

## RIGAS

RUNYAN INDUSTRIAL GAS ANALYZERS, INC.

### Terms and Conditions

THESE TERMS AND CONDITIONS GOVERN THE PROVISION OF ALL SERVICES ("SERVICES") AND THE SALE OF ALL GOODS ("GOODS") BY RUNYAN INDUSTRIAL GAS ANALYZERS, INC. DBA RIGAS ("SELLER") AND APPLY NOTWITHSTANDING ANY CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN ANY PURCHASE ORDER OR OTHER DOCUMENT OR COMMUNICATION ("PURCHASE ORDER") FROM BUYER. THESE TERMS AND CONDITIONS MAY ONLY BE WAIVED OR MODIFIED IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. NEITHER SELLER'S ACKNOWLEDGMENT OF A PURCHASE ORDER NOR SELLER'S FAILURE TO OBJECT TO CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN A PURCHASE ORDER SHALL BE DEEMED AN ACCEPTANCE OF SUCH TERMS AND CONDITIONS OR A WAIVER OF THE PROVISIONS HEREOF.

1. **PRICES.** Prices shall be as specified by Seller and shall be applicable for the period specified in Seller's quote. If no period is specified, prices shall be applicable for thirty (30) days. Notwithstanding the foregoing, prices shall be subject to increase in the event of an increase in Seller's costs or other circumstances beyond Seller's reasonable control. Prices are exclusive of taxes, impositions and other charges including, but not limited to, sales, use, excise, value added and similar taxes or charges imposed by any government authority; shipping charges; transportation expenses; forwarding agent's and broker's fees; consular fees; document fees; and import duties. If Seller shall be liable for or shall pay any of the foregoing, same shall be paid by Buyer to Seller in addition to the price of the Goods or Services.

2. **TERMS OF PAYMENT.** Payment shall be net thirty (30) days from date of invoice or as otherwise specified by Seller. Buyer agrees to pay the entire net amount of each invoice from Seller pursuant to the terms of each such invoice without offset or deduction. Orders are subject to credit approval by Seller, which may in its sole discretion at any time change the terms of Buyer's credit, require payment in cash, bank wire transfer or by official bank check and/or require payment of any or all amounts due or to become due for Buyer's order before shipment of any or all of the Goods or the provision of any Services. If Seller believes in good faith that Buyer's ability to make payments may be impaired or if Buyer shall fail to pay any invoice when due, Seller may suspend delivery of any Goods or the performance of additional Services until such payment is made or may cancel the remaining portion of any order for Goods and Services, and Buyer shall remain liable to pay for any Services already provided or Goods already shipped. Buyer agrees to submit such financial information from time to time as may be reasonably requested by Seller for the establishment and/or continuation of credit terms. Checks are accepted subject to collection and the date of collection shall be deemed the date of payment. Any check received from Buyer may be applied by Seller against any obligation owing from Buyer to Seller, regardless of any statement appearing on or referring to such check, without discharging Buyer's liability for any additional amounts owing from Buyer to Seller, and the acceptance by Seller of such check shall not constitute a waiver of Seller's right to pursue the collection of any remaining balance. Buyer shall pay interest on any invoice not paid when due from the due date to the date of payment at the rate of one and one-half (1-1/2%) percent per month or such lower rate as may be the maximum allowable by law. If Buyer fails to make payment when due, Seller may pursue any legal or equitable remedies, in which event Seller shall be entitled to reimbursement for costs of collection and reasonable attorneys fees.

3. **DELIVERY AND TITLE.** All shipments by Seller are F.O.B. point of origin and all transportation charges shall be paid by Buyer in addition to the price of the Goods or Services. Subject to Seller's right of stoppage in transit, delivery of the Goods to the carrier shall constitute delivery to Buyer and title and risk of loss shall thereupon pass to Buyer. Selection of the carrier and delivery route shall be made by Seller unless specified by Buyer. Seller shall use reasonable efforts to initiate shipment and schedule delivery as close as possible to Buyer's requested delivery dates. Buyer acknowledges that delivery dates provided by Seller are estimates only and that Seller is not liable for failure to deliver on such dates. Seller reserves the right to make deliveries in installments. Delivery of a quantity which varies from the quantity specified shall not relieve Buyer of the obligation to accept delivery and pay for the Goods delivered. Delay in delivery of one installment shall not entitle Buyer to cancel other installments.

4. **FORCE MAJEURE.** Seller shall not be liable for failure to fulfill its obligations herein or for delays in delivery due to causes beyond its reasonable control, including, but not limited to, acts of God, natural disasters, acts or omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, riots, war, acts of terrorism, delays in transportation or inability to obtain labor or materials through its regular sources. Seller's time for performance of any such obligation shall be extended for the time period of such delay or Seller may, at its option, cancel any order or remaining part thereof without liability by giving notice of such cancellation to Buyer.

5. **SELLER'S LIMITED WARRANTY.** Subject to the limitations set forth in Section 6, any Goods (including replacement parts) provided by Seller will carry only the warranty extended by the original manufacturer; and any Services provided by Seller will be free from defects in material or workmanship under normal use and care for a period of ninety (90) days from the date of shipment or completion of the Services. All replacements and repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable power sources, unsuitable environmental conditions, accident, misuse, improper installation, modification, repair, storage or handling, or any other cause not the fault of the Seller are not covered by this limited warranty, and shall be at Buyer's sole expense. Seller makes no other warranty, express or implied, with respect to the Good and Services. **IN PARTICULAR, SELLER MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OF ANY GOODS OR SERVICES OR THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OR ANY OTHER MATTER RESPECTING SUCH GOODS AND SERVICES.** If Buyer discovers any warranty defects and notifies Seller within the applicable warranty period Seller shall, at Seller's election, (1) correct any error found in the Services provided, or repair or replace F.O.B. point of manufacture that portion of any Goods found to be defective, or (2) refund the purchase price (without interest) of the defective portion of the Goods or Services. Seller shall not be obligated to pay any costs or charges incurred by Buyer or any other party except as may be agreed upon in writing in advance by an authorized representative of the Seller. All costs of dismantling, reinstallation and freight and the time and expenses of Seller's personnel for site travel and diagnosis under this warranty clause shall be borne by Buyer unless accepted in writing by Seller.

6. **LIMITATION OF LIABILITIES.** **SELLER SHALL NOT BE LIABLE FOR DELAY IN PERFORMANCE. BUYER SHALL NOT BE ENTITLED TO, AND SELLER SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION COSTS, REMOVAL AND/OR REINSTALLATION COSTS,**

REPROCUREMENT COSTS, LOSS OF ANTICIPATED PROFITS OR REVENUES, LOSS OF USE, LOSS OF DATA, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER'S RECOVERY FROM SELLER FOR ANY CLAIM SHALL NOT EXCEED BUYER'S PURCHASE PRICE FOR THE GOODS OR SERVICES GIVING RISE TO SUCH CLAIM IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, OR OTHER TORT. SELLER SHALL NOT BE LIABLE FOR AND BUYER SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY CLAIMS BASED ON SELLER'S COMPLIANCE WITH BUYER'S DESIGNS, SPECIFICATIONS OR INSTRUCTIONS, OR MODIFICATION OF ANY GOODS OR SERVICES BY PARTIES OTHER THAN SELLER, OR USE IN COMBINATION WITH OTHER PRODUCTS.

7. **INSTALLATION.** Buyer shall be responsible for receiving, storing, installing, starting up and maintaining all Goods. Seller shall provide a quotation for services to assist Buyer in these functions if desired.

8. **BUYER SUPPLIED DATA.** To the extent that Seller has relied upon any specifications, information, representation of operating conditions or other data or information supplied by Buyer to Seller in the selection or design of the Goods or in the providing of Services, and in the event that actual operating conditions or other conditions are different from those represented by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void, unless otherwise agreed upon in writing.

9. **USE OF GOODS IN LIFE SUPPORT, NUCLEAR AND CERTAIN OTHER APPLICATIONS.** Goods sold by Seller are not designed, intended or authorized for use in life support, life sustaining, nuclear, or other applications in which the failure of such Goods could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If Buyer uses or sells the Goods for use in any such applications: (1) Buyer acknowledges that such use or sale is at Buyer's sole risk; (2) Buyer agrees that Seller and the manufacturer of the Goods are not liable, in whole or in part, for any claim or damage arising from such use; and (3) Buyer agrees to indemnify, defend and hold Seller and the manufacturer of the Goods harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.

10. **GENERAL PROVISIONS.** As used herein, terms appearing in the singular shall include the plural and terms appearing in the plural shall include the singular. No rights, duties, agreements or obligations hereunder may be assigned or transferred by either party, by operation of law, merger or otherwise, without the prior written consent of the other. Any attempted or purported assignment shall be void. Notwithstanding the foregoing, Seller's obligations under these Terms and Conditions may be performed by subsidiaries, affiliates or sub-contractor's of Seller. The obligations, rights, terms and conditions hereof shall be binding on the parties hereto and their respective successors and assigns. The waiver of any provision hereof or of any breach or default hereunder shall not be deemed a waiver of any other provision hereof or breach or default hereunder. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction. These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Ohio excluding any law or principle which would apply the law of any other jurisdiction. The United Nations Convention for the International Sale of Goods shall not

apply.

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