



# Product Supply Agreement

THIS PRODUCT SUPPLY AGREEMENT ("Agreement") numbered **PT543** and dated as of March 31, 2016, is made by and between PRAXAIR DISTRIBUTION, INC., a Delaware corporation, having an office at 39 Old Ridgebury Road, Danbury, Connecticut 06810-5113 (hereinafter called "Seller") and CITY OF SANTA ROSA, a California government agency, having an office at 4300 Llano Road, Santa Rosa, California 95407 (hereinafter called "Buyer").

### 1. Definitions

The term "First Delivery" means the date on which Seller first delivers Product to Buyer, which date will in no event be earlier than the date on which Buyer is no longer obligated to purchase Product for Buyer's Location under the terms of any other contract. In addition to the meaning of the term "Supply System" set forth in the Rider(s), the term "Supply System" means a system located at Buyer's Location which is owned by Seller for the supply of Product to Buyer hereunder and which may be comprised of Product generating systems, storage units, vaporizers, piping up to Buyer's Product distribution system, controls and other equipment, devices and/or instrumentation as deemed appropriate by Seller. Capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Rider(s).

### 2. Requirements

Seller will sell to Buyer, and Buyer will purchase from Seller, on the terms and conditions hereinafter set forth, Buyer's total present and future requirements, in gaseous and liquid form, of Product for use at Buyer's Location(s), and if the operations at Buyer's Location(s) are conducted at expanded or new location(s), Seller will have the right to supply Product to such expanded or new location(s). As to each Rider, Buyer represents and warrants to Seller that as of First Delivery Buyer will not be obligated under the terms of any other contract to purchase Product for Buyer's Location(s). In the event the foregoing representation and warranty proves to be false, Buyer will indemnify, and hold harmless Seller from and against any and all costs, fees (including reasonable legal fees and expenses), damages, liabilities and claims which Seller may incur in connection with any claim or claims asserted by any third party as a result thereof. Buyer will not purchase any other substance(s) or system(s) in replacement of Product unless Seller has first refused a written offer from Buyer to supply such substance(s) or comparable system(s) at the same total cost contained in such offer on terms and conditions substantially similar to those terms and conditions contained herein.

### 3. Prices and Payment

Buyer will pay Seller the Prices for Product, equipment, or services supplied hereunder and any charges and surcharges related thereto, including those associated with regulatory and environmental compliance, greenhouse gas emission reductions, and obtaining power and transportation, whether or not set forth in the Rider. If Seller provides Buyer with product(s), equipment and/or services not specifically covered by any Rider or other agreement, the prices, charges and surcharges as are set forth in Seller's schedule applicable to such product(s), equipment or services will apply, any such product(s) will meet industry standards for purposes of Article 5 and any such product(s), equipment, or services will be deemed to be provided pursuant to the terms and conditions of this Agreement. In addition, Buyer will pay or reimburse Seller for any sales, property, use, excise or other duty, tax, charge or fee now or hereafter imposed by reason of any sale, delivery or furnishing of any Product, equipment, or services hereunder. Nothing contained in this Agreement will be construed to relieve Buyer from its obligations to pay any applicable Monthly Service Charge, Monthly Facility Fee, Demand Charge, Monthly Rental or Cylinder Rental during the term of any Rider. Seller will invoice Buyer by Seller's standard billing methods. Terms of payment will be net thirty (30) days following date of invoice. At Seller's request and subject to Buyer's ability to do so, Seller and Buyer will utilize Seller's website or other electronic data interchange for invoicing and paying of invoices. If Buyer fails to make timely payment in accordance with the terms of this Agreement, or its financial responsibility becomes otherwise impaired, or if Buyer is otherwise in default of its obligations hereunder, Seller reserves the right, among other remedies, to refuse to supply Product except for receipt of cash with order and/or payment in full of all outstanding charges, and/or assess and collect from Buyer a monthly late charge on any delinquent balance equal to the lesser of eighteen percent (18%) per annum or the maximum charge permitted by law, and/or enter Buyer's premises and remove any Supply System, Cylinders or other Seller's equipment located thereat with or without notice of legal process, and/or suspend Seller's performance under this Agreement and/or terminate this Agreement or any Rider. If any action is required to collect Buyer's delinquent account, recover any Cylinders or otherwise enforce the terms and conditions of this Agreement, Buyer will pay Seller all fees and costs of such collection, recovery or enforcement including reasonable legal fees and expenses.

### 4. Delivery

Seller will deliver to Buyer Buyer's requirements for Product in accordance with the terms of this Agreement. Product in Cylinders will be delivered F.O.B. point of shipment. At Seller's request, Buyer will provide to Seller information relating to Buyer's pattern of use of Product from each Supply System. Seller may anticipate Buyer's requirements for Product and deliver Product at such times as are consistent with Seller's delivery schedule. The delivery of Product by Seller will constitute Buyer's purchase thereof, and the quantities delivered will be measured by Seller by the method it regularly uses for the type of delivery made. Buyer grants to Seller the right of twenty-four (24) hour access to each Supply System site or the site of any Product storage system provided by Buyer as provided in any Rider, and if (a) Buyer fails to grant or delays such access, or (b) Seller is unable to deliver Product (i) from Seller's Shipping Point or (ii) at any time consistent with Seller's delivery schedule or otherwise in accordance with the terms of this Agreement due to any act or omission of Buyer, Buyer will pay Seller any applicable delivery charge set forth in Seller's delivery charge schedule. If Seller is requested by Buyer and is able to make deliveries during a strike or other concerted acts of workers affecting Buyer's Location(s), then such deliveries will be made at Buyer's sole risk and, notwithstanding anything in this Agreement to the contrary, Buyer will indemnify and hold harmless Seller from and against any and all costs, fees (including reasonable

legal fees and expenses), damages, liabilities and claims arising out of or incident to any such deliveries. In addition, Seller reserves the right to request, in its sole discretion, that Buyer provide qualified personnel to deliver Product to any Supply System affected by such strike or concerted acts, and Buyer will provide such personnel.

### 5. Specifications

Product delivered hereunder will meet the Specifications. Buyer may reject any Product which does not meet the Specifications and no charge will be made for Product so rejected. Since Buyer may obtain devices which have the capability of testing whether Product meets the Specifications, no claim of any kind with respect to the conformance of Product to the foregoing Specifications, whether or not based on negligence, warranty, strict liability or any other theory of law, will be greater than the price of the quantity of nonconforming Product in respect to which such claim is made. The foregoing constitutes Buyer's exclusive remedy and Seller's sole obligation with respect to any such claim. THERE ARE NO EXPRESS WARRANTIES BY SELLER OTHER THAN THOSE SPECIFIED IN THIS ARTICLE 5. NO WARRANTIES BY SELLER (OTHER THAN WARRANTY OF TITLE AS PROVIDED IN THE UNIFORM COMMERCIAL CODE) WILL BE IMPLIED OR OTHERWISE CREATED UNDER THE UNIFORM COMMERCIAL CODE INCLUDING WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

### 6. Price Changes

Seller will have the right to adjust the Prices by giving Buyer not less than fifteen (15) days prior written notice of the effective date of such adjustment; provided, however, that if said Prices are increased and Buyer, within fifteen (15) days after said notice, furnishes Seller with credible written evidence that Buyer can purchase Product to which such increased Prices apply from a responsible supplier for a specified term in like quantities, at lower prices and under similar terms and conditions, and Seller, within fifteen (15) days thereafter, does not agree to either meet said lower prices or rescind the notice of increased Prices, Buyer will have the right within ten (10) days thereafter to terminate this Agreement as to the supply of Product for which such lower prices are offered by giving Seller not less than ten (10) days prior written notice. If Buyer exercises such right of termination, the cost of removal of the Supply System used for the supply of such Product will be borne by Buyer. If Seller agrees to meet the lower prices or rescind the notice of increased Prices, Seller may extend the term of the Rider covering such Product for a period equal to the period of the Basic Term of such Rider notwithstanding any prior termination notice by Buyer. Any adjustments made by Seller pursuant to this Article 6 with respect to any Monthly Service Charge, Demand Charge or Monthly Rental set forth in the Rider or to surcharges or other charges which arise pursuant to Article 3 will not be subject to the proviso contained in the first sentence of this Article 6.

BY SIGNING BELOW, BUYER AND SELLER EACH ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS CONDITIONAL UPON THE TERMS AND CONDITIONS CONTAINED ON THE BACK OR SECOND PAGE HEREOF AND/OR ON ANY RIDER, EXHIBIT OR SCHEDULE ATTACHED HERETO AT THE TIME OF EXECUTION OR AT THE TIME SUBSEQUENTLY EXECUTED BY BUYER AND SELLER. Buyer and Seller intending to be legally bound have by the signatures of their authorized representatives executed this Agreement as of the date first above written.

CITY OF SANTA ROSA (Buyer)

Submitted by: RITA MILLER as agent of the CITY OF SANTA ROSA

By: \_\_\_\_\_

Signature: [Signature]

Title: DEPUTY DIRECTOR OF ENVIRONMENTAL SERVICES

Date: 4/21/2016

PRAXAIR DISTRIBUTION, INC. (Seller)

Submitted by: Luis Martinez

By: Stephen T. Bogard

Signature: \_\_\_\_\_

Title: Region Vice President

Date: \_\_\_\_\_

[Initials]

## 7. Contingencies

Neither party hereto will be liable to the other for default or delay in the performance of any of its obligations hereunder (except any obligation to make payments when due) due to act of God, accident, fire, flood, storm, riot, war, act of terrorism, sabotage, explosion, strike, concerted acts of workers, national defense requirements, governmental law, ordinance, rule or regulation, whether valid or invalid, extraordinary failure of equipment or apparatus, inability to obtain electricity or other type of energy, feedstock, raw or finished material from normal sources of supply, labor, equipment or transportation, or any similar or different contingency beyond its reasonable control which would prevent or delay performance or make performance commercially impracticable whether or not the contingency is of the same class as those enumerated above, it being expressly agreed that such enumeration is non-exclusive; provided, however, that neither business downturn nor economic conditions will qualify as a contingency within the meaning of this Article 7. In the event any such contingency affects only a part of Seller's capability to produce and/or deliver Product, Seller will allocate production and/or deliveries among the requirements of all its affected customers and Seller's own requirements in a fair and reasonable manner. Buyer will pay or reimburse Seller for any additional costs incurred relating to the delivery of any Product to Buyer during a contingency. During any period that delivery of Product is interrupted or reduced due to a contingency hereunder, Seller may extend the Basic Term for a period equal to the duration of the contingency.

## 8. Health, Safety, Indemnity and Limitation of Liability

Buyer acknowledges that there are hazards associated with Product, including the storage, use and handling thereof, and Buyer agrees that its employees, agents, contractors, and others concerned with Product are aware of such hazards. Buyer assumes all responsibility for the suitability and the results of using Product alone or in combination with other articles or substances and in any manufacturing, medical, or other process or procedures. Buyer will notify Seller of any hazards and safety procedures at Buyer's Location(s) and Buyer will notify Seller in advance of any anticipated construction, renovation, or change in operations in the area of any Supply System site so that any hazards associated with same can be minimized. Buyer will be responsible for complying with all relevant reporting obligations under all applicable laws, including the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Sections 11001-11049 (EPCRA, also commonly known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III)), that result from the presence at Buyer's Location(s) of Product supplied under this Agreement. Buyer will warn and protect its employees, contractors and others exposed to the hazards posed by Buyer's storage, use and handling of Product. Seller will provide documents to Buyer containing Seller's safety and health information pertaining to Product, including Seller's Material Safety Data Sheet(s), and Buyer will incorporate such information into Buyer's safety program. Buyer hereby waives any right of subrogation that Buyer, any insurer of Buyer or any third party making a claim through Buyer, may have under this Agreement. Seller will not be liable to Buyer for any incidental, consequential, indirect, special or exemplary damages (including lost profits, sales or other similar damages) arising in connection with this Agreement without regard to the nature of the claim or the underlying theory or cause of action (whether in contract, tort, strict liability, equity or any other theory of law) on which such damages are based. Each party will indemnify and hold harmless the other party from and against any and all costs, fees (including reasonable legal fees and expenses), damages, liabilities and claims arising from the injury, illness or death of the indemnifying party's employees in any way related to any activities performed in connection with or Product supplied by Seller under this Agreement, whether or not such injury, illness, or death is claimed to have been caused by, resulted from, or was in any way connected with the negligence of the party to be indemnified.

## 9. Confidentiality

This Agreement, including the Rider(s) and any addendum hereto, and all drawings, diagrams, specifications, operating data, pricing, costs and other materials or information furnished by either party to the other in connection therewith, and the information contained therein are the proprietary and confidential information of the disclosing party. Such materials and information are considered valuable trade secrets of the disclosing party and any unlawful disclosure of such materials or information will result in significant damages to the disclosing party. The receiving party will hold in confidence all such materials and information. However, the receiving party may disclose such materials and information to (a) governmental agencies for the purpose of obtaining permits under any Rider, and (b) the receiving party's employees for the purpose of performing the receiving party's obligations under this Agreement. In the case of any of the aforementioned disclosures, the receiving party will inform its employees or governmental agencies that such materials and information are the proprietary and confidential information of the disclosing party and are to be treated accordingly. Unless otherwise agreed, the receiving party will keep all such materials and information confidential for a period which will expire ten (10) years after the termination date of this Agreement. It is understood that the foregoing obligation of confidentiality does not apply to materials and information that: (i) was already known to the receiving party prior to the disclosure of same hereunder, as evidenced by the receiving party's written records prepared prior to such disclosure; (ii) was in or hereafter comes within the public domain, other than by the receiving party's failure to fulfill its obligations hereunder; (iii) is made available to the receiving party by a third party who does not have any direct or indirect obligation of secrecy to the disclosing party; or (iv) is developed by the receiving party independent of any disclosure under this Agreement as evidenced by its written records.

## 10. Assignment

Any assignment of this Agreement by either party without the prior written consent of the other party, which consent will not be unreasonably delayed or withheld, will be void; provided, however, that Seller will have the right without Buyer's consent to assign this Agreement in whole or in part to any affiliate of Seller, or any party obtaining all or substantially all of the business assets of Seller related to the production, storage or distribution of any Product(s). If Buyer sells or otherwise transfers or conveys all or substantially all of the assets relating to the operations at Buyer's Location(s), Buyer will, as a condition precedent to the closing of such sale, transfer or conveyance, require the purchaser or transferee to assume all of the rights and obligations of Buyer under this Agreement. This Agreement will inure to the benefit of, and be binding upon, the respective heirs, representatives, successors, including any by way of merger or consolidation, and permitted assigns of the parties.

## 11. Notices

All notices, unless otherwise provided herein, will be in writing and deemed given on the date the notice is hand delivered, mailed or electronically transmitted to the receiving party at such party's Address. Either party may change its Address upon notice to the other party as set forth herein.

## 12. Term

Except as provided in Articles 3, 6 and 7 or the Rider(s), this Agreement will be in effect from the date hereof and will continue in effect thereafter as to each Rider for the period of the Basic Term, and will continue in effect thereafter as to such Rider unless or until either party terminates such Rider effective as of the date of expiration of the Basic Term thereof by giving to the other party not less than twelve (12) months prior written notice of termination with respect to such Rider or, if either party does not so terminate such Rider upon the expiration of the Basic Term thereof, such Rider will continue in effect thereafter for successive renewal terms equal to the period of the Basic Term of such Rider (the "Renewal Terms") until either party terminates such Rider effective upon the expiration of any Renewal Term by giving the other party not less than twelve (12) months prior written notice of termination with respect to such Rider.

## 13. Dispute Resolution

If a party to this Agreement has reasonable grounds to believe that the other party hereto has failed to fulfill any obligation hereunder, or that its expectation of receiving due performance under this Agreement may be impaired, such party will promptly notify the other party in writing of the substance of its belief. The party receiving such notice must respond in writing within thirty (30) days of receipt of such notice and either provide evidence of cure of the condition specified, or provide an explanation of why it believes that its performance is in accordance with the terms of this Agreement, and also specify three (3) dates, all of which must be within thirty (30) days from the date of its response, for a meeting of the designated representatives of the parties, each of whom will have the authority to resolve and settle the dispute. The claiming party will then select one (1) of the three (3) dates, and a dispute resolution meeting will be held. If the parties cannot, in good faith discussions, resolve their dispute, they will be free to pursue all remedies allowed under the law without prejudice.

## 14. General

This Agreement supersedes any prior agreement or agreements between Buyer and Seller covering the supply of Product to Buyer's Location(s), but this Agreement will not be construed as a renunciation or discharge of any claim in damages for an antecedent breach. The entire agreement is contained herein and in the Rider(s). There are no other promises, representations or warranties affecting this Agreement, and any other or different terms or conditions in any purchase orders, Buyer's website agreements (including any terms or conditions subject to an accept button or other similar means of indicating acceptance) or other documents issued or accepted hereunder will be deemed null and void. Seller may from time to time record telephone conversations with Buyer regarding matters related to this Agreement. If Seller records any such conversations, notice of such recordings will be provided and Buyer hereby consents to such recordings. No modification or waiver of this Agreement will bind either party unless expressly set forth in writing and manually signed and accepted by an authorized representative of the party sought to be bound by such writing. A waiver of any of the terms and conditions hereof will not be deemed a continuing waiver, but will apply solely to the instance to which the waiver is directed. Any headings contained in this Agreement are used only as a matter of convenience and reference, and are in no way intended to define, limit, expand or describe the scope of this Agreement. As used in this Agreement, the word "including" and variations thereof will be deemed to be followed by the words "without limitation." Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. In the event of conflict between the terms and conditions contained in this Agreement and the Rider(s), the terms and conditions of the Rider(s) will govern. This Agreement, as well as any claim, controversy or dispute arising under or related to this Agreement, will be governed by the laws of the State of New York, without reference to its conflict of laws provisions which would render applicable the laws or any other jurisdiction. This Agreement may be executed by the parties in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument and be delivered by a party by facsimile transmission or by email delivery. **Buyer and Seller hereby waive to the fullest extent permitted by law any right to a trial by jury in any action or proceeding based upon, arising out of, or in any way relating to this Agreement**



THIS RIDER ("Rider") numbered PT543 and dated as of March 31, 2016 (the "Effective Date"), is made a part of the Product Supply Agreement (the "Agreement") by and between PRAXAIR DISTRIBUTION, INC., a Delaware corporation, having an office at 39 Old Ridgebury Road, Danbury, Connecticut 06810-5113 (hereinafter called "Seller") and CITY OF SANTA ROSA, a(n) California government agency, having an office at 4300 Llano Road, Santa Rosa, California 95407 (hereinafter called "Buyer"). In the event of conflict between the terms and conditions contained in this Rider and the Agreement, the terms and conditions of this Rider will govern.

1. As to this Rider, the following words and terms shall have the following meanings:

"Basic Term" means the period commencing on the Effective Date and continuing for Seven (7) years.

"Buyer's Location(s)" means 4300 Llano Road, Santa Rosa, California 95407.

"Prices" are:

Table with 8 columns: Item No., Product, Specification, Size Code, Estimated Monthly Volume in Cubic Feet (ft³), Charge per 100 cubic feet (ft³) of product and/or per unit, Monthly Service Charge per unit, Demand Charge per 100 cubic feet (ft³) of product. Rows include NI 4.8-MBFILL, AR 4.8-MBFILL, ZZZBKHM, and ZZZ DELIVERY.

The Monthly Service Charge and Demand Charge for each Supply System will commence on the earliest of the following dates: (a) the date of First Delivery of Product(s) to or from such Supply System, (b) thirty (30) days after the date such Supply System is delivered to Buyer's Location in the event Seller is delayed in tendering delivery of Product(s) to Buyer from such Supply System and such delay is due to the acts or omissions of Buyer or (c) thirty (30) days after the date such Supply System or Product(s) would have been delivered to Buyer's Location had such delivery not been delayed due to the acts or omissions of Buyer. Products are subject to a delivery and/or hazardous materials and/or fuel charge that will be noted on the invoice for such Products. For each delivery of Product(s) to Buyer's Location(s), Seller will invoice Buyer and Buyer will pay Seller a regulatory compliance charge ("RCC") at the current charge set forth in Seller's most current schedule of charges (which charge is currently \$0.00). The RCC is in addition to the Prices specified above.

"Product(s)" means the gaseous and liquid Product(s) noted in the table under "Prices" above.

"Estimated Monthly Volume" means the indicated amount for the Product(s) in the table under "Prices" above.

"Specifications" means the Product specification set under the column so indicated in the table under "Prices" above, or the Compressed Gas Association (CGA) specification for such Product, if none is indicated.

"Supply System" means the following supply system(s):

Table with 8 columns: Item No., Supply System, Account Number, Number of Units, Supply System Delivery Pressure (psig), Average Flow Rate (cfh), Peak Flow Rate (cfh), Peak Flow Duration (h/day). Rows include RENNIMB450 and RENARMB450.

BY SIGNING BELOW, BUYER AND SELLER EACH ACKNOWLEDGE AND AGREE THAT THIS RIDER IS CONDITIONAL UPON THE TERMS AND CONDITIONS CONTAINED ON THE BACK OR SECOND PAGE HEREOF AND/OR IN THE AGREEMENT OR ANY EXHIBIT, SCHEDULE OR ADDENDUM ATTACHED HERETO AT THE TIME OF EXECUTION OR AT THE TIME SUBSEQUENTLY EXECUTED BY BUYER AND SELLER. Buyer and Seller intending to be legally bound have by the signatures of their authorized representatives executed this Rider as of the date first above written.

CITY OF SANTA ROSA (Buyer)

By: RITA MILLER as agent of the City of Santa Rosa
Signature: [Handwritten Signature]
Title: DEPUTY DIRECTOR OF ENVIRONMENTAL SERVICES
Date: 4/21/2014

PRAXAIR DISTRIBUTION, INC. (Seller)

Submitted By: Luis Martinez
Accepted By: Stephen T. Bogard
Signature: [Handwritten Signature]
Title: Region Vice President
Date: [Blank]

[Handwritten Initials]

## 2. Delivery, Supply System and Supply System Sites

- (a) Product is to be delivered in bulk form. The Supply System shall be located at Buyer's Location(s) and shall at all times be owned and maintained by Seller for the supply of Product to Buyer hereunder. The Supply System may be comprised of air separation facilities, Product generating systems, storage units, vaporizers, piping, controls and other equipment, devices and/or instrumentation as deemed appropriate by Seller.
- (b) Seller will install each Supply System and make the connection to Buyer's Product distribution system. The costs associated with installing each Supply System and connecting it to Buyer's Product distribution system, including, without limitation, transportation and rigging costs, will be borne by Buyer.
- (c) Buyer, at its expense, will provide a suitable site for each Supply System free from any underground or overhead obstructions and with access either by road or railroad siding as mutually agreed upon by the parties, construct a suitable foundation for each Supply System as specified by Seller, install fencing adequate to prevent tampering, install isolation barriers as required, obtain any necessary permits and licenses for each Supply System, install and maintain a properly designed system for the distribution of Product from each Supply System to Buyer's points of use, and furnish utilities as required by Seller in connection with each Supply System, such as electric power, lighting, telephone lines, water and/or steam, and the facilities to deliver such utilities to the point(s) on each Supply System site designated by Seller.
- (d) Each Supply System site furnished by Buyer hereunder will be free from toxic and hazardous materials which would prevent or increase the cost of the installation or operation of the Supply System, or which would cause injury or death of Buyer's employees or any other persons on or at the Supply System site, or which would cause damage to any adjoining property. Notwithstanding anything in the Agreement to the contrary, Buyer hereby indemnifies and holds harmless Seller from and against any and all claims, liabilities, costs (including legal fees), expenses, damages, penalties and fines that result from any toxic or hazardous materials now or hereafter in, on or under the Supply System site and do not occur or result directly from Seller's performance pursuant to the Agreement. If subsequent to the date of this Rider any new local, state or federal law, rule or regulation requires modification to any Supply System or Supply System site, or any additional permits, licenses or rights are required, any costs associated with performing such modifications or obtaining such permits, licenses or rights will be borne by Buyer.
- (e) If any Supply System is damaged by Buyer, its agents, employees, contractors or invitees, the cost of repairing such Supply System will be borne by Buyer. Buyer will prevent persons other than those authorized by Seller from entering any Supply System site, delaying delivery of Product, or altering, repairing, adjusting or otherwise tampering with any Supply System.
- (f) Seller will, at Buyer's expense, remove each Supply System within a reasonable time after the termination of the Basic Term of this Rider. Seller may at its expense remove any Supply System or part thereof, and replace it with another Supply System or part thereof, as Seller may deem appropriate for the supply of Buyer's requirements. Seller will have the right from time to time to shut down each Supply

System for such period of time as may be necessary for repairs and maintenance consistent with proper operation. Each Supply System will remain the property of Seller at all times. Buyer will hold harmless Seller from and against liens and claims against each Supply System due to its location on Buyer's premises.

- (g) If Seller relocates, modifies or replaces all or part of any Supply System due to a change in Buyer's requirements, method of supply, pressure specifications, Buyer's Location(s) or Buyer's facilities, Seller may charge Buyer the cost of such relocation, modification or replacement, adjust the Monthly Service Charge set forth on the face hereof covering such relocated, modified or replaced Supply System, and extend the term hereof effective upon First Delivery to or from the relocated, modified or replacement Supply System for a period equal to the Basic Term hereof.
- (h) Buyer hereby authorizes Seller to file a UCC-1 Financing Statement in order to reflect Seller's ownership of the Supply System and will provide Seller with any assistance necessary to make such filing.

## 3. Right of Refusal

Following the expiration or termination of this Rider, Buyer will not purchase any of its requirements for Product at Buyer's Location (hereinafter called the "Product Requirement") unless Buyer provides Seller with the opportunity to meet the most competitive offer of any third party to supply the Product Requirement (hereinafter called the "Offer"), and if Seller meets the Offer, Buyer will enter into a new Rider to the Agreement with Seller covering the supply of the Product Requirement. After receiving all competitive offers from third party suppliers for the Product Requirement, Buyer will deliver a copy of the Offer to Seller. Upon receipt of the Offer, Seller will have the option, for a period of twenty (20) days thereafter (the "Option Period"), to meet the material terms and conditions set forth in the Offer. Such option will be exercisable by Seller by written notice to Buyer given within the Option Period. If Seller fails to exercise the option with respect to the Product Requirement, Buyer will be free to enter into an agreement with another supplier covering the supply of the Product Requirement, provided the terms and conditions of such agreement are not more favorable to such supplier than those contained in the Offer. If Seller fails to exercise the option with respect to the Product Requirement and Buyer for any reason does not, within sixty (60) days following the expiration of the Option Period, enter into a binding agreement with another supplier covering the Product Requirement on terms and conditions set forth in the Offer, then the rights and obligations set forth above will be revived with respect to the Product Requirement.



THIS RIDER ("Rider") numbered PT543 and dated as of March 31, 2016 (the "Effective Date"), is made a part of the Product Supply Agreement (the "Agreement") by and between PRAXAIR DISTRIBUTION, INC., a Delaware corporation, having an office at 39 Old Ridgebury Road, Danbury, Connecticut 06810-5113 (hereinafter called "Seller") and CITY OF SANTA ROSA, a(n) California government agency, having an office at 4300 Llano Road, Santa Rosa, California 95407 (hereinafter called "Buyer"). In the event of conflict between the terms and conditions contained in this Rider and the Agreement, the terms and conditions of this Rider will govern.

1. As to this Rider, the following words and terms shall have the following meanings:

"Basic Term" means the period commencing on the Effective Date and continuing for Seven (7) years.

"Buyer Location(s)" means 4300 Llano Road, Santa Rosa, California 95407.

"Prices" are:

Table with 6 columns: Product, Specifications, Product Code, Cylinder Type, Product Price Per Cylinder/Unit, Cylinder Rental Per Day. Rows include Hydrogen, Air, and Ancillary Charges.

In addition to the Prices set out above, Products are subject to a delivery and/or hazardous materials and/or fuel charge that will be noted on the invoice for such Products. Seller will invoice Buyer and Buyer will pay Seller a regulatory compliance surcharge ("RCC") of \$0.00 for each delivery of Cylinders to Buyer Location(s). The RCC is in addition to the Prices specified above.

"Products" means the gaseous and liquid Products noted in the table under "Prices" above.

"Specifications" means the Product specification set under the column so indicated in the table under "Prices" above or listed in the Product Information Sheet(s) attached hereto.

Notwithstanding anything to the contrary in the Agreement, Product(s) will be supplied by Seller to Buyer at Seller's facility or Buyer Location(s), or to a contract or common carrier at Seller's facility, for shipment to Buyer as mutually agreed upon by Buyer and Seller. If, at Buyer's request, Seller makes more than one (1) delivery of Product on any day, Buyer will pay Seller any special expenses incurred.

BY SIGNING BELOW, BUYER AND SELLER EACH ACKNOWLEDGE AND AGREE THAT THIS RIDER IS CONDITIONAL UPON THE TERMS AND CONDITIONS CONTAINED ON THE BACK OR SECOND PAGE HEREOF AND/OR IN THE AGREEMENT OR ANY EXHIBIT, SCHEDULE OR ADDENDUM ATTACHED HERETO AT THE TIME OF EXECUTION OR AT THE TIME SUBSEQUENTLY EXECUTED BY BUYER AND SELLER. Buyer and Seller intending to be legally bound have by the signatures of their authorized representatives executed this Rider as of the date first above written.

CITY OF SANTA ROSA (Buyer)
By: RITA MILLER as agent of City of Santa Rosa
Signature: [Signature]
Title: DEPUTY DIRECTOR OF ENVIRONMENTAL SERVICES
Date: 4/21/2016

PRAXAIR DISTRIBUTION, INC. (Seller)
Submitted By: Luis Martinez
Accepted By: Stephen T. Bogard
Signature: [Signature]
Title: Region Vice President
Date: [Blank]

[Handwritten initials]

## 2. Cylinders

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- (a) The cylinders and/or other containers that are used to deliver Product by Seller ("Cylinders") will remain the property of Seller at all times. Risk of loss of Cylinders shall pass to Buyer upon delivery. Seller will not be responsible for connecting any Cylinder to Buyer's Product distribution system.
- (b) Buyer will not permit the refilling of any Cylinders by any third party with any substance, whether gas, liquid or solid.
- (c) Buyer will return all Cylinders to Seller in a non-contaminated condition with valves closed. Buyer will pay Seller for any loss or damage to Cylinders beyond normal wear and tear and for any cleanup of Cylinders returned in a contaminated condition.
- (d) Buyer will pay rent or a facility fee as outlined in this Rider. Seller may increase the amount of such rent or facility fee to its then current standard rates at any time on thirty (30) days' prior written notice. Such charges shall be paid for each Cylinder until it is returned or, if it is damaged beyond repair or missing, until Buyer pays for such Cylinder in full at Seller's then current published price.
- (e) Buyer shall, from time to time, at the request of Seller, submit an accounting of Cylinders delivered to Buyer which have not been returned and shall permit Seller to enter its premises to verify such accounting. By paying the amount specified for Cylinder rent on the invoices provided to Buyer by Seller, Buyer shall be deemed to agree that the number of Cylinders specified in such invoice are in Buyer's possession as of the close of business on the date specified in such invoice.
- (f) Buyer hereby grants to Seller the right to enter Buyer Location(s) and remove any Cylinders which have not been returned to Seller within thirty (30) days after the termination of this Rider, or at any time for non-payment of rent or facility fee, or for Buyer's breach of this Agreement, or if Seller, after seeking adequate assurances from Buyer, reasonably believes that Buyer will not be able to meet its obligations under the Agreement. Seller will not be liable for any damages resulting from such removal except to the extent caused by Seller's intentional wrongful act.
- (g) Buyer will promptly remove any liens and claims against Cylinders due to their location at Buyer Location(s) or possession by Buyer.
- (h) Buyer hereby authorizes Seller to file a UCC-1 Financing Statement in order to reflect Seller's ownership of Cylinders and will provide Seller with any assistance necessary to make such filing.

## 3. Orders

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Buyer will give Seller reasonable advance notice of orders for the Products which orders shall be in quantities reasonably proportionate to Buyer's total annual requirements.

## 4. Limited Manufacturer's Warranty

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Notwithstanding any other warranty provision otherwise contained in the Agreement or in this Rider, with respect to any items or equipment covered by this Rider that are not manufactured by Seller, Seller shall provide reasonable assistance to Buyer in obtaining the benefit for Buyer of any applicable manufacturer's warranty. No claim of any kind with respect to any item or equipment covered by this Rider and or delivered hereunder, whether based on contract, negligence, warranty, strict liability or otherwise, shall be greater than the price paid for the item or equipment in respect to which such claim is made. **THERE ARE NO EXPRESS WARRANTIES BY SELLER RELATING TO HARDGOODS, CONSUMMABLE GOODS, EQUIPMENT OR OTHER ITEMS SUPPLIED TO BUYER (EXCEPT AS SPECIFIED IN SECTION 5 OF THE AGREEMENT WITH RESPECT TO PRODUCTS) OTHER THAN THOSE SPECIFIED IN THIS PARAGRAPH. NO WARRANTIES BY SELLER (OTHER THAN WARRANTY OF TITLE AS PROVIDED IN THE UNIFORM COMMERCIAL CODE) WILL BE IMPLIED OR OTHERWISE CREATED INCLUDING UNDER THE UNIFORM COMMERCIAL CODE INCLUDING WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.**

## 5. Right of Refusal

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Following the expiration or termination of this Rider, Buyer will not purchase any of its requirements for Product at Buyer's Location (hereinafter called the "Product Requirement") unless Buyer provides Seller with the opportunity to meet the most competitive offer of any third party to supply the Product Requirement (hereinafter called the "Offer"), and if Seller meets the Offer, Buyer will enter into a new Rider to the Agreement with Seller covering the supply of the Product Requirement. After receiving all competitive offers from third party suppliers for the Product Requirement, Buyer will deliver a copy of the Offer to Seller. Upon receipt of the Offer, Seller will have the option, for a period of twenty (20) days thereafter (the "Option Period"), to meet the material terms and conditions set forth in the Offer. Such option will be exercisable by Seller by written notice to Buyer given within the Option Period. If Seller fails to exercise the option with respect to the Product Requirement, Buyer will be free to enter into an agreement with another supplier covering the supply of the Product Requirement, provided the terms and conditions of such agreement are not more favorable to such supplier than those contained in the Offer. If Seller fails to exercise the option with respect to the Product Requirement and Buyer for any reason does not, within sixty (60) days following the expiration of the Option Period, enter into a binding agreement with another supplier covering the Product Requirement on terms and conditions set forth in the Offer, then the rights and obligations set forth above will be revived with respect to the Product Requirement.



**THIS RIDER** ("Rider") numbered **PT543** and dated as of March 31, 2016 (the "Effective Date"), is made a part of the Product Supply Agreement (the "Agreement") by and between PRAXAIR DISTRIBUTION, INC., a Delaware corporation, having an office at 39 Old Ridgebury Road, Danbury, Connecticut 06810-5113 (hereinafter called "Seller") and **CITY OF SANTA ROSA**, a(n) California government agency, having an office at 4300 Llano Road, Santa Rosa, California 95407 (hereinafter called "Buyer"). In the event of conflict between the terms and conditions contained in this Rider and the Agreement, the terms and conditions of this Rider will govern.

**1. As to this Rider, the following words and terms shall have the following meanings:**

"Basic Term" means the period commencing on the Effective Date and continuing Seven (7) years.

"Buyer Location(s)" means each location on Annex A hereto that Seller elects to supply in its sole discretion.

"Prices" are:

**Packaged:**

Product	Specification	Product Code	Cylinder Type	Product Price Per Cylinder/Unit	Cylinder Rental Per Day
Helium	Specialty Gas Grade, 99.999% ultra-high, 291 cf	HE 5.0UH-T	Cylinder, 530	\$ 248.35	\$ 0.165
Ancillary Charge	Hazardous Material Charge, per delivery	ZZZHM	n/a	\$ 11.95	-----
Ancillary Charge	Delivery Charge, per trip	ZZZDELIVERY	n/a	\$ 23.75	-----

**Bulk Supply System:**

Item No.	Product	Specification	Estimated Volume in Cubic Feet (ft <sup>3</sup> )	Charge per 100 cubic feet (ft <sup>3</sup> ) of product	Monthly Service Charge	Monthly Demand Charge
n/a				\$ per ccf	\$ per month	-----
				\$ per ccf	\$ per month	-----

In addition to the Prices set out above, Products are subject to a delivery and/or hazardous materials charge that will be noted on the invoice for such Products. Seller will invoice Buyer and Buyer will pay Seller a regulatory compliance surcharge ("RCC") of \$ 7.95 for each delivery of Cylinders to Buyer Location(s). The RCC is in addition to the Prices specified above.

For bulk deliveries, the Monthly Service Charge and Monthly Demand Charge for each Supply System will commence on the earliest of the following dates: (a) the date of First Delivery of Product(s) to or from such Supply System, (b) thirty (30) days after the date such Supply System is delivered to Buyer's Location in the event Seller is delayed in tendering delivery of Product(s) to Buyer from such Supply System and such delay is due to the acts or omissions of Buyer or (c) thirty (30) days after the date such Supply System or Product(s) would have been delivered to Buyer's Location had such delivery not been delayed due to the acts or omissions of Buyer.

**Special Service Fees**

Special Services, to the extent required by the Buyer, will be in accordance with the fees set forth on Attachment X, provided that such fees may be revised from time to time.

**Delivery at standard rate and terms**

For packaged gases, there will be a \$23.75 per trip charge for deliveries and for cylinder pick-ups. For bulk deliveries, distribution charges will be calculated using round trip mileage to the Buyer's use point from the supplying Praxair facility, at \$2.75/mile, per delivery. For Bulk deliveries, two hours is allocated for product transfer into customer's equipment, additional time will be billed at \$50/hour, rounded up to the next half hour. Additional delivery services, to the extent required by Buyer, will be in accordance with the fees set forth on Attachment Y, provided that such fees may be revised from time to time.

"Products" means the gaseous and liquid Products noted in the table under "Prices" above.

"Specifications" means the Product specification set under the column so indicated in the table under "Prices" above or listed in the Product Information Sheet(s) attached hereto.

Notwithstanding anything to the contrary in the Agreement, Product(s) will be supplied by Seller to Buyer at Seller's facility or Buyer Location(s), or to a contract or common carrier at Seller's facility, for shipment to Buyer as mutually agreed upon by Buyer and Seller. If, at Buyer's request, Seller makes more than one (1) delivery of Product on any day, Buyer will pay Seller any special expenses incurred.

The Seller will be the exclusive provider for each Location on Schedule A that Seller has elected to supply. If at any time Buyer requires a greater volume of Product than Seller elects to supply at such time for any Location, Seller will agree to waive the exclusivity requirements with respect to such excess volume up to the full requirements for a given location.

**2. As to the supply of Product pursuant to this Rider, Buyer and Seller further agree as follows:**

**(a) First Delivery**

First Delivery shall not occur until the Seller's current helium allocation period has ended.

**(b) Monthly Volumes**

Buyer has estimated that Buyer's monthly consumption of Product will be approximately 1,746 cubic feet (the "Estimated Monthly Volume"). Seller will be obligated hereunder to supply Product only up to 110% of the Estimated Monthly Volume. Seller will supply to Buyer Product in excess of 110% of the Estimated Monthly Volume ("Excess Product") to the extent that Seller, in its sole discretion, deems that it has Excess Product available for Buyer, and, notwithstanding anything to the contrary contained in this Rider, Seller will have the right to adjust the Prices for such Excess Product by giving Buyer not less than fifteen (15) days prior written notice of the effective date of such adjustment and such adjustment will not be subject to the proviso contained in the first sentence of Article 6 of the Agreement. To the extent that Buyer has requirements for Excess Product and Seller has Excess Product available for Buyer, Buyer will purchase such requirements from Seller. If Buyer's monthly consumption of Product in any three (3) months, whether or not consecutive, during any consecutive twelve-month period is eighty percent (80%) or less of the Estimated Monthly Volume, Seller will, notwithstanding anything to the contrary contained in this Rider, have the right to adjust the Prices and the Estimated Monthly Volume by giving Buyer not less than fifteen (15) days prior written notice of the effective date of such adjustment and such adjustment will not be subject to the proviso contained in the first sentence of Article 6 of the Agreement..If Buyer fails to take any Product during any period of three (3) consecutive months, Seller will have the right at any time thereafter to immediately terminate this Rider.

**(c) Interruptible Supply**

In consideration for negotiated changes to Seller's standard terms and conditions for Helium supply, Buyer hereby agrees that in the event of contingency events or supply disruption or product shortage, whether or not covered by Article 7 of the Agreement, Seller may at its sole discretion interrupt or suspend deliveries to Buyer for all or any portion of Buyer's supply upon thirty (30) days written notice. Any suspension greater than ninety (90) days will result in termination of the Agreement.

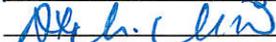
**3. MODIFICATION TO THE PRODUCT SUPPLY AGREEMENT**

As to the supply of Product pursuant to this Rider, the Agreement is hereby modified as follows:

Article 6 is hereby amended and restated as follows:

Seller will have the right to adjust the Prices then in effect by giving Buyer not less than fifteen (15) days prior written notice of the effective date of such adjustment; provided, however, if said Prices are increased by more than fifteen percent (15%) in the aggregate during any calendar year, Buyer will have the right within fifteen (15) days after said notice to furnish Seller with credible written evidence that Buyer can purchase Product to which such increased Prices apply from a responsible supplier for a specified term in like quantities, at lower prices and under similar terms and conditions, and if Seller, within fifteen (15) days thereafter, does not agree to either meet said lower prices or rescind the notice of the increase in Product price, either party will have the right within fifteen (15) days thereafter to terminate the Agreement as to the supply of Product for which such lower prices are offered by giving the other party not less than fifteen (15) days prior written notice. If Seller agrees to meet the lower prices or rescind the notice of increased Prices, Seller may extend the term of this Rider for a period equal to the period of the Basic Term of this Rider notwithstanding any prior termination notice by Buyer. Any adjustments made by Seller pursuant to this Article 6 with respect to any Monthly Service Charge, Demand Charge or Monthly Rental set forth in this Rider or to surcharges or other charges which arise pursuant to Article 3 will not be subject to the proviso contained in the first sentence of this Article 6 and may be adjusted by Seller in accordance with its generally applied price increases for these charges.

**BY SIGNING BELOW, BUYER AND SELLER EACH ACKNOWLEDGE AND AGREE THAT THIS RIDER IS CONDITIONAL UPON THE TERMS AND CONDITIONS CONTAINED ON THE BACK OR ADDITIONAL PAGES HEREOF AND/OR IN THE AGREEMENT OR ANY EXHIBIT, SCHEDULE OR ADDENDUM ATTACHED HERETO AT THE TIME OF EXECUTION OR AT THE TIME SUBSEQUENTLY EXECUTED BY BUYER AND SELLER. Buyer and Seller intending to be legally bound have by the signatures of their authorized representatives executed this Rider as of the date first above written.**

<u>CITY OF SANTA ROSA</u>	(Buyer)	<u>PRAXAIR DISTRIBUTION, INC.</u>	(Seller)
By:	<u>RITA MILLER as agent of City of Santa Rosa</u>	Submitted By:	<u>Luis Martinez</u>
Signature:	<u></u>	Accepted By:	<u>Stephen T. Bogard</u>
Title:	<u>DEPUTY DIRECTOR OF ENVIRONMENTAL SERVICES</u>	Signature:	<u></u>
Date:	<u>4/21/2016</u>	Title:	<u>Region Vice President</u>
		Date:	<u></u>



#### 4. Cylinders

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- (a) The cylinders and/or other containers that are used to deliver Product by Seller ("Cylinders") will remain the property of Seller at all times. Risk of loss of Cylinders and equipment shall pass to Buyer upon delivery. Seller will not be responsible for connecting any Cylinder to Buyer's Product distribution system. Buyer will not permit the refilling of any Cylinders by any third party with any substance, whether gas, liquid or solid.
- (b) Buyer will return all Cylinders to Seller in a non-contaminated condition with valves closed. Buyer will pay Seller for any loss or damage to Cylinders and other equipment beyond normal wear and tear and for any cleanup of Cylinders returned in a contaminated condition. Buyer will pay Seller additional costs to clean and return to service any dewar returned with its tamper-evident seal broken.
- (c) Buyer will pay rent or a facility fee as outlined in this Rider. Seller may increase the amount of such rent or facility fee to its then current standard rates at any time on thirty (30) days' prior written notice. Such charges shall be paid for each Cylinder until it is returned or, if it is damaged beyond repair or missing, until Buyer pays for such Cylinder in full at Seller's then current published price.
- (d) Buyer shall, from time to time, at the request of Seller, submit an accounting of Cylinders delivered to Buyer which have not been returned and shall permit Seller to enter its premises to verify such accounting. By paying the amount specified for Cylinder rent on the invoices provided to Buyer by Seller, Buyer shall be deemed to agree that the number of Cylinders specified in such invoice are in Buyer's possession as of the close of business on the date specified in such invoice.
- (e) Notwithstanding anything in this Agreement to the contrary, if Buyer's use of any Supply System affects the safe or reliable operation thereof, or if any Supply System or Cylinder is damaged by Buyer, its agents, employees, contractors or invitees, the cost of repairing such Supply System or Cylinder will be borne by Buyer. Buyer will prevent persons other than those authorized by Seller from entering any Supply System site, delaying delivery of Product, or altering, repairing, adjusting or otherwise tampering with any Supply System or Cylinder.
- (d) Buyer will comply with all laws, rules and regulations applicable to Buyer's Location relating to a safe and secure operation and Seller will have the right, without any liability hereunder, to refuse to deliver Product to Buyer's Location if Seller reasonably determines that Buyer is not in compliance with any such law, rule or regulation or that Buyer is not providing a workplace at Buyer's Location that is free from known hazards that will result or are likely to result in death or serious harm.
- (e) Seller will install each Supply System and make the connection to Buyer's Product distribution system. The costs associated with installing each Supply System and connecting it to Buyer's Product distribution system, including transportation and rigging costs, will be borne by Buyer. Seller will not be responsible for connecting any Cylinder to Buyer's Product distribution system.

#### 5. Supply Systems and Supply System Sites

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- (a) For any Supply System, Buyer, at its expense, will provide and maintain a suitable site free from any underground or overhead obstructions and with access either by road or railroad siding as mutually agreed by the parties, construct a suitable foundation, install fencing adequate to prevent tampering and install isolation barriers all as specified by Seller, obtain any necessary permits and licenses, install and maintain a properly designed system for the distribution of Product from each Supply System to Buyer's points of use, and furnish utilities as required by Seller, such as electric power, lighting, telephone lines, internet connections, water and/or steam, and the facilities to deliver such utilities to the point(s) on each Supply System site designated by Seller.
- (b) Each Supply System site furnished by Buyer hereunder will be free from toxic and hazardous materials (including corrosives) or other debris which would prevent or increase the cost of the installation or operation of the Supply System, or which could cause injury or death of Seller's employees or any other persons on or at the Supply System site, or which could cause damage to any adjoining property. If the atmospheric or other environmental conditions or the operations at Buyer's Location(s) affect the safe or reliable operation, or result in the imposition of any additional fees, costs or expenses relating to the maintenance, repair or operation of the Supply System, Buyer will promptly correct such conditions and reimburse Seller for any fees, costs and expenses incurred by Seller attributable to such conditions. Notwithstanding anything in this Agreement to the contrary, Buyer hereby indemnifies and holds harmless Seller from and against any and all costs, fees (including reasonable legal fees and expenses), damages, liabilities, claims, penalties and fines that result from any toxic or hazardous materials now or hereafter in, on or under the Supply System site and do not occur or result directly from Seller's performance pursuant to this Agreement. If any new or modified local, state or federal law, rule or regulation requires modification to any Supply System or Supply System site, or requires that any additional permits, licenses or rights be obtained, any costs associated with performing such modifications or obtaining such permits, licenses or rights will be borne by Buyer.
- (f) Seller will, at Buyer's expense, remove each Supply System within a reasonable time after the termination of this Agreement with respect to the Rider covering such Supply System and pay Seller a reconditioning fee for such Supply System not to exceed ten percent (10%) of the total monthly service charges, facility fees, or rental payments due during the term of the Rider covering such Supply System. Seller may at its expense remove any Supply System or part thereof, and replace it with another Supply System or part thereof, as Seller may deem appropriate for the supply of Buyer's requirements of Product(s). Seller will have the right from time to time to shut down each Supply System for such period of time as may be necessary for repairs and maintenance consistent with proper operation. Each Supply System or Cylinder will remain the property of Seller at all times. Buyer will hold harmless Seller from and against any and all costs, fees (including reasonable legal fees and expenses), damages, liabilities and claims arising in connection with any liens filed against any Supply System or Cylinder due to its location on Buyer's premises.
- (g) If Seller relocates, modifies or replaces all or part of any Supply System due to a change in Buyer's requirements of Product, method of supply, pressure specifications, Buyer's Location or Buyer's facilities, Seller may charge Buyer the cost of such relocation, modification or replacement, adjust the Monthly Service Charge, Monthly Facility Fee or Monthly Rental set forth in the Rider covering such relocated, modified or replaced Supply System, and extend the term of such Rider effective upon First Delivery to or from the relocated, modified or replacement Supply System for a

period not greater than a period equal to the Basic Term of such Rider

## 6. Orders

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Buyer will give Seller reasonable advance notice of orders for the Products which orders shall be in quantities reasonably proportionate to Buyer's stated total annual requirements.

## 7. Limited Manufacturer's Warranty

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Notwithstanding any other warranty provision otherwise contained in the Agreement or in this Rider, with respect to any items or equipment, including Cylinders and Supply Systems, covered by this Rider that are not manufactured by Seller, Seller shall provide reasonable assistance to Buyer in obtaining the benefit for Buyer of any applicable manufacturer's warranty. No claim of any kind with respect to any item or equipment covered by this Rider and or delivered hereunder, whether based on contract, negligence, warranty, strict liability or otherwise, shall be greater than the price paid for the item or equipment in respect to which such claim is made. **THERE ARE NO EXPRESS WARRANTIES BY SELLER RELATING TO HARDGOODS, CONSUMMABLE GOODS, EQUIPMENT OR OTHER ITEMS SUPPLIED TO BUYER (EXCEPT AS SPECIFIED IN SECTION 5 OF THE AGREEMENT WITH RESPECT TO PRODUCTS) OTHER THAN THOSE SPECIFIED IN THIS PARAGRAPH. NO WARRANTIES BY SELLER (OTHER THAN WARRANTY OF TITLE AS PROVIDED IN THE UNIFORM COMMERCIAL CODE) WILL BE IMPLIED OR OTHERWISE CREATED INCLUDING UNDER THE UNIFORM COMMERCIAL CODE INCLUDING WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.**

## 8. Removal of Liens; Filing of Financing Statements; Removal

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- (a) Buyer will promptly remove any liens and claims against Cylinders, Supply Systems or other equipment due to their location at Buyer Location(s) or possession by Buyer.
- (b) Buyer hereby authorizes Seller to file a UCC-1 Financing Statement in order to reflect Seller's ownership of Cylinders, Supply Systems and other equipment and will provide Seller with any assistance necessary to make such filing.
- (c) Buyer hereby grants to Seller the right to enter Buyer Location(s) and remove any Cylinders, Supply System or other equipment which have not been returned to Seller within thirty (30) days after the termination of this Rider, or at any time for non-payment of rent or facility fee, or for Buyer's breach of this Agreement, or if

Seller, after seeking adequate assurances from Buyer, reasonably believes that Buyer will not be able to meet its obligations under the Agreement. Seller will not be liable for any damages resulting from such removal except to the extent caused by Seller's intentional wrongful act.

## 9. Right of Refusal

---

Following the expiration or termination of this Rider, Buyer will not purchase any of its requirements for Product at Buyer's Location (hereinafter called the "Product Requirement") unless Buyer provides Seller with the opportunity to meet the most competitive offer of any third party to supply the Product Requirement (hereinafter called the "Offer"), and if Seller meets the Offer, Buyer will enter into a new Rider to the Agreement with Seller covering the supply of the Product Requirement. After receiving all competitive offers from third party suppliers for the Product Requirement, Buyer will deliver a copy of the Offer to Seller. Upon receipt of the Offer, Seller will have the option, for a period of twenty (20) days thereafter (the "Option Period"), to meet the material terms and conditions set forth in the Offer. Such option will be exercisable by Seller by written notice to Buyer given within the Option Period. If Seller fails to exercise the option with respect to the Product Requirement, Buyer will be free to enter into an agreement with another supplier covering the supply of the Product Requirement, provided the terms and conditions of such agreement are not more favorable to such supplier than those contained in the Offer. If Seller fails to exercise the option with respect to the Product Requirement and Buyer for any reason does not, within sixty (60) days following the expiration of the Option Period, enter into a binding agreement with another supplier covering the Product Requirement on terms and conditions set forth in the Offer, then the rights and obligations set forth above will be revived with respect to the Product Requirement.



## Price Schedule for Supply System Service

### Charges apply to services including but not limited to:

- Customer-requested tank painting
- Relocation of equipment (permanent or temporary)
- Modifications to existing equipment
- Installation of accessory equipment
- Vaporizer de-icing
- All customer-caused damage
- Pressure washing
- All services on customer-owned tanks and Praxair-owned carbon dioxide tanks
- Pressure adjustment
- Repairs associated with improper use of Supply System
- Piping work
- Installation, removal of permanent or temporary Supply System
- Custom services completed on site

Charges apply to services performed on Supply Systems for: argon, carbon dioxide, helium, hydrogen, nitrogen, and oxygen. If you are unsure if services performed on your Supply System will be billed to you, please contact your Account Manager. **Services performed on all customer-owned tanks for all products, and all Praxair-owned carbon dioxide tanks, will be billed per charges in this schedule.**

### Charges For All Services:

#### Customer Service Technician Rates

- Labor, portal-to-portal, weekdays  
.....\$95/hour, \$380 minimum charge
- Labor, portal-to-portal, weekends and holidays  
.....\$145/hour, \$580 minimum charge

Travel, portal-to-portal  
.....\$0.95/mile

Plus out-of-pocket costs, including parts

#### Additional Charges:

Crane/freight charges as applicable (Supply System installations, removals, relocations)

**A Purchase Order number is required before any services are performed.** Please be prepared to provide the number when calling 1-800-PRAXAIR (1-800-772-9247) for service requests.

Additional information regarding Praxair and Praxair's products and services is available at [www.praxair.com](http://www.praxair.com) or by contacting 1-800-PRAXAIR.

Charges are subject to change.

Attachment Y – Additional Delivery Service Fees



**Delivery Option  
Charge Schedule**

■ Individual Certificate of Conformance (COC-3) - all products..... (conformance to contractual purity specifications)	\$35 per delivery*
■ Individual Certificate of Analyses (COC-4) (product delivered has been tested for each indicated standard** component)	
> Liquid Oxygen (purity and moisture).....	\$75 per delivery*
> Liquid Nitrogen (oxygen and moisture).....	\$75 per delivery*
> Liquid Argon (oxygen, nitrogen, and moisture).....	\$75 per delivery*
> Liquid and Gaseous Hydrogen..... (oxygen, nitrogen, moisture, total halocarbons, carbon monoxide + carbon dioxide)	\$150 per delivery*
> Carbon Dioxide (moisture, total sulfur, total hydrocarbons).....	\$75 per delivery*
> Liquid and Gaseous Helium..... (purity, moisture, total hydrocarbons, oxygen + argon, nitrogen, neon, hydrogen, carbon monoxide liquid only)	\$150 per delivery*
■ Individual Certificate of Analysis (COC-4) for FDA Registered Customers**	
> Liquid Oxygen USP (purity and odor).....	\$75 per delivery*
> Liquid Nitrogen NF (oxygen, carbon monoxide and odor).....	\$125 per delivery*
> Carbon Dioxide USP (purity, moisture, hydrogen sulfide, sulfur dioxide, nitric oxide, nitrogen dioxide, ammonia, carbon monoxide).....	\$325 per delivery*
> Liquid and Gaseous Helium USP (purity, carbon monoxide, odor).....	\$150 per delivery*
■ Scaled Weight Documentation of Quantity Delivered	
> On-Site Scale (BSD and weight ticket, if provided, will be left in green canister).....	\$50 per delivery*
> Off-Site Scale (BSD and weight ticket will be mailed to customer).....	\$250 per delivery*
■ Customer Required Signature on Bulk Shipment Document.....	\$25 per delivery*
■ Purchase Order or Release Number change more than once per calendar year, or per Shipment Numbers (customers can make changes through Praxair Express at no charge)	\$100 per occurrence
■ Customer Required First-stop or Full Truckload Deliveries..... (no charge if First Stop is required for Certificate of Analysis)	\$75 per delivery*
■ Restricted Access (Less Than 120 hours/wk or Scheduled Time for Delivery).....	\$100 per delivery*
■ Expedited (Short-Notice) Delivery Charges	
> Less than 24 hrs-Oxygen, Nitrogen, Argon, Hydrogen, Helium, Carbon Dioxide.....	\$500 per delivery
> 24-48 hrs - Hydrogen, Argon and Helium.....	\$150 per delivery
■ Order Only Charge..... (Customer will only accept deliveries placed by the Customer)	\$100 per delivery
■ On-Site Delivery Vehicle Delays..... (Beyond 1.5 hour standard delivery time – all products)	\$75 per half hour
■ Averted Deliveries.....	\$5 per one way mile or \$250 minimum
■ Carbon Dioxide Rail Car Storage at Customer More Than 5 days.....	\$750 per day after 5 days
■ CO <sub>2</sub> Low Volume Delivery Charge	
6 ton tank.....	\$400 per delivery
Less than 6 ton tank.....	Minimum \$800 per delivery, subject to approval by Product Management
■ Wireless Tracker™ Remote Telemetry Unit Charge.....	\$85 per month

Charges are subject to change.

\* Number of deliveries is based on monthly volume divided by the volume representing a standard 65% tank fill, or the actual average number of monthly deliveries, whichever is lower. This number is revised every six months based on historical delivered volume.

\*\* Non-standard component testing is available. For more information please contact your account manager.

www.praxair.com info@praxair.com; Telephone:  
1-800-PRAXAIR (1-800-772-9247) (716) 879-4077

Fax:  
1-800-772-9985 (716) 879-2040

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07/10 P-78631

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Rev 2-12 Initials of each authorized representative \_\_\_\_\_

