

# MSA SENSOR X-CHANGE™ PROGRAM TERMS AND CONDITIONS

1. **AGREEMENT:** Upon acceptance by Customer, this document shall be the final written expression of agreement between MSA and Customer, constituting the entire contract between Customer and MSA with respect to the subject matter herein contained and superseding all previous communications, either verbal or written. This contract may be modified only by a writing signed by both parties. Customer must notify MSA immediately if these terms are unacceptable as acceptance and/or failure to object to the terms herein shall conclusively establish Customer's acceptance of the terms and conditions of this agreement. Under no circumstances shall any terms and conditions of Customer's business forms, that are in addition to or inconsistent with the terms and conditions of this agreement, become part of any contract.

2. **WARRANTY AND DISCLAIMERS:** MSA warrants that the sensors furnished under this agreement are free from mechanical defects or faulty workmanship for their full duration of use in MSA's Sensor X-Change Program, the time period of which is set forth on the cover page of this agreement; provided however that the sensor(s) have been installed and maintained in accordance with MSA's instructions and/or recommendations contained in the instruction book delivered with the gas detection equipment. MSA shall be released from all obligations under this warranty in the event repairs or modifications are made by persons other than its own or authorized service personnel unless such repairs by others are made with the written consent of MSA. No agent, employee or representative of MSA has any authority to bind MSA to any affirmation, representation or warranty concerning the goods delivered under this agreement, and unless an affirmation, representation or warranty made by an agent, employee or representative is specifically included within this written agreement it shall not be enforceable by Customer. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AND IS STRICTLY LIMITED TO THE TERMS HEREOF. MSA SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.**

3. **EXCLUSIVE REMEDY:** It is expressly agreed that Customer's sole and exclusive remedy for breach of the warranty set forth in Paragraph 2, for any tortious conduct of MSA, or for any other cause of action, shall be the repair and/or replacement (at MSA's option) of any equipment or parts thereof, which after examination by MSA is proven to be defective. Replacement equipment and/or parts will be provided at no cost to Customer, F.O.B. MSA's Plant. Failure of MSA to successfully repair any nonconforming product shall not cause the remedy established hereby to fail of its essential purpose.

4. **STATUTE OF LIMITATIONS, NOTICE OF BREACH:** All suits by Customer for breach of any resulting contract, alleged tortious conduct or any other claim shall be barred unless filed within one (1) year of the date when the claim or cause of action accrues. MSA and Customer agree that a reasonable time within which Customer must notify MSA in writing after discovery of any alleged breach by MSA is within forty-five (45) days of discovery, and that failure of Customer to provide timely notice of breach will bar Customer from any remedy for said breach.

5. **GOVERNING LAW, VENUE, & JURISDICTION:** Any resulting contract shall be governed by and construed under the Uniform Commercial Code as adopted in the Commonwealth of Pennsylvania as effective and in force on the date of said Contract of Sale. Venue for any suit by Customer shall be in and only in the Pennsylvania state court of proper jurisdiction in Allegheny County, Pennsylvania, U.S.A. Customer hereby submits to the jurisdiction of said court and appoints Secretary of the Commonwealth of Pennsylvania as its agent for the service of process in the event MSA wishes to commence any action against Customer.

6. **EXCLUSION OF CONSEQUENTIAL DAMAGES:** CUSTOMER SPECIFICALLY UNDERSTANDS AND AGREES THAT UNDER NO CIRCUMSTANCES WILL MSA BE LIABLE TO CUSTOMER FOR ECONOMIC, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND WHATSOEVER, INCLUDING BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, AND ANY OTHER LOSS CAUSED BY REASON OF THE NONOPERATION OF THE GOODS. THIS EXCLUSION IS APPLICABLE TO CLAIMS FOR BREACH OF WARRANTY, TORTIOUS CONDUCT OR ANY OTHER CAUSE OF ACTION AGAINST MSA.

7. **DISCLAIMER OF TORT LIABILITY:** CUSTOMER SPECIFICALLY UNDERSTANDS AND AGREES THAT MSA AND ITS OFFICERS, AGENTS AND EMPLOYEES SHALL NOT BE LIABLE IN TORT - WHETHER BASED ON NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF TORT LIABILITY - FOR ANY ACTION OR FAILURE TO ACT IN RESPECT TO THE MANUFACTURER, PREPARATION FOR SALE, SALE, DELIVERY OR SERVICING OF THE PRODUCT. IT IS THE PARTIES' INTENT TO ABSOLVE AND PROTECT MSA AND MSA'S OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL TORT LIABILITY.

8. **PRICES AND PAYMENT:** The actual price shall be the price in effect at the date of delivery. The amount of any and all present or future taxes or other governmental charges upon the production, shipment, installation or sale, of the equipment covered hereby, including use or occupation taxes, shall be added to the purchase price paid by Customer, or in lieu thereof, Customer shall furnish MSA with tax exemption certificate(s) acceptable to the taxing authorities, or other basis for exemption. Payment in full of the contract price, amounts due for additional work or changes, and escalation shall be due thirty (30) days net after the date of MSA's invoice. Interest at the rate of one (1) percent per month from due date shall be charged on overdue accounts. Customer shall have no right to withhold any contract amount due MSA because of any claim by Customer against MSA.

9. **PROMISES OF SHIPMENT:** MSA shall use its commercially reasonable efforts to supply replacement sensors in accordance with Customer's requested exchanges schedule. The prior sentence notwithstanding, promises of shipment do not in any way constitute a reservation as materials are at all times subject to prior orders and the availability of materials.

10. **INVOICING AND BILLING:** For purposes of invoicing and billing, each shipment hereunder shall be treated as a separate and independent contract.

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11. **TIME OF SHIPMENT, FORCE MAJEURE, RISK OF LOSS, TITLE, F.O.B.:** MSA shall not be liable for any delay or failure to produce, process, ship or deliver occasioned by Force Majeure which term is hereby declared to include all circumstance and actions whatsoever (including inclement weather of the ordinary seasonal nature) beyond the direct and immediate control of MSA, among which, but not exclusive of others, are the following: Acts of God; war between the United States and any Foreign country; Civil War; riot or insurrection in the United States; preparation for war; urgency or intervention of civil, naval or military authorities or other agencies of government, including agencies concerned with the preservation of the environment; rules and restraints of rulers and people; blockades; embargoes; vandalism; sabotage; epidemics; strikes; lockouts; differences with workman and other industrial disturbances; earthquakes; landslides; accidents; floods; hurricanes and cyclonic storms; shortages of fuel, power, raw materials or component parts; delays in delivery of materials; government priorities; and delays of carriers by land, sea or air. MSA is not relieved from making shipment or Customer from accepting delivery at the agreed price when the cause interfering with delivery has been removed. Risk of loss shall pass to Customer upon delivery to the carrier on shipments made F.O.B. Place of Shipment, and upon tender on shipment made F.O.B. Point of Destination. MSA shall not be responsible for damage to property, material, or equipment belonging to Customer while the sensors are in Customer's custody. Title to the sensors shall at all times remain with MSA. Customer shall immediately provide MSA with notice at any such time that Customer reasonably believes a third party may attempt to levy or seize upon the sensors. Customer shall indemnify MSA against any all loss occasioned by the levy or attempted levy upon the sensors by any third party. Shipments made by MSA pursuant to the Sensor X-Change Program shall be F.O.B. Destination.

12. **CREDIT, NONWAIVER:** If Customer fails to fulfill the terms of payment in every respect, MSA is not obligated to make delivery and may resort to the remedies provided by law or herein. MSA reserves the right, previous to making delivery, to require from Customer satisfactory security for performance of Customer's obligations. Credit shall be provided to Customer only after approval by MSA.

13. **TERM AND TERMINATION:** The term of this agreement shall be as set forth on the cover page hereof. Either party may terminate this agreement at any time by providing 30 days prior written notice to the other. In the event that Customer commits any breach of this contract and fails to remedy such breach within seven (7) days after the giving of notice thereof by MSA to Customer in writing, then MSA may by notice to Customer in writing terminate this agreement so far as any future performance by MSA is concerned but without prejudice to the rights and remedies of either party arising out of any antecedent performance or breach.

14. **INDEMNIFICATION AND LIMITATION OF LIABILITY:** MSA and Customer shall indemnify, defend and hold the other harmless from claims, demands and causes of action asserted against the Indemnitee by any person (including, without limitation, Customer's or MSA's

employees to the extent that such employees are not compensated by applicable state workmen's compensation statutes, Customer's or MSA's subcontractors and employees of such subcontractors to the extent that such employees are not compensated by applicable state workmen's compensation statutes, or any other third party) for personal injury or death resulting from the Indemnitor's negligence or willful misconduct hereunder. Where personal injury or death occurs as the result of the joint negligence or willful misconduct of MSA and Customer, the Indemnitor's duty of indemnification shall be in proportion to its allocable share of joint negligence or willful misconduct: It being the intent of this provision that MSA and Customer be liable for the proportion of liability caused by their negligence or willful misconduct.

15. **PATENTS:** MSA will defend and save harmless Customer from all costs, expense and damage as a result of any infringement, or claim of infringement, of any United States patent existing at the time of shipment on account of the equipment furnished by MSA, provided Customer notified MSA promptly in writing of any such claim and MSA is given authority to defend said claim and all information and assistance by Customer necessary in MSA's opinion to the defense of said claim, suit or proceeding. MSA, however, makes no warranty nor assumes any patent infringement liability respecting Customer's use of the equipment with other equipment, for infringement of process or product patents, nor for royalties assessed on the basis of the amount of product produced by or other utilization of the equipment

16. **INSURANCE:** Customer shall at all times keep the sensors insured against all risk of loss or damage from every cause for not less than the full replacement value thereof.

17. **FAILURE TO RETURN SENSORS.** In the event MSA does not receive returned sensors from Customer within two (2) weeks from the date of MSA's replacement shipment to Customer, then MSA shall issue to Customer an invoice for the price of the unreturned sensors. The price on such invoice shall be the MSA price in effect for such sensors as of the invoice date. Said invoice shall be due and payable on Net 30 terms. Without waiver of any other rights available to MSA, MSA also reserves the right to terminate this agreement immediately and/or suspend all future sensor X-change program shipments to Customer.

18. **RETURN MATERIALS:** All sensors to be returned by Customer must be in re-usable conditioned and be cleaned, sanitized and/or decontaminated as necessary to minimize the possibility of MSA employee exposure to health hazards in handling said sensors. All applicable laws and regulations shall apply.