purchaser shall not buy or lease any Equipment from any third party to produce any Product of equal or lesser purity, without first offering Seller, in writing, a last refusal to sell or lease the same for equivalent pricing and terms. This agreement covers all of Purchaser's locations including any future locations.
- 2.) The term ("Initial Term") of this Agreement shall be for a 3 year period after January 4, 2024 or after the first delivery to the last storage tank installed by Seller hereunder, whichever is later and thereafter from year to year until terminated in writing by either party at the end of the initial term or any subsequent anniversary thereof upon not less than twelve (12) months prior written notice. If seller relocates or provides additional Equipment to meet Purchaser's requirements, then a new initial term shall be effective upon the date of first delivery of such Product utilizing the relocated, replacement or additional equipment.
- 3.) The prices for Products purchased hereunder shall be as set forth in the attachment(s).
- 4.) Terms: NET – 45th Prox.
- 5.) The Seller shall maintain records of cylinder deliveries and returns hereunder, and Purchaser shall pay Seller's then current standard rate for demurrage or rental. Purchaser shall pay Seller's then current standard rate for any liquid Product storage tank and related Equipment installed by Seller to serve Purchaser.
- 6.) Purchaser shall return, in good condition, all cylinders complete with caps and fittings and shall pay Seller the replacement value of any cylinders, caps or fittings lost or damaged. Purchaser shall not permit cylinders or other storage containers furnished hereunder to be filled with any Product not furnished by Seller or Seller's representative.
- 7.) Purchaser shall promptly furnish and maintain an accessible, safe and secure site ("Site") for the Equipment at each of its facilities at which Products are required in liquid form to enable suitable delivery and storage of such Products, including all foundations, lighting, fences, bollards and piping and other Equipment required for the safe distribution of Products from the Site. The Purchaser shall also provide at the Site at its cost all electricity required as well as all licenses and permits required in connection with such use of the Site.
- 8.) Authorized representatives of Purchaser, Seller and/or Seller's representative shall have access at all times to the Site but Purchaser shall deny access to all others. Purchaser shall not alter, adjust or repair any Equipment installed by Seller at the Site although Purchaser shall be responsible for any loss or damage to such Equipment unless caused by Seller's negligence. Seller shall not be liable for any delay in installation of any such Equipment that results from any cause beyond its reasonable control.
- 9.) Equipment shall be installed and maintained in good repair and operating conditions by Seller. Purchaser shall have no ownership interest in Equipment installed at the Site by Seller. Purchaser may provide such Equipment in which event Seller shall have no obligation to maintain the same.
- 10.) If any Equipment installed by Seller shall become inadequate, in the judgment of Seller, because of a substantial change in Purchaser's requirements of Product, Seller shall have the right at its own expense to substitute a different size or type of Equipment and the Facility Fee shall be adjusted to reflect such substitution or if any Equipment supplied by Seller needs to be relocated due to a change in the Purchaser's operations, Seller shall have the right to extend this Agreement to the ("Initial Term"). If The Buyer refuses to accept the substitute equipment specified by The Seller as provided in this Section (10) above, (i) under no circumstances shall The Seller have any liability to The Buyer, or to any third party with whom The Seller does business, in the event that any damage to persons or property result from an inadequate supply of the Product, and (ii) The Buyer shall indemnify The Seller with respect to, and shall hold it harmless from and against, any claim, loss, liability or expense (including attorney's fees) incurred by The Seller as a result of any claim arising out of or caused, in whole or in part, by the inadequate supply of the Product at any time. If, at the inception of the business relationship between The Seller and The Buyer, The Seller recommends to The Buyer that The Buyer install equipment of a size which Seller deems sufficient for Buyer's stated requirements, and Buyer rejects such recommendation for any reason, then the terms of Section 10 (i) and (ii) shall apply thereafter during the Term. Seller shall have the right to remove such Equipment installed by it within ninety (90) days after the expiration or termination of this Agreement at the expense of Purchaser.
- 11.) Purchaser may require Seller to remove any of its Equipment from the Site by paying to Seller a pro rata share of the cost of remaining Equipment lease which reflects the balance of the term of this Agreement that is unexpired at the date of such removal. No such removal shall affect Purchaser's obligation to purchase its requirements for Products from Seller.
- 12.) Seller or its representative shall usually make all deliveries of Product to the Site on regular business days between 8:00 AM and 5:00 PM although Product may be delivered at other hours. In the event Purchaser requests Seller to deliver at other hours, Seller shall employ its best efforts to do so although Purchaser shall pay all additional expenses incurred as a result. Billings for Product delivered shall be made in cubic feet or pounds, 70 Degrees F and one (1) atmosphere pressure or other appropriate units. (b) Deliveries, which may be made during a strike or other labor disturbance affecting Purchaser, shall be at Purchaser's sole risk. Purchaser hereby indemnifies Seller from and against all costs, damages and losses arising out of any such delivery which are not normally incurred by Seller in the normal delivery of Product.
- 13.) All Products furnished hereunder shall conform to the description thereof published by the manufacturer at the time of sale. THERE IS NO WARRANTY OF MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, THAT EXTENDS BEYOND SAID DESCRIPTION. SELLER SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCT SOLD HEREUNDER WHETHER SUCH DAMAGE RESULTS FROM ANY NEGLIGENT ACT OR OMISSION OR IS RELATED TO STRICT LIABILITY.

Seller Initials _____

Purchaser Initials _____



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- 14.) Purchaser’s exclusive remedy for each unexcused failure on the part of Seller to deliver Product when required by Purchaser, whether or not such failure was caused by any negligence, shall be to recover from Seller the difference between the cost to Purchaser of any reasonable purchase of Product in substitution for Product not delivered and the lesser price of such quantity of Product hereunder. Purchaser’s exclusive remedy for each unexcused failure of Product to conform to its warranted description shall be to receive a refund of the price of such non-conforming Product or a replacement thereof with Product which conforms to such description.
- 15.) Service and deliveries by the Seller are subject to and contingent upon weather, floods, strikes or other labor disturbances, fires, accidents, war, civil unrest, riots, delays of carriers, inability to obtain raw materials, failures of normal sources of supply, restraints of government, or any other similar or dissimilar cause beyond the Seller’s reasonable control. It is Purchaser’s responsibility to maintain clear access to the Equipment at the Site at all times.
- 16.) The Purchaser shall pay any applicable taxes necessitated by virtue of any Federal, State, Municipal or other law. Purchaser will also pay any applicable surcharges, tariffs, and delivery, environmental or hazmat fees.
- 17.) Cost increases may necessitate a revision of prices from time to time for Products sold under this Agreement. Such increases shall become effective fifteen (15) days after written notice is given to Purchaser. If within fifteen (15) days of receiving such notice, the Purchaser furnishes Seller with a copy of a bona fide firm written offer to sell such Products of the same quantities, of the same quality under similar circumstances, at prices lower than such revised prices, Seller shall have fifteen (15) days to either meet at its option the lower price or revert to the Seller’s price before the price increase. If the Seller does not exercise the option to so adjust the price, the Purchaser may terminate this Agreement by giving the Seller thirty (30) days written notice of such termination, but if Seller does agree to meet such lower price, Seller shall have the right to extend this Agreement to the (“Initial Term”).
- 18.) FORCE MAJEURE: Seller’s performance hereunder is subject to floods, strikes or other labor disturbances, fire, accidents, war, civil unrest, riots, delays of carriers, inability to obtain raw materials, failure or allocation of normal sources of supply, terrorist act, machinery or equipment breakdown, plant shutdown, restraints of government, (whether or not it later proves to be invalid), or any other similar or dissimilar cause beyond Seller’s reasonable control (“Force Majeure Event”). Seller shall not be liable for any damages resulting from a Force Majeure Event, and Purchaser waives any right to assert a claim against Seller in respect thereof. Seller shall advise Purchaser in writing of the reason for and anticipated length of any such event. If any such event affects only a part of Seller’s capacity to perform, Seller may allocate production and deliveries among its customers in a fair and reasonable manner. Purchaser shall pay or reimburse Seller for any additional costs incurred by Seller in the procurement or delivery of Product during a Force Majeure Event. Purchaser may source Products subject to the Force Majeure Event from another supplier for the duration of the Force Majeure Event.
- 19.) Purchaser acknowledges that there are hazards associated with the storage, distribution and use of Products, cylinders and/or containers furnished under this Agreement and that Purchaser and its personnel are fully aware of all such hazards. Purchaser hereby assumes all responsibility for warning its personnel and any third parties on the premises of all hazards to persons and property in any way associated with such Products or the storage, distribution or use hereof.
- 20.) It is a responsibility of the Purchaser to comply with all relevant reporting obligations under the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001-11049 (EPCRA), also commonly known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III) and any other statutes and regulations concerning the storage, handling or use of Product or resulting from the presence of the Product supplied under this Agreement. Further, it is a responsibility of the Purchaser to warn and protect its employees and others exposed to the hazards posed by the Purchaser’s storage and use of the Product. By execution of this Agreement, Purchaser acknowledges receipt of Safety Data Sheet(s), which describe Product(s).
- 21.) If a court of competent jurisdiction determines that any provision of this agreement is not enforceable, then such provision shall be enforceable to the maximum extent possible under applicable law, as determined by such court. The invalidity or unenforceability of any provision of this agreement, as determined by a court of competent jurisdiction, will not affect the validity or enforceability of any other provision herein and all other provisions will remain in full force and effect.
- 22.) All claims by Purchaser having anything to do with any Product, cylinder or Equipment furnished hereunder by Seller shall be made in writing within ten (10) days after the delivery thereof and failure of Purchaser to give such notice shall constitute a complete defense for Seller against all such claims.
- 23.) This agreement shall not be binding on Seller until it is accepted by one of its duly authorized representatives. This agreement represents the entire agreement between Seller and Purchaser in relation to the sale of Products, and all amendments shall be in writing. Purchaser may use purchase orders to specify delivery dates, volumes or like matters, but such use is not intended to amend this Agreement and the terms and conditions thereof shall not apply, even if acknowledged by Seller without objection.
- 24.) It is FURTHER AGREED that this document, when signed and accepted, will replace all existing contracts and agreements previously executed. This contract shall be binding on Seller or Purchaser’s successors or assigns.

City of La Crosse Wastewater Purchaser (Company)

Mississippi Welders Supply Co., Inc. Seller

_____ Title

_____ Title

_____ By (Printed Name)

_____ By (Printed Name)

_____ By (Signature)

_____ By (Signature)

_____ Date

_____ Date



PRODUCT SALE AGREEMENT Addendum "A"

Agreement between Mississippi Welders Supply Co., Inc. and City of La Crosse Wastewater (Company)

Liquid or Gas Product	
Liquid Nitrogen	\$0.68 per 100 SCF
Delivery Charge	\$45.00 per delivery
Hazmat Charge	\$20.00 per delivery
<p>***Product Price firm for 12 months, with a maximum of 5% annual price increase thereafter.***</p>	

Equipment Rental	
3,000 Gallon Nitrogen Tank, Customer Owned	\$0.00 per month
MWSCO Telemetry	\$0.00 per month
<p>***Lease pricing guaranteed for the entirety of the three (3) year agreement. Telemetry fees and annual inspections at no cost to buyer.***</p>	

Purchaser (Company): City of La Crosse Wastewater	Seller: Mississippi Welders Supply Co., Inc.
By (Signature):	By (Signature):
Printed Name:	Printed Name:
Date:	Date: