



**NIKKISO CLEAN ENERGY & INDUSTRIAL GASES
GROUP U.S. PURCHASE ORDER TERMS AND
CONDITIONS
Rev. 12/9/2024**

1. **EXCLUSIVE TERMS** – Any acceptance of the purchase order placed by the Nikkiso Clean Energy & Industrial Gases Group company named on the face of this Purchase Order with the supplier named on the face of the purchase order (“Seller”) is limited to the acceptance of the express terms and conditions contained herein (together, the “Purchase Order”). Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer in Seller’s acceptance is hereby objected to and rejected, but such proposal shall not operate as a rejection of this offer unless such variances are in the terms of the description and specification of the goods, prices, quantities, delivery schedules, or terms of payment, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms. If this Purchase Order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms and conditions contained herein, attached to this document, or delivered by Buyer with this document. Additional or different terms and conditions or any attempt by Seller to vary in any degree any of the terms and conditions of this Purchase Order shall be deemed material and shall be rejected; however, this Purchase Order shall not operate as a rejection of Seller’s offer unless this Purchase Order contains one or more of the variances described above.

2. **TAXES; SHIPMENTS; EXTRAS** – (a) All sales, use, excise or similar taxes applicable to this transaction shall be paid by Seller, except as specifically provided in this Purchase Order. All sales, use, excise or similar taxes to be paid by Buyer must be itemized separately in this Purchase Order and on invoices.

(b) Seller shall enclose a packing slip with each shipment. The packing slip shall indicate the contents of each container, excluding prices. On shipments without a packing slip, Buyer’s count or weight shall be conclusive. Buyer’s order number, Seller’s name, packing slip number, piece number and other identification as Buyer shall require shall appear on all containers, invoices, correspondence, bills of lading and other shipping papers, and where Seller and shipper are not the same, the full names and addresses of both shall be shown thereon. Seller shall not make any COD (Collect On Delivery) shipments unless requested by Buyer or issue drafts against this Purchase Order. Unless provided herein, no charge shall be made for boxing, crating, handling, carting, drayage, storage or other packing requirements. All goods shall be packed, marked and prepared for shipment in a manner which is (i) in accordance with good commercial

practice, (ii) acceptable to common carriers for shipment at the lowest rate for the particular goods and in accordance with the applicable delivery requirements, and (iii) adequate to insure safe arrival of the goods at the named destination. Seller shall mark all containers with the necessary lifting, handling and shipping information. No partial or complete delivery shall be made prior to the delivery date shown on this Purchase Order, unless Buyer has given its prior written consent thereto, nor shall deliveries exceed the quantities specified. Unless provided otherwise in this Purchase Order, goods ordered shall be delivered on a DDP destination basis to Buyer’s designated plant or plants. If, in order to comply with Buyer’s required delivery date(s), it becomes necessary for Seller to ship by a more expensive method than specified in this Purchase Order, any increased transportation costs resulting therefrom shall be paid by Seller, unless the necessity for such rerouting or expedited handling has been caused by Buyer.

(c) Goods in excess of, or different from, those ordered by Buyer and any unauthorized advanced shipments may be rejected by Buyer and returned, or held subject to Seller’s disposal, at Seller’s risk and expense. When part of an order is rejected, the acceptance or rejection of the remainder of the order shall be within Buyer’s sole discretion.

3. **SPECIFICATIONS** – All goods ordered to Buyer’s specifications must comply with specifications current as of the date of this Purchase Order, unless otherwise specified by Buyer.

4. **WARRANTY** – Seller warrants the goods delivered hereunder to be of merchantable quality, fit for the purpose intended, free from defects in labor, material and manufacture, and in compliance with any drawings or specifications incorporated or referenced in this Purchase Order and with any samples furnished by the Seller. Without Buyer’s prior written consent, no materials may be substituted in lieu of those specified. All warranties shall run to Buyer, its successors, assigns, and customers and to the users of its products. Seller agrees that this warranty shall survive acceptance of the goods. Such warranties shall be in addition to any warranties of additional scope given to Buyer by Seller and those implied by law. Unless otherwise provided in this Purchase Order, this warranty shall remain in effect for a period of one (1) year from the date the goods are placed in operation at the end user’s site. The warranty for repaired or replaced goods shall be six (6) months from the date of repair or replacement or the end of the original warranty period, whichever is latest. All costs arising from any breach of this warranty, including but not limited to disassembly, removal, reinstallation, transportation costs (including freight, insurance, and any possible loading/unloading expenses, storage, customs duties, etc.) shall be borne by Seller. Seller shall commence corrections within three (3) business days

following the receipt of notice of breach of warranty and complete such corrections within thirty (30) days. If Seller does not complete the corrections as required, Buyer, at its option, may either terminate this Purchase Order or hire one or more third parties to repair or replace the defective goods for the account of Seller, in which case Seller's warranty shall continue to be in effect.

5. TITLE – (a) Seller warrants good title to all of the goods furnished by it hereunder, free of all liens, claims and encumbrances. Title to the goods shall pass to Buyer at the date payment for all or any portion of the goods is made or upon delivery, whichever comes first. Said transfer of title shall in no way affect Buyer's rights to refuse the goods in case of non-conformity with the requirements for the goods as set forth in this Purchase Order.

(b) Title to all goods and materials for which payment has been made, whether or not the same has been incorporated in the goods, and title to all completed goods, whether paid for or not, shall vest in Buyer, and in any case shall not be part of Seller's property or estate in the event Seller is adjudged insolvent or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of Seller's insolvency, or if this Purchase Order is terminated. Notwithstanding the foregoing, Seller shall be responsible for and shall bear any and all risk for loss or damage to the goods until delivery thereof in accordance with the delivery provisions of this Purchase Order. Upon such delivery, Seller shall cease to bear the risk of loss or damage; provided however, that any loss or damage, whenever occurring, which results from Seller's nonconforming packaging or crating shall be borne by Seller.

(c) Any of the goods furnished hereunder for which title has passed to Buyer but which remain in the care and custody of Seller or its subcontractors and any Buyer-provided items, shall be clearly identified as being the property of Buyer and shall be segregated from Seller's property. In addition, title to materials or partially completed goods whose full costs are included in any progress payments or cancellation charges shall pass to Buyer. Buyer shall advise Seller, in writing, regarding the disposition of such goods.

6. LIQUIDATED DAMAGES – Where it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages that Buyer would incur if the goods are not delivered in compliance with this Purchase Order by the scheduled delivery date, the parties may agree that Seller shall pay to Buyer any liquidated damages specified in this Purchase Order (the "Delay Liquidated Damages"). If Delay Liquidated Damages are agreed upon, and Seller does not pay any incurred Delay Liquidated Damages within thirty (30) days after receiving the corresponding invoice from Buyer, interest shall be

accrued on the unpaid amount at a rate of one and one half percent (1.5%) per month, calculated from the due date until payment is made in full by the Seller.

7. RIGHT TO OFFSET – Buyer, without waiver or limitation of any of its rights or remedies, shall be entitled from time to time to deduct from any amounts due or owing by Buyer to Seller in connection with this Purchase Order any and all amounts owed by Seller to Buyer.

8. INSPECTION – Unless otherwise specified, all goods ordered will be subject to final inspection and approval at the end user's site, notwithstanding any payments or any inspection at source. Buyer may reject or require the prompt correction in place or otherwise of any goods which are defective in material or workmanship or otherwise fail to meet the requirements of this Purchase Order. Buyer may, in addition to any other rights it may have by law, prepare for shipment and ship the goods to Seller, require Seller to remove them, or direct their correction in place. The expense of any such action, including transportation both ways, as applicable, shall be borne by Seller. If Seller fails promptly to remove such goods or to proceed promptly to replace or correct them, Buyer may replace or correct such goods at Seller's expense, including any excess costs. Seller shall not again tender rejected or corrected goods without Buyer's prior written consent. All work under this Purchase Order is subject to source and surveillance inspection by Buyer, agencies of the U.S. Government and Buyer's customer(s). Seller, without additional cost, shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors. At the time of inspections Seller shall make available to the inspectors copies of all drawings, specifications and process, preservation and packaging data applicable to the goods.

9. ADVERTISING – Seller shall not, without the prior written consent of Buyer, advertise or publish the fact that Buyer has placed this Purchase Order in any manner.

10. PATENT INDEMNITY AND USE OF PRODUCTS – (a) Buyer acknowledges that the prints, drawings or specifications of Seller attached to goods or furnished by Seller to Buyer in connection with the obtaining or the performance of this Purchase Order are the property of Seller and represent a proprietary article with respect to which Seller retains all United States or foreign patents, trademarks, copyrights or trade secret information, including exclusive rights of use, manufacture and sale. Seller grants to Buyer a worldwide, irrevocable, royalty-free, fully paid-up, transferrable license to use Seller's patents, inventions, prints, drawings, specifications and trade secret information, with right to sublicense, solely to install, operate, maintain, and resell the goods. Buyer and Buyer's customer(s) may retain and use the physical or electronic manifestations of such prints, drawings and specifications for use under the license granted to Buyer.

(b) Seller agrees to indemnify, defend and hold harmless Buyer, its successors, assigns and users of Seller's goods from and against loss, damage or liability, including costs and expenses (including attorneys' fees), which may be incurred on account of any suit, claim, judgment, or demand involving infringement or alleged infringement of any patent rights in the manufacture, use or disposition of any goods or parts thereof, provided Buyer shall notify Seller of any suit instituted against it, and to the full extent of its ability to do so, shall permit Seller to defend the same or make settlement in respect thereof.

11. TERMINATION FOR DEFAULT & EXCUSABLE DELAYS

– (a) Time is of the essence with respect to this Purchase Order, and Buyer reserves the right to terminate all or any part of the undelivered portion of this Purchase Order in the event Seller fails to perform any of the provisions of this Purchase Order or fails to make progress so as to endanger performance of this Purchase Order in accordance with its terms, or if deliveries are not made within specified times. Buyer shall also have the right to terminate this Purchase Order or any part thereof if Seller becomes insolvent or if a bankruptcy petition is filed which is not vacated within thirty (30) days from the date of filing.

(b) Seller shall not be liable for damages if the delay or failure to perform this Purchase Order arises out of causes beyond the control and without the fault or negligence of Seller, such as acts of God or the public enemy, fires, floods, strikes, freight embargoes, or acts of government in either a sovereign or contractual capacity; but in every case the failure to perform must be beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the delay of a subcontractor, and if such delay arises out of causes beyond the control of both Seller and the subcontractor, and without fault or negligence of either of them, Seller shall not be liable for damages suffered by Buyer. Seller must notify Buyer in writing within ten (10) days after the beginning of any such cause that may delay performance under this Purchase Order and provide an estimate of the duration of the delay.

(c) If the delay caused by the events specified in the previous subparagraph (b) continues for longer than sixty (60) days, Buyer may terminate this Purchase Order or any part thereof without liability to Seller upon written notice to Seller.

(d) In the event Buyer terminates this Purchase Order in whole or in part as provided in this paragraph 11, Buyer, in addition to any other rights it may have by law, may procure, upon such terms and in such a manner as Buyer may deem appropriate, goods or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for such similar goods or services; provided, however, that Seller shall continue the performance of this Purchase Order to the extent not terminated under the provisions of the preceding subparagraph.

12. SUSPENSION; TERMINATION FOR CONVENIENCE

– Buyer reserves the right to suspend this Purchase Order or any part thereof at any time upon written notice to Seller. Seller shall immediately suspend performance to the extent specified in the notice and protect all work in progress and shall immediately resume performance of the suspended portion of the Purchase Order upon receipt of the Buyer's written notification to do so. Buyer reserves the right to terminate this Purchase Order or any part thereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. After submission by Seller of reasonable justification therefor, Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus the actual direct costs of Seller resulting directly from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. Nothing in this provision shall limit Buyer's rights to terminate this Purchase Order for default of Seller. In no event shall Seller be entitled to more than the unpaid portion of the purchase price allocated to the terminated portion of the goods.

13. CHANGES – Buyer reserves the right at any time to make changes to drawings, designs, and specifications, methods of shipment and packaging, quantities, schedules and place of delivery as to any goods or materials covered by this Purchase Order. Any claim by Seller for an adjustment must be asserted in writing by Seller to Buyer within ten (10) days after receipt by Seller of notification of the change. Failure to provide such notice of proposed adjustment within the ten (10) day period shall constitute a waiver by Seller of any claim for an adjustment. In such event, Buyer will provide an equitable adjustment in the purchase price and time of performance. Seller will not be entitled to any other remedy on account of such change. Nothing herein, however, shall excuse Seller from proceeding with this Purchase Order as changed.

14. ASSIGNMENT – This Purchase Order may not be assigned in whole or in part by Seller without the prior written consent of Buyer. No subcontract shall be made by Seller with any other party for furnishing any of the completed or substantially completed goods, spare parts, or work required by this Purchase Order without the prior written approval of Buyer, not to be unreasonably withheld, conditioned or delayed. No assignment shall relieve Seller of its obligations under this Purchase Order.

15. DIES, JIGS, TOOLS AND PATTERNS – If the price to be paid is stated on the face of this Purchase Order to include special dies, jigs, tools and/or patterns used in the manufacture of the goods ("Tools") then such Tools shall

be and become the property of Buyer or its customer(s). They, and any other similar items furnished by Buyer, shall be kept in good condition and from time to time replaced as needed by Seller without expense to Buyer, except that the actual cost of changes due to Buyer's change of design or specifications shall be paid for by Buyer, if such changes are made prior to the exhaustion of the useful life of the Tools changed. No Tools supplied to Seller by, or otherwise belonging to, Buyer or its customer(s) shall be used in the production, manufacture, or design of any goods other than those called for by this Purchase Order, except with the prior written consent of Buyer, nor shall goods furnished to Buyer's Tools be furnished or quoted to any other person or concern. When such Tools belonging to Buyer or its customer, or any part thereof, are no longer required for Buyer's orders, they shall be disposed of as Buyer shall direct. Seller shall be liable for the loss of or damage to Buyer's and/or its customers' property while such property is in Seller's possession and until returned to Buyer and/or its customer(s).

16. COMPLIANCE WITH APPLICABLE LAW – (a) Seller warrants and certifies that in the performance of this Purchase Order, it will comply with all applicable statutes, rules, regulations, and orders (“Laws”) in the jurisdiction(s) in which the goods are manufactured or assembled, including, but not limited to, compliance with environmental laws, and laws and regulations pertaining to labor, which may include, as applicable, the Laws of the United States, and of any state or political subdivision thereof, including laws and regulations pertaining to labor, wages, hours, and other conditions of employment, including, without limitation, the non-discrimination provisions of executive order 10925, as amended, applicable price ceilings, if any, and that the goods delivered hereunder shall be produced in compliance with the Fair Labor Standards Act. Seller agrees to indemnify Buyer for any loss Buyer may sustain by reason of Seller's failure to comply with the above statutes, rules, regulations and orders.

(b) Neither party shall export, re-export, transfer or release any technology or software supplied by either party to the other hereunder, or any direct product of any technology or software supplied by either party to the other in connection with this Purchase Order (“Items”), except in full compliance with the U.S. Export Administration Regulations and all other applicable U.S. or other export laws and regulations, and in particular not to any prohibited party, to any prohibited country or for any prohibited end use. Seller shall obtain the written consent of Buyer prior to submitting any request to any U.S. government agency for authority to export, re-export, transfer or release any of Buyer's Items.

17. EFFECT OF INVALIDITY – The invalidity in whole or part of any terms or conditions of this Purchase Order shall not affect the validity of any other terms or conditions.

18. REMEDIES. NO WAIVER – The remedies herein reserved to Buyer shall be cumulative, and additional to any other remedies at law or in equity. No waiver of a breach of any provision of this Purchase Order shall constitute a waiver of any other breach, or of such provision. Any waiver by Buyer must be in writing and signed by an authorized representative of Buyer.

19. RISK OF LOSS; IDENTIFICATION OF GOODS; PROPERTY DAMAGE INSURANCE – The risk of loss for all goods ordered hereunder shall be borne by Seller until such goods are delivered to and received by Buyer at the place specified on the face of the Purchase Order. Goods ordered hereunder shall be deemed identified as goods to which this Purchase Order refers at the time such goods are actually in existence and in the possession of Seller, its successors, assigns or agents. Seller agrees to carry fire insurance and all other insurance necessary to protect Buyer from loss of goods in which Buyer has an interest or title while the same are in the custody or possession of Seller. Copies of policies or certificates of such insurance will be furnished to Buyer on request.

20. CONFIDENTIALITY – It is agreed that all information, drawings, and specifications provided by one party (the “Disclosing Party”) to the other (the “Receiving Party”) relating to the design, engineering, manufacturing and other operations and processes for the manufacture of the goods included in this Purchase Order or relating to Buyer's or its customers' proposed use of the goods (herein called “Confidential Information”) is confidential to the Disclosing Party. Should the Receiving Party or any of its affiliates obtain any Confidential Information, the Receiving Party agrees to keep such Confidential Information confidential and shall disclose such Confidential Information to their personnel only to the extent necessary to perform the work under this Purchase Order and subject to confidentiality agreements with persons to whom such Confidential Information is disclosed. The Receiving Party agrees to make all reasonable efforts and take all reasonable precautions to prevent any of its personnel or those of its affiliates, or the third parties to whom such Confidential Information is disclosed with the other party's prior written consent, from making any unauthorized use or disclosure of such Confidential Information, and shall be responsible to the Disclosing Party for any such unauthorized use or disclosure. Notwithstanding the foregoing, Confidential Information does not include the particular portion thereof that the Receiving Party can prove: (i) was or becomes generally available to the public other than as a result of an unauthorized disclosure by the Receiving Party or the Receiving Party's officers, directors, managers, employees, accountants, attorneys, agents, or representatives (ii) was known by the Receiving Party prior to the date of disclosure by the Disclosing Party without any obligation of confidentiality, as evidenced by written

records; (iii) becomes lawfully available to the Receiving Party on a non-confidential basis from an independent source without breach of this Agreement or any other confidentiality obligations; or (iv) is independently developed by the Receiving Party without any reliance on or use of any Confidential Information and without breach of this Agreement or any other confidentiality obligations. The Receiving Party agrees to return all such Confidential Information to the Disclosing Party upon written demand of the Disclosing Party or upon termination of this Purchase Order for any reason.

21. CERTIFICATE OF CURRENT PRICING – Seller certifies that the prices and delivery schedules reflected elsewhere in this Purchase Order are equal to or lesser than the prices and delivery schedules offered by Seller as of the date of this Purchase Order to their most favored customer for the goods ordered for like quantities. In the event Seller reduces its price for such goods during the term of this Purchase Order, Seller agrees to reduce the prices hereof correspondingly.

22. WAIVER OF LIENS – Seller hereby waives its rights to any mechanic's or similar liens under any applicable statute or otherwise for work done or materials furnished in connection with the goods. Seller shall obtain from any subcontractor or materialman prior to the performance of any work on the goods or to the furnishing of any materials for the goods, a written waiver satisfactory to Buyer of such subcontractor's or materialman's right to any such lien and shall deliver such waiver to Buyer promptly upon receipt thereof. Seller shall reimburse Buyer for all costs and damages, including attorneys' fees, incurred by Buyer in connection with or as a result of the existence or discharge of any such lien.

23. INDEMNIFICATION; LIABILITY AND OTHER INSURANCE – Seller shall indemnify, defend and hold Buyer harmless from and against all expenses (including attorneys' fees), claims, damages, demands, losses or liabilities arising out of Seller's breach in the performance of this Purchase Order and/or the goods. In furtherance of the foregoing indemnity and not in limitation thereof, Seller agrees that Buyer shall be entitled to all damages resulting from a breach by Seller, including, but not limited to, all expenses reasonably incurred in inspection, receipt, transportation, care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions incurred in effecting cover, and any other reasonable expense incident to a delay or breach by Seller. This indemnification shall be in addition to the warranty obligations of Seller. Seller shall maintain such general liability insurance, including products liability, completed operations, contractor's liability and protective liability, automobile liability (including non-owned automobile liability), workers' compensation and employer liability insurance as will adequately protect Buyer against such damages, liabilities, claims, losses, demands and

expenses (including attorneys' fees). Seller agrees to submit to Buyer certificates of insurance evidencing such insurance coverage when requested by Buyer.

24. LIMITATION OF LIABILITY – In no event shall either party be liable for any loss of profits or revenue (whether direct or indirect) or for any exemplary, punitive, indirect or consequential damages of the other party except when such damages are caused by fraudulent acts, gross negligence, willful misconduct, breach of its indemnity obligations hereunder, violation of law, breach of confidentiality obligations or breach of intellectual property representations. Any liquidated damages that Buyer incurs due to delays in its own projects for which the goods are purchased as a result of Seller's delays shall not be considered indirect or consequential damages. This limitation does not apply to personal injury, death or property damage claims. Further, either party's liability on any claim of any kind for loss or damage arising out of or in connection with or resulting from this Purchase Order or for the performance or breach thereof shall in no case exceed one hundred percent (100%) of this Purchase Order price. This limitation does not apply to damages, liabilities, demands or claims arising out of fraudulent acts, gross negligence, willful misconduct of the breaching party, breach of the indemnity obligations, violation of law, breach of confidentiality obligations, breach of intellectual property representations or personal injury, death or property damage.

25. APPLICABLE LAW; DISPUTES – Any action to enforce or interpret the terms of this Purchase Order or arising out of this Purchase Order shall be brought and maintained exclusively in the principal trial court in the state and county in which Buyer's principal offices are located or in the Federal District Court for the District in which Buyer's principal offices are located. Buyer and Seller each irrevocably submits to the exclusive jurisdiction of the aforesaid courts and agrees not to commence any action, suit, or proceeding except in such courts. Buyer and Seller irrevocably and unconditionally waive, and agree not to assert, by way of motion or as a defense, counterclaim, or otherwise, in any action or proceeding arising out of or relating to this Purchase Order (a) any claim that is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure lawfully to serve process, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts, and (c) to the fullest extent permitted by law, that (i) the suit, action or proceeding in any such court is in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper, or (iii) this Purchase Order, or the subject matter hereof, may not be enforced in or by such courts. The laws of the state in which Buyer's principal offices are located, other than the conflict of law provisions, shall govern the formation, performance, and construction of this Purchase

Order. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to this Purchase Order. In the event any action or proceeding is instituted to enforce or interpret this Purchase Order, the party prevailing in such action or proceeding shall be entitled to recover its reasonable attorneys' fees and costs (including, but not limited to costs of experts), as well as such fees and costs on any appeal(s).

26. ENTIRE AGREEMENT – This Purchase Order, and any documents referred to herein as a part hereof, constitute the entire agreement between Buyer and Seller with respect to the subject matter hereof. This Purchase Order may be amended only in a writing signed by authorized representatives of the parties. No course of prior dealings between Buyer and Seller and no usage of trade shall be relevant to supplement any term used in this Purchase Order. Acceptance or acquiescence in a course of performance rendered under this Purchase Order shall not be relevant to interpret this Purchase Order, even though the acquiescing party has knowledge of the nature of the performance and opportunity for objection.