

## Product Service Agreement Agreement #

Lampton Welding Supply Co., Inc. (hereinafter "Seller"), of Wichita, KS and **Mangum Regional Medical Center** (hereinafter "Purchaser") of **1 Wickersham Dr., Mangum, OK 73554** hereby agrees upon the terms, conditions, covenants, and descriptions set forth herein as follows:

1. Purchaser must buy its present and future requirements of industrial, medical, specialty, and/or beverage gases in gaseous and/or liquid form in suitable containers (hereinafter "Products") from Seller at the prices, terms and conditions set forth in this Agreement, Exhibit, Addendum, or Rider. Purchaser must buy its present and future requirements of any hard goods described in any Exhibit, Addendum, or Rider to this Agreement from Seller at the prices, terms and conditions set forth in this Agreement. Any leases purchased from Seller must be paid in full at time of purchase.
2. The term of this Agreement is for ten (10) years and commences upon the later of the date of first delivery of product by Seller hereunder or the date signed by Seller herein below. But, if Purchaser is prohibited from entering into this Agreement by any prior Agreement, this Agreement commences upon the earliest expiration or earlier termination of such prior Agreement. This Agreement will automatically renew for successive ten (10) year terms unless terminated upon not less than twelve (12) months prior notice (either written or digital) by either party at the end of the initial term, or any renewal term as the case may be. If Seller relocates Equipment or provides additional Equipment to meet Purchaser's gas requirements, then a new initial ten (10) year term is 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 this Agreement, including any Exhibit, Addendum, or Rider.
4. Terms: net 10th Prox. Late payments will accrue a service charge of the greater of \$25/month or 1 1/2% per month.
5. The Seller shall maintain records of cylinder deliveries and returns hereunder and shall charge the Purchaser rental at the Seller's standard published rate. The Purchaser shall pay this rental charge to the Seller in accordance with Paragraph 4. In the event any storage tanks and/or related equipment ("Equipment") are installed by Seller or its representative at Purchaser's facilities for storage or use of Product, Purchaser shall pay to Seller for the availability of said Equipment for use hereunder, a Facilities Fee computed by Seller for each item of Equipment so furnished by Seller. Facilities Fees may be adjusted by Seller from time to time. Increases in rental fees and Facilities Fees are not Price Changes, within the meaning of this Agreement.
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 must not permit cylinders or other storage containers furnished hereunder to be filled with any Product unless furnished by Seller or Seller's authorized representative.
7. Purchaser shall promptly furnish an accessible, secure site ("Site") for the Equipment at each of its facilities in which Products are required to enable suitable delivery and storage of such Products, including all foundations, lighting, fences and pipes 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 and phone lines, if necessary, as well as all licenses and permits required in connection with such use of the Site.
8. Equipment shall be installed and maintained in good repair and operating conditions by Seller. Purchaser shall pay Seller's standard freight, rigging, and installation charges, FOB Seller's original shipping point of Equipment and/or labor service center. Purchaser may provide its own Equipment, in which event Seller has no obligation to maintain the Equipment. Equipment owned by Purchaser must be kept in standard, safe operational condition. Purchaser has no ownership interest in Equipment installed, owned, and/or maintained at the Site by Seller.
9. Authorized representatives of Purchaser, Seller and/or Seller's representative must have access at all times to the Site, but Purchaser will deny access to all others. Purchaser will not alter, adjust or repair any Equipment installed by Seller at the Site although Purchaser is responsible for any loss or damage to Seller's Equipment unless caused by Seller's negligence.
10. If any Equipment installed by Seller becomes inadequate, in the judgment of Seller, because of a change in Purchaser's requirements of Product, Seller may, at its own expense, substitute a different size or type of Equipment and adjust the Facility Fee to reflect such substitution. If Seller modifies, upgrades, or enhances the equipment, Purchaser agrees to extend the term of this Agreement by the term of the initial Agreement. Seller may remove any Equipment installed, owned, and/or maintained by it within ninety (90) days after the expiration or termination of this Agreement.
11. (a) All deliveries of cylinder Product to the Site shall be made by Seller or its representative on regular business days between 8:00 A.M. and 5:30 P.M. Bulk Products may be delivered twenty-four (24) hours a day seven (7) days a week. In the event Purchaser requests Seller to deliver at limited hours (or after hours for cylinders), Seller will use reasonable efforts to do so. But Purchaser must pay all additional expenses incurred as a result of Seller's accommodation. Billings for Bulk Product delivered shall be made in hundred cubic feet, 70°F and one (1) atmosphere pressure or other appropriate units.  
  
(b) Deliveries made during a strike or other labor disturbance-affecting Purchaser, if any, are at Purchaser's sole risk. Purchaser hereby agrees to indemnify Seller from and against all costs, damages, losses, and expenses (including reasonable attorneys' fees) of any type arising out of any such delivery which costs, etc. are not normally incurred by Seller in the normal delivery of Product.
12. All Products, cylinders and other Equipment furnished hereunder shall conform to the description thereof published by the manufacturer at the time of sale. Except as otherwise required by law, THERE IS NO WARRANTY OF MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, THAT EXTENDS BEYOND SAID DESCRIPTION. Seller is not liable for any damages, whether direct, indirect, special, incidental, consequential, or otherwise, arising out of or in connection with any Product, cylinder, or other Equipment sold or rented hereunder whether such damage results from any negligent act or omission of Seller or is related to strict liability.
13. Purchaser's exclusive remedy for Seller's unexcused failure to deliver Product when required by Purchaser, whether or not such failure was caused by any negligence or misconduct, 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 meet the Seller's standard purity levels is, at Seller's option, to receive a refund of the price of such non-conforming Product or a replacement thereof with Product which meets such purity levels.
14. Seller's obligations under this Agreement are subject to and contingent upon floods, strikes, and/or other labor disturbances, fires, hurricanes, tornados and/or other acts of God, accidents, war, acts of terror, 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.

Purchaser Initials \_\_\_\_\_

Seller Initials \_\_\_\_\_



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15. The Purchaser shall pay any and all applicable taxes or fees related to Product or Equipment necessitated by virtue of any Federal, state, municipal, or other law. All of Seller's prices (whether for Product, Equipment, or Facilities Fees) are exclusive of any amount of federal, state, and/or local excise, sales, use, property, rental, retailer's occupation, gross receipts, or similar taxes which may be imposed upon this relationship. If any tax is determined to be applicable and Seller is required to pay it, all affected prices will be increased by the amount of such tax. In the event that the Purchaser claims exemption from such taxes, Purchaser must provide Seller with a properly completed and valid exemption certificate that is acceptable to the appropriate taxing authorities. Should such certificate be found invalid or ineffective, the Purchaser will bear the burden of any unpaid taxes owed and of any interest and penalties assessed. To the extent any such amount is paid by Seller, Purchaser will promptly, upon written demand, reimburse Seller for any such amounts paid or incurred.
16. Purchaser must comply with all relevant reporting obligations, by the state where the gases are stored, under the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. section 11001-11049 (EPCRA, also commonly known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III)) resulting from the presence of the chemicals supplied under the Agreement. Purchaser will pay all fees associated with such requirements to the required state and/or federal authorities. Moreover, it is Purchaser's responsibility to warn and protect its employees and all others exposed to the hazards posed by the Purchaser's storage and use of the Product and Equipment.
17. For Gas Products, cost increases may necessitate a revision of prices from time to time for Products sold under this Agreement (a "Price Change"). Price Changes will become effective fifteen (15) days after notice (either written or digital) 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 will have thirty (30) days to, at its option, meet the lower price, amend to a variant of the price increase, or revert to Seller's price before the price increase. If Seller does not exercise the option to so adjust the price, the Purchaser may terminate this Agreement by giving the Seller thirty (30) days' notice (either written or digital) of such termination. If Seller agrees to modify price, Seller may, at its option, extend the term of this Agreement for the longer of the initial term of this agreement or the term of the competitive written offer. Any price increase arising as a result, in whole or part, of compliance by Seller, or its suppliers, with Federal, state, or municipal law (including Seller taxes, or government agency required audits or other regulations) is not a Price Change for purposes of this Agreement. For Hardgoods Products, prices may change based on supplier updates, and newly presented prices serve as notice of the changes.
18. Purchaser acknowledges that there are hazards associated with the storage, distribution and use of Products, cylinders and/or containers and other equipment furnished under this Agreement. Purchaser warrants that it 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 of the Products and the Equipment.
19. All claims by Purchaser having anything to do with any Product, cylinder or Equipment furnished hereunder by Seller shall be made in writing (either written or digital) within ten (10) days after the delivery thereof. Failure of Purchaser to give such notice constitutes a complete defense for Seller against all such claims.
20. This Agreement is not binding on Seller until it is accepted by two of its duly authorized officers. This Agreement represents the entire Agreement between Seller and Purchaser in relation to the sale of Products and the use or rental of Equipment, including all cylinders and storage tanks. All Exhibits, Amendments, or Riders to this Agreement must be in writing. No acceptance by Seller of any purchase order specifying different delivery dates, locations or other terms or conditions is effective. This Agreement shall inure to the benefit of Seller and Purchaser and their respective successors and assigns.
21. All terms and conditions of this Agreement, Exhibits, Addendums or Riders shall be kept confidential.
22. If Seller or Purchaser institutes any action or proceeding relating to the provisions of this Agreement, or if Seller institutes any action or proceeding against Purchaser relating to any default hereunder by Purchaser, or makes any claim against Purchaser as a result of Purchaser's breach of this Agreement, then Purchaser will indemnify and hold harmless Seller from all costs and expenses related thereto, including costs of collection, reasonable attorneys' fees and costs and expenses of litigation (including those pertaining to the appeal from any final and appealable court order) incurred by Seller.
23. In addition to the base prices for Products provided in this Agreement, Seller may charge Purchaser for various items, including but not limited to charges for handling hazardous materials plus related compliance charges, shipping, handling, and/or delivery charges, and charges or surcharges for fuel and energy costs. Purchaser acknowledges that these fees are retained by Seller and are intended to compensate Seller for amounts expended in carrying out its obligations under this Agreement, but Seller is not required to specifically quantify the relationship between the charges and Seller's actual costs, as such actual costs vary with time, place, and other factors. Any such charge is not a Price Change for purposes of this Agreement.

Purchaser      Mangum Regional Medical Center

Seller      Lampton Welding Supply Co., Inc.

By \_\_\_\_\_

Submitted by \_\_\_\_\_

Accepted by \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_