1. APPLICATION. These Terms and Conditions ("Terms of Sale") apply to a sale of any equipment, gas in liquid or gaseous form, and/or any other items of tangible personal property ("Goods") by Baker’s Gas & Welding Supplies, Inc. or its affiliated business entity ("Company"), as seller, to a person or legal entity purchasing Goods from Company ("Customer"), as buyer. These Terms of Sale together with any document describing the Goods being ordered by or sold to Customer, their price, delivery terms and other related provisions, such as, for example, Company’s Delivery Ticket, constitute a “Contract.” The Contract is effective upon, and Customer shall be deemed to have accepted these Terms of Sale by, Customer’s (1) written acceptance, (2) ordering Goods from Company in any manner, including through Company’s online ordering system, (3) receipt of any Goods from Company, or (4) paying for the Goods, whichever occurs first. Except for Section 2, these Terms of Sale do not apply to any transaction covered by Gas Purchase and Equipment Lease Agreement.

2. OTHER TERMS. If Customer rents or leases any equipment and/or other items of tangible personal property from Company, then Equipment Rental Terms and Conditions located at WWW.BakersGas.com, govern the Customer’s rent or lease of these items, are a part of the Contract and are incorporated herein by reference. Customer agrees that Delivery Ticket Terms and Conditions and, if applicable, Contract Adjustment Terms and Conditions located at WWW.BakersGas.com are also a part of and apply to the Contract.

3. PROPOSALS. These Terms of Sale also apply to any proposal ("Proposal") issued by Company to Customer in connection with any proposed sale or purchase of any Goods. With respect to any Proposal, Customer shall be deemed to have accepted these Terms of Sale upon receipt of a Proposal from Company. Any Proposal issued by Company to Customer involves Company’s interpretation of the Customer’s needs. Customer is responsible for correctness of all information provided to Company, and Company makes no representation as to the accuracy of its interpretation of Customer’s information. A Proposal is provided to Customer for informational purposes only, and any information in a Proposal is subject to change without notice prior to Company’s acceptance of Customer’s order based on the Proposal. A Proposal is for Customer’s use only, may not be used by Customer for any other purpose or disclosed by Customer to any third party without Company’s written consent, and will expire and become void at 11:59 P.M. Eastern Standard Time, thirty (30) days after the date the Proposal was issued.

4. PURCHASE AND SALE OF GOODS. Customer agrees to purchase from Company, and Company agrees to sell to Customer, the Goods described in the Contract. All Customer’s orders to purchase Goods are offers to purchase the Goods identified in the order, and no order issued by Customer in any manner, including through Company’s online ordering system, shall be binding upon or accepted by Company until Company confirms the order through e-mail or other writing or ships or delivers the Goods to the Customer, whichever occurs first. Prices are subject to change without notice at any time prior to Company’s acceptance of Customer’s order. The person ordering the Goods or signing the Contract as or on behalf of Customer has authority to do so and to bind Customer to the obligations under the Contract and thereby personally guarantees Customer’s performance under the Contract. Customer represents and warrants to Company that it has no other contractual or business relationship that may in any way adversely affect Company’s ability to sell Goods to Customer or Customer’s ability to purchase Goods from Company.

5. GAS PRICE CHANGE. Company may from time to time, because of market price fluctuations or otherwise, adjust the price that Customer pays for any gas in liquid or gaseous form upon ten (10) days notice to the Customer.

6. PAYMENT. Customer shall pay, in U.S. funds, the purchase price for the Goods and other amounts listed in the Contract, Delivery Ticket or Invoice upon the issuance of same to Customer, or upon such other terms as specified in the Contract. Payment terms are subject to Customer maintaining a credit status acceptable to Company in its sole discretion. Customer’s payment obligations are not subject to any setoffs, claims, conditions or contingencies and shall survive expiration or termination of the Contract for any reason.

7. DEPOSIT. Customer’s order may be subject to a deposit fee, as may be established by Company, which fee will be returned to Customer or applied to the amounts owed by Customer in Company’s sole discretion.

8. TAXES AND FEES. In addition to the purchase price for the Goods, Customer shall pay all of the applicable fees, assessments, charges, and taxes (municipal, state and federal), which are due or may become due or imposed upon the sale, ownership, possession and/or use of any Goods.

9. OTHER CHARGES. The total amount due may include various itemized charges, such as charges for the handling of hazardous materials, none of which are a tax or fee paid to or imposed by a governmental authority and all of which are retained by Company, and which can vary by product, service, time and place, among other factors.

10. SECURITY INTEREST. Until Company receives payment in full for the Goods sold to Customer and other amounts due under the Contract, Company reserves a purchase money security interest in the Goods sold. Customer agrees to execute any document reasonably required by Company to perfect Company’s security interest in such Goods and/or Company may file the Contract or these Terms of Sale as a financing statement.

11. LATE PAYMENT FEE. Company reserves the right to charge Customer interest at a rate of 1 1/2 % per month (or the maximum rate permitted by law, if less) on any payments that were not made timely until the entire unpaid balance is paid in full. Company may include and charge this interest, in whole or in part, on any Invoice, Delivery Ticket or a Statement of a past due balance issued to the Customer, but a failure to do so shall not be a waiver of Company’s right to charge this interest at a later time. Payment of such interest shall not operate to release Customer from its obligation to make payments on their due date.

12. TITLE, DELIVERY. All sales of Goods are made F.O.B. the Company’s shipping point. All delivery dates are estimates. Partial
deliveries shall be allowed. Customer will be responsible for all shipping and insurance charges, and will reimburse Company for these charges that Company incurs in connection with shipping Goods to Customer. Risk of loss, theft, destruction and damage to the Goods shall pass to Customer at the time the Goods are delivered to a carrier for delivery to Customer or when Customer picks up the Goods from a Company's location, as applicable. Title to the Goods shall pass to Customer after Company receives full and final payment for the Goods and other amounts due under the Contract. In the event of any actual or reasonably anticipated default by Customer, Company may decline to make further shipments or deliveries and/or stop the Goods in transit and/or repossession same.

13. DELIVERY OF GAS. Company's delivery times for Goods that are gas in liquid or gaseous form are between 8:00 AM and 5:00 PM on regular business days. Company shall use reasonable commercial efforts to, but shall not be required to, accommodate Customer's requests for delivery of such Goods at other hours, provided that Customer shall compensate Company for any additional costs incurred in making such deliveries.

14. INSPECTION, ACCEPTANCE. Customer must inspect all Goods upon receipt and immediately notify Company of any shortage, defects, non-conformities or other issues affecting the Goods. Customer shall be deemed to have received and accepted the Goods in a condition, quantity and quality required by the Contract unless Company receives a timely notice from Customer as required above. Further, payment for any Goods constitutes acceptance of the Goods for which the payment was made.

15. RETURNS, EXCHANGES AND CANCELLATIONS. ALL SALES ARE FINAL and Customer may not cancel an order after its acceptance by Company or exchange or return any Goods without Company's prior authorization. Customer must request a return or exchange of Goods within 30 days after the date of purchase, provided that unless the Goods are defective or non-conforming, Goods must be in the original packaging and unused. Company may charge an order cancellation or a restocking fee for any returns or exchanges in the amount of twenty-five (25%) percent of the purchase price. In addition, Customer agrees to pay all charges resulting from cancellation of an order or exchange or return of any Goods, including storage and shipment costs, costs of producing non-standard materials and costs of purchasing non-returnable materials. Company shall exchange, at no additional charge, any gas delivered to Customer that is clearly demonstrated by a recognized standard test not to conform, through no fault of Customer, to the purity specifications listed in the Contract, subject to Company's right to conduct testing of the allegedly non-conforming gas and to dispute Customer's findings of non-conformity.

16. CUSTOMER'S ASSUMPTION OF RISK. If Customer is buying any industrial, specialty, medical or other gases which the Customer will be moving or transporting, Company has informed the Customer, and Customer acknowledges and agrees, that:
   A. Moving and/or transporting gas cylinder(s) by any means not specifically designed or equipped for transportation of gas cylinder(s) is extremely dangerous, should be avoided, and may cause an explosion or fire;
   B. Gas cylinder(s) must never be moved in closed spaces such as cars, vans, car trunks or in passenger compartments;
   C. Gas cylinder(s) should be moved and transported in a fixed upright position, with windows open for sufficient ventilation;
   D. It may be safer to transport gas cylinder(s) by open truck; and
   E. Company offered to transport and deliver the gas cylinder(s) to Customer, but Customer declined.

17. INDEMNIFICATION. Company shall not be responsible or liable to Customer or any third party for, and Customer ASSUMES ALL RISK and shall be solely responsible and/or liable for and shall indemnify, defend and hold harmless Company and its affiliated legal entities, and their respective shareholders, directors, officers, employees and representatives from and against, any and all liability, loss, cost, damage and expense (including court costs and reasonable attorneys' fees), including those arising out of any injuries to or death of persons or damage to or destruction of property, in any manner caused by, incident to, connected with or arising out of (i) any use, misuse, possession, operation, replacement, return, moving and/or transportation of any gas cylinder(s) and/or any other Goods by Customer, its employees, representatives or others under Customer's direction or control, and/or (ii) any breach by Customer of any representation, warranty or obligation to Company. The indemnities contained in this Section shall survive and continue in full force and effect after the purchase and sale of Goods is completed and after any expiration or termination of the Contract for any reason.

18. USE AND OPERATION. Customer has reviewed and shall use, possess, operate, move and transport the Goods strictly in accordance with the applicable instructions, user manuals, and warnings on the labels of the Goods and any gas cylinder(s) containing any Goods, and in compliance with all laws, regulations and ordinances related to the Goods. Customer shall use only qualified and trained professionals in handling Goods. If Customer at any time discovers any problems with any Goods or that any Goods are or may have become unsafe or may require repair or replacement, Customer shall immediately discontinue all use and operation of affected Goods and notify the manufacturer of Goods.

19. CUSTOMER'S SOLE REMEDY. Customer acknowledges and agrees that Company is not a manufacturer of any Goods, and Customer shall pursue all of its rights and remedies related to defective and/or non-conforming Goods with the manufacturer(s) of the Goods. Customer's sole remedy under the Contract shall be, in Company's sole and absolute discretion, Company's repair or replacement of defective or non-conforming Goods within a reasonable time after return of same to Company and/or an adjustment of amounts due under the Contract, provided that Customer timely notified Company of any issues with the Goods as required by Section 14 and requests an exchange or return of the Goods as required by Section 15. Except as provided in these Terms of Sale, in no event shall Customer be entitled to any refunds, replacements, substitutions, or rejection after any acceptance.

20. LIMITED WARRANTY. ALL GOODS ARE SUBJECT TO WARRANTIES PROVIDED BY THE RESPECTIVE MANUFACTURERS OF THE GOODS, TO THE EXTENT SUCH "PASS-THROUGH" WARRANTIES ARE AVAILABLE. Upon Customer's request, Company will use commercially reasonable efforts to inform Customer of the warranties provided by a particular manufacturer or to direct Customer to a source of such information. Company warrants only that at the time of delivery of Goods to Customer, the delivered Goods shall be of the quantity, type and
description specified in the Contract. This limited warranty does not cover any negligence, abuse, mishandling, or misuse of any Goods by Customer, Customer’s employees, representatives or others under Customer’s direction or control, or any loss or damage caused by any cause beyond Company’s reasonable control.

21. DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE CONTRACT, COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, REGARDING ANY GOODS, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR USE OR PURPOSE, OR OTHER WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AND ALL SUCH WARRANTIES AND REPRESENTATIONS ARE HEREBY DISCLAIMED. ORAL STATEMENTS ARE NOT WARRANTIES AND SHALL NOT BE RELIED ON BY CUSTOMER AND ARE NOT PART OF ANY AGREEMENT BETWEEN THE PARTIES. SUBJECT TO THE PROVISIONS OF THE CONTRACT, CUSTOMER ACCEPTS GOODS IN THEIR “AS IS” “HOW IS” CONDITION.

22. LIMITATION OF LIABILITY. COMPANY SHALL HAVE NO LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES RELATING TO LOSS OF PROFIT, LOSS OF INCOME OR REVENUE OR LOSS OF GOODWILL, IN CONNECTION WITH OR RELATED TO ANY GOODS, THE CONTRACT OR ANY RELATED MATTER, EVEN IF IT HAS BEEN PUT ON NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL COMPANY’S LIABILITY IN CONNECTION WITH ANY GOODS OR THE CONTRACT EXCEED THE AMOUNT THAT CUSTOMER ACTUALLY PAYS TO COMPANY FOR THE GOODS WITH RESPECT TO WHICH THE LIABILITY AROSE.

23. INSURANCE. If Customer is a legal entity, Customer shall at its cost carry public liability insurance, both personal injury and property damage, with limits consistent with the industry standard for its business.

24. NOTICES. Any communication required or permitted hereunder shall be in writing and delivered in person, or sent by overnight courier, fax or electronic mail, except Customer may request amendment to the Contract, and Company may approve same, by telephone followed by Company’s issuance of a Contract Adjustment.

25. RELATIONSHIP. Relationship between the parties under the Contract is that of buyer and seller and nothing contained herein shall be construed to make either party an agent, servant, or employee of the other or to create any joint venture, partnership, or any other association between the parties.

26. DEFAULT. Customer shall be in default if: (a) Customer fails to make any payment to Company when due; (b) Customer is in breach under any other condition, warranty or covenant hereof, and fails to cure within 5 days of notice from Company; or (c) Customer ceases doing business as a going concern, becomes insolvent or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of Customer, or of all or a substantial part of its assets, or if a petition in bankruptcy is filed by or against Customer.

27. REMEDIES. In the event of any default by Customer, Company may: (i) terminate the Contract; (ii) declare entire outstanding amount immediately due, which shall become immediately due and payable; and (iii) without demand or legal process, and without being guilty of trespass or conversion, and without constituting a termination of the Contract or relieving Customer of its original obligations, enter any premises where any Goods may be found, take possession of and remove the Goods for which Company has not received payment, at which point all rights of Customer in and to such Goods shall terminate absolutely and any damages occasioned by such taking are hereby expressly waived by Customer. Customer shall be liable for all costs Company incurs in the enforcement of any of its rights or remedies against Customer, including reasonable attorney fees. Company’s rights and remedies stated herein are cumulative and are not exclusive of any other rights or remedies.

28. FORCE MAJEURE. Any delay or failure by Company to perform its obligations under the Contract will be excused without liability if such delay or failure is caused by an event or occurrence beyond its reasonable control, such as, by way of example, acts of God, extreme weather conditions, interruptions of supply, a declared state of emergency or a governmental action regardless of legal validity. Company shall use commercially reasonable efforts to resume performance of its obligations as soon as practicable following the cessation of such an event or occurrence.

29. CONFIDENTIALITY. Customer covenants and agrees not to disclose any terms of the Contract or of any documents issued in connection with the Contract to any third party, except to the extent (i) the information being disclosed is generally available to the public, (ii) the disclosure is required by law, (iii) is required for the performance of its obligations hereunder, or (iv) as necessary or appropriate in dealing with the accountants, attorneys and other representatives of the respective parties.

30. ASSIGNMENTS. Customer may not assign the Contract, in whole or in part, or any right or obligation hereunder, without Company’s prior written consent. Company may subcontract or delegate some or all of its obligations hereunder.

31. LAW, JURISDICTION, VENUE. The Contract and these Terms of Sale are governed by Michigan law, without reference to its conflict of law principles. The parties agree and consent to the exclusive jurisdiction of federal and/or state courts in the State of Michigan for any dispute arising from the Contract, said venues being convenient for both parties.

32. AMENDMENTS. Any amendment of the Contract must be in writing and signed by both parties, except for a Contract Adjustment issued by Company in response to Customer’s request which shall be deemed to amend the Contract to the extent indicated therein. Notwithstanding the foregoing, Company may amend these Terms of Sale at any time without notice, and such an amendment shall apply to any purchase and sale of Goods pursuant to a Customer’s order that is accepted by Company on or after the effective date of such an amendment, but shall not apply to any Customer’s order that has been accepted by Company.

33. ENTIRE AGREEMENT. The Contract (including these Terms of Sale) and any documents issued by Company in connection with the Contract is the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, with respect to subject matter hereof and shall be binding on the parties and their respective successors and permitted assigns. Any unilateral attempt by Customer to add to or modify the Contract shall be null and void.
Under no circumstances is performance or failure to perform or receipt of any payment by Company to be construed as Company's acceptance of any terms or conditions of Customer. All pre-printed terms, boilerplate language, disclaimers, and any other terms and/or conditions of Customer, including those referenced or included on any of its purchase orders or other documents issued or referenced by Customer at any time and in any way, shall not apply or be deemed to be a term or condition for purposes of the Contract and are hereby excluded without further notice.

34. MISCELLANEOUS. Any provision of Contract which is determined to be invalid or unenforceable shall not affect the remainder of the Contract. Section headings are for reference purposes only and shall not affect the meaning or interpretation of the Contract. Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute only one agreement. Time is of the essence and Company's failure at any time to require strict performance by Customer of any provision hereof shall not waive or diminish its right thereafter to demand strict compliance therewith or with any other provisions. The parties do not intend to confer any benefits hereunder on any third party other than the parties. Acceptance by Company of any payments hereunder shall not be a waiver of breach or default under the Contract. “Including” means “including without limitation.”

35. ACKNOWLEDGMENT. Provisions hereof that limit liability and remedies, disclaim warranties, and exclude consequential damages and other damages, are essential terms of Contract, shall be severable and independent of any other provisions of the Contract, and shall be enforced to the fullest extent permitted by law, even under circumstances that cause any exclusive remedy to fail of its essential purpose, and shall apply regardless of the form of action, including actions in contract, tort (including negligence), and strict liability.