

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CamCara, Inc. d/b/a AST Waterjet, individually,)	
and on behalf of all others similarly situated,)	Civil Action
)	No. _____
Plaintiff,)	
)	
v.)	CLASS ACTION COMPLAINT
)	
Air Products and Chemicals, Inc.,)	JURY TRIAL DEMANDED
)	
Defendant.)	ECF CASE
)	
)	

1. Defendant Air Products and Chemicals, Inc. (“Air Products”) produces atmospheric gases such as oxygen, nitrogen, and argon, and process gases such as hydrogen, helium, and carbon dioxide. It sells those gases worldwide, to thousands of customers in a variety of industries, including refining, chemical, manufacturing, and food and beverage.

2. In the United States, Air Products generally sells its gases pursuant to standard-form Product Supply Agreements, Microbulk Product Supply Agreements, or similar standard-form documents, such as Air Products General Conditions of Sale (collectively, the “Product Supply Agreements” or “Agreements”).

3. The Product Supply Agreements typically contain multi-year terms. The pricing terms for the gases are set forth in the body of the Agreements or in standard-form, gas-specific riders attached to the Agreements (the “Riders”). Generally, the price for each gas has two basic components: “Price for Product” and “Other Charges.”

4. The Price for Product is typically a combination of the Unit Price for the gas, often expressed as \$/1000 SCF (standard cubic foot) and a fixed Monthly Charge, typically expressed as \$/month.

5. The Other Charges are charges that Air Products imposes in addition to the Price for Product. These Other Charges include such things as “Hazmat Charges,” “Delivery Charges,” and customer-specific fees and expenses unique to a particular purchaser. One of the Other Charges is identified as “Surcharges.” This litigation concerns Surcharges.

6. The Product Supply Agreements define Surcharges as follows:

Surcharges may be assessed in order for [Air Products] to recover increases in its production or delivery costs (e.g., increases in the cost of diesel fuel, natural gas and/or electric power, or increases arising out of utility deregulation or change in laws.)

Similarly, the Air Products General Conditions of Sale define Surcharges as follows:

[Air Products], in its sole discretion, shall charge and Buyer hereby agrees to pay to [Air Products], surcharges for increases in [Air Product]’s production and delivery costs caused by changes in law or increases in fuel, energy, or feedstock costs (including but not limited to diesel fuel, natural gas and/or electric power affecting [Air Product]’s producing facility(ies) (“Surcharges”). These Surcharges shall be in addition to the Unit Price and Monthly Charge.

7. The purpose of Surcharges, if assessed, is to allow Air Products to pass through specified increases in its production and delivery costs, where those increases occur after the date on which the parties entered into a particular Product Supply Agreement and where those increases directly impacted the Agreement under which the Surcharge was assessed. For example, if Air Products entered into a Product Supply Agreement with a customer and thereafter experienced an increase in its diesel fuel, natural gas, or electric power costs which increased its cost of performance under that Agreement, Air Products could assess a Surcharge “to recover [those] increases.” In practice, however, Air Products assessed Surcharges on plaintiff and the other class members without regard to “increases in its production and delivery costs.”

8. Moreover, Surcharges were not assessed with reference to any particular Product Supply Agreement, but often on an across-the-board basis without regard to when the Agreement may have been entered into, and without regard to whether its production and delivery costs related to a particular Agreement had increased. Rather, Air Products arbitrarily assessed Surcharges on a routine basis simply to generate additional revenue.

9. In addition, Air Products would often discriminatorily assess Surcharges on similarly-situated customers, based solely on what it thought it could obtain from different customers.

10. The Product Supply Agreements uniformly provide that they “shall be governed by the laws of the Commonwealth of Pennsylvania.” The Air Products General Conditions of Sale provide that they “shall be construed and governed by the law of the Commonwealth of Pennsylvania” and that “[t]he terms of the Uniform Commercial Code . . . shall apply.”

11. Pennsylvania has adopted the Uniform Commercial Code. 13 Pa. Cons. Stat. §§ 1101 *et seq.* The Product Supply Agreements are agreements for the sale of goods and are governed by Article 2 of Pennsylvania’s Uniform Commercial Code. 13 Pa. Cons. Stat. §§ 2101-2725.

12. Because Air Products may assess Surcharges at a time and in an amount that is unilaterally fixed by Air Products, Surcharges are considered to be open price terms under § 2305(b).

13. With respect to open price terms, § 2305(b) provides: “A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.” “Good faith” is defined as “honesty in fact and the observance of reasonable commercial standards of fair dealing.” 13 Pa. Cons. Stat. § 1201(b)(20). Air Products was required, when it assessed Surcharges, to act in

good faith. As such, it was required to act honestly and to observe reasonable commercial standards of fair dealing.

14. Because Air Products assessed Surcharges arbitrarily, discriminatorily, and without regard to increases in its production or delivery costs, Air Products breached the Product Supply Agreements and its good-faith obligations to plaintiff and each of the class members.

15. Plaintiff and the other members of the class are entitled to return of all Surcharges that Air Products wrongfully assessed, and interest on each such Surcharge at the statutory rate.

Parties

16. Plaintiff CamCara, Inc. d/b/a AST Waterjet (“AST”), is a Texas corporation, organized under the laws of the State of Texas, with a place of business in Grand Prairie, Texas. AST was a customer of Air Products from approximately March 2015 to March 2020, pursuant to a Microbulk Product Supply Agreement, dated March 10, 2015. AST paid Surcharges to Air Products during this timeframe.

17. Defendant Air Products is a producer and seller of atmospheric and process gases. It is incorporated in Delaware, and maintains its principal place of business in Allentown, Pennsylvania.

Jurisdiction and Venue

18. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(d)(2)(A), because some members of the class are citizens of a state different from defendant Air Products, the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and there are over 100 members in the proposed class.

19. The Court has personal jurisdiction over all parties to this lawsuit, and venue is proper under 28 U.S.C. § 1391(b)(2), because defendant is incorporated in this district.

Factual Allegations

Plaintiff AST

20. AST is a manufacturing company which provides sheet metal fabrication solutions, including laser cutting, waterjet cutting, computer numerical control (CNC) routing and machining, and press brake services.

21. On March 10, 2015, AST entered into a standard-form (Form 3076) Microbulk Product Supply Agreement with Air Products for the purchase of liquid nitrogen (the “AST Agreement”). (Attached as Exhibit 1.)

22. The AST Agreement was amended on April 13, 2015 to establish the Unit Price for the liquid nitrogen at \$9.50/1000 SCF. On March 1, 2017, the Unit Price increased to \$10.45/1000 SCF. The contract was terminated in early 2020.

23. The AST Agreement also contained separate pricing for a “Delivery Charge” and a “Hazmat Charge.” Those charges were initially \$40 and \$20 respectively per delivery and were raised to \$50 and \$30 in October 2018.

24. Page 2 of the AST Agreement also contained the following provision:

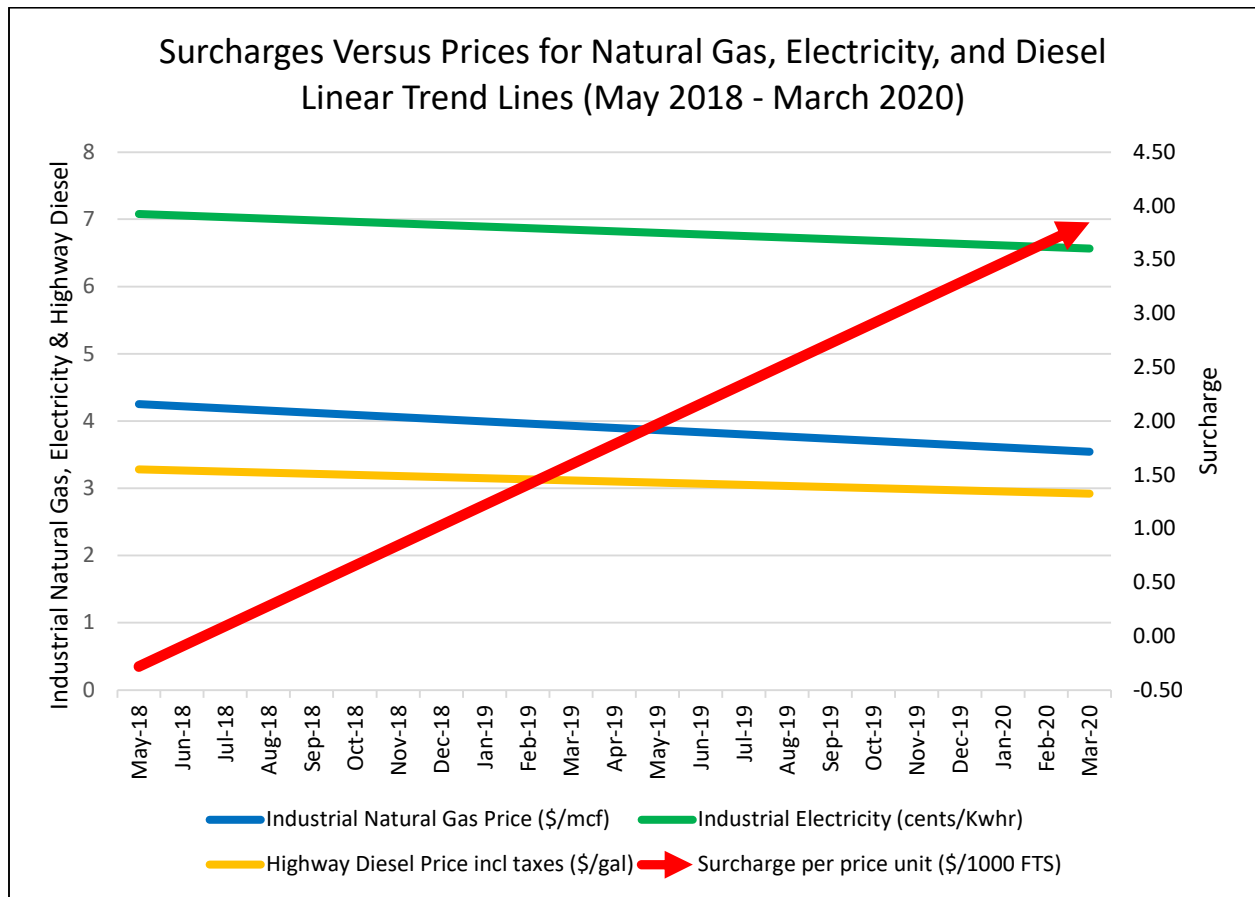
Surcharges. Surcharges may be assessed in order for [Air Products] to recover increases in its production or delivery costs (e.g., increases in the cost of diesel fuel, natural gas and/or electric power, or increases arising out of utility deregulation or change in laws).

25. From March 2015 to April 2018, Air Products did not assess any Surcharges pursuant to this provision.

26. Beginning in May 2018 and continuing through March 2020, Air Products imposed Surcharges on every one of AST’s invoices. Moreover, the amount of the Surcharges steadily increased from 1% of the Unit Price in May 2018 to over 35% of the Unit Price by November of 2019, where it remained for the balance of the AST Agreement.

27. AST received no notice or explanation for the Surcharges. The amounts simply appeared on the invoices Air Products sent to AST.

28. Air Products’ “diesel fuel, natural gas and/or electric power” costs related to performing its obligations under the AST Agreement did not increase 35% between May 2018 and November 2019. Indeed, as the following graph shows, the average price for industrial natural gas, industrial electricity, and highway diesel decreased during this period.



29. Air Products assessed the Surcharges on AST and raised the amount of the Surcharges – ultimately to over 35% of the Unit Price – without regard to any “increases in its production or delivery costs.” Rather, Air Products imposed the Surcharges on AST arbitrarily, discriminately, and solely as a way to increase the Unit Price and enhance revenue.

30. Air Products was able to assess these Surcharges because of the small number of competing merchant gas suppliers and the substantial expense, disruption, and inconvenience experienced by customers switching from one supplier to another.

Defendant Air Products

31. Air Products' program of assessing and continuously increasing Surcharges was part of a corporate strategy of relentlessly focusing on the company's bottom line without regard for its customers or the Surcharges language in the Product Supply Agreements.

32. This can be seen in Air Products' reported financial results. From 2014 to 2019 (the last full year of publicly reported results), Air Products' revenues declined from \$10.4 billion to \$8.9 billion, a decline of over 10%. Yet, from 2014 to 2019, every measure of Air Products' profitability increased:

- Net income increased from under \$1 billion to over \$1.8 billion.
- Earnings per share increased from \$3.24 to \$7.94.
- Adjusted EBITDA margin increased from 25.1% to 41.9%, an increase of almost 1700 basis points.
- From 2014 to 2019 Air Products compound annual growth rate was 13%.

33. The only way a company can sell less and make more is by increasing the margin on existing (declining) sales. This margin enhancement was due, in significant part, to Air Products' Surcharges strategy: assess and collect Surcharges wherever possible without regard to whether those Surcharges were permitted under the Product Supply Agreements or whether there had been any increases in Air Products' "production or delivery costs."

34. In the 2019 Annual Report to shareholders, Air Products' Chairman and CEO, Seifi Ghasemi, commented on how Air Products had managed to achieve growing profitability

with declining sales. He noted that Air Products was in the fifth year of its “Five-Point Plan to substantially reposition Air Products and make it the best performing industrial gas company in the world.” One of these five points reads as follows:

Change the incentive compensation system to ensure that it is directly related to performance by each unit around the globe, with a focus on cash generation and profitability. (Emphasis added.)

35. One of the changes to the incentive compensation system was to pay employees bonuses on assessing and collecting Surcharges. Air Products had a contractual right to assess Surcharges if specified conditions were met – i.e., there were “increases in its production or delivery costs.” It did not need to provide bonuses to its employees to assess Surcharges. It did so, however, to incentivize employees to assess extra-contractual Surcharges on customers to increase “cash generation and profitability.”

36. Air Products has concealed its conduct relating to Surcharges, both from its customers and the public at large. If customers like plaintiff AST asked questions or complained about Surcharges, Air Products’ sales and customer service personnel were instructed to ignore, deflect, or threaten termination of product deliveries.

37. In its public filings, Air Products informs investors that it “mitigate[s] electricity, natural gas, and hydrocarbon price fluctuations contractually through pricing formulas, surcharges, and cost pass-through and tolling arrangements.” Air Products & Chemicals, Inc., 2019 Form 10-K Annual Report 5. Similarly, Air Products represents that it “typically contract[s] to pass-through cost increases in energy and raw materials to customers” *Id.* at 11.

38. Although it is true that Air Products did, in fact, contract with customers “to pass-through cost increases in energy and raw materials,” it did not honor those contracts and imposed

Surcharges to raise revenue and increase margin, irrespective of any “cost increases in energy and raw materials.”

Class Action Allegations

39. Plaintiff brings this class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure.

40. Plaintiff seeks certification of the following class:

All individuals and entities who, within the four-year period prior to filing this complaint, paid Surcharges to Air Products pursuant to a Product Supply Agreement, Microbulk Product Supply Agreement, Air Products General Conditions of Sale, or other materially similar agreement, containing a Surcharges provision, which provided in substance that “Surcharges may be assessed in order for [Air Products] to recover increases in its production or delivery costs (e.g., increases in the cost of diesel fuel, natural gas and/or electric power, or increases arising out of utility regulation or change in laws.)”

41. Excluded from the class are: (i) any person or entity who has previously obtained a judgment or settled a claim against Air Products relating to the claims asserted in this complaint or who has previously executed a release for such claims; or (ii) any person or entity that is a party to an arbitration agreement with Air Products that would apply to the transactions which form the basis of the claims asserted in this complaint.

42. The class is so numerous that joinder of all members is impractical. Although the exact number and identity of class members is unknown to the plaintiff at this time and can only be ascertained through discovery, plaintiff believes that the number of class members is in excess of 5,000. The precise number and identification of the class members will be easily ascertainable from Air Products’ records.

43. There are questions of law and fact common to all members of the class. Those common questions include, but are not limited to:

- (i) Did Air Products breach its Product Supply Agreements with class members by arbitrarily and discriminatorily assessing Surcharges without regard to any “increases in its production and delivery costs”?
- (ii) Did Air Products breach its duty under 13 Pa. Cons. Stat. § 2305(b) to act in good faith when fixing the amount of any Surcharges it assessed upon class members?
- (iii) Are the class members entitled to the return of all improperly-assessed Surcharges and interest thereon of the statutory rate?

44. Plaintiff’s claims are typical of the claims of the class because it, like the class members, paid the Surcharges improperly assessed by Air Products.

45. Plaintiff will fairly and adequately protect the interests of the class because it has paid Surcharges during the class period, its interests do not conflict with the interests of the class, and it has retained counsel experienced in litigating class actions and matters involving similar questions of law.

46. The questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the class members’ claims.

47. Joinder of all class members is impracticable.

48. Furthermore, because the injury suffered by many of the class members may be relatively small, the expense and burden of individual litigation make it impossible for those members of the class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

Cause of Action

49. Plaintiff and each member of the class entered into Product Supply Agreements.

50. Under the terms of these Agreements, Air Products was permitted to assess Surcharges only “in order for [it] to recover increases in its production or delivery costs (e.g., increases in the cost of diesel fuel, natural gas and/or electric power, or increases arising out of utility deregulation or change in laws).”

51. Air Products arbitrarily and discriminatorily assessed Surcharges on members of the class without regard to “increases in its production and delivery costs.”

52. The Surcharges provision in the Product Supply Agreements is an open-price term as defined in 13 Pa. Cons. Stat. § 2305(b). This statute applies to the claims of all class members because the Product Supply Agreements uniformly provide that they shall “be governed by the laws of the Commonwealth of Pennsylvania.”

53. Pursuant to 13 Pa. Cons. Stat. § 2305(b), Air Products was required to act in good faith when assessing and collecting Surcharges. Good faith is defined as “honesty in fact and the observance of reasonable commercial standards of fair dealing.” 13 Pa. Cons. Stat. § 1201(b)(20). The drafters of the Uniform Commercial Code intended that the Code’s open-price term provisions would prevent arbitrary and discriminatory pricing.

54. Air Products breached the Agreements by assessing and collecting Surcharges arbitrarily and discriminatorily and without regard to its “increases in its production and delivery costs.” Air Products also breached its duty of good faith imposed by § 2305(b) by not acting honestly and not observing reasonable commercial standards of fair dealing.

55. Members of the class have been damaged by Air Products' breaches and are entitled to a return of all improperly-assessed Surcharges and interest thereon at the statutory rate.

56. Though not required to do so, prior to bringing suit, plaintiff, pursuant to 13 Pa. Cons. Stat. § 2607(c)(1), on behalf of itself and the class, notified Air Products of its breaches of the Product Supply Agreements and its duty of good faith.

Prayer for Relief

Plaintiff, on behalf of itself and members of the class, requests that this Court grant the following relief:

1. An order certifying this action as a class action under Fed. R. Civ. P. 23(b)(3).
2. A judgment declaring that Air Products has breached the Product Supply Agreements and its duty of good faith imposed by 13 Pa. Cons. Stat. § 2305(b).
3. An award of money damages or restitution to compensate members of the class for Air Products' breaches.
4. An award of prejudgment interest.
5. An award of attorneys' fees, costs and expenses.
6. A judgment enjoining Air Products from continuing its breaches of the Product Supply Agreements and its duty of good faith imposed by 13 Pa. Cons. Stat. § 2305(b).
7. Such other relief as the Court deems equitable and just.

Demand For Jury Trial

Plaintiff requests that this matter be tried before a jury.

September 22, 2020

Respectfully Submitted,

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

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Counsel for Plaintiff

Exhibit 1

EXHIBIT 1

MICROBULK PRODUCT SUPPLY AGREEMENT



This Agreement is made as of the 10th day of March 2015, between Air Products and Chemicals, Inc. ("Seller"), whose address is 7201 Hamilton Boulevard, Allentown, PA 18195-1501, and AST WATERJET ("Buyer"), whose address is 1000 Avenue N Grand Prairie, TX.

Product	Designated Location	Equipment Description*	Unit Price \$/1000SCF	Monthly Charge \$/month	Delivery Charge* \$/delivery	Hazmat Charge* \$/delivery	Estimated Monthly Volume (1000 SCF)
Nitrogen	Grand Prairie, TX	450L Laser Pak	22	200	40	20	40

* Subject to adjustment upon not less than 15 days prior written notice

- Product Requirements.** Buyer agrees to purchase its entire requirements of the Products identified above from Seller for the Term hereof, and agrees not to obtain, by any method, or purchase from others, any Products or materials in gaseous or liquid form, irrespective of how produced or delivered, in substitution for such Products. If Buyer's requirements cease before Equipment is installed, Buyer shall pay Seller's invoice for all costs and expenses incurred to ready the Equipment for use and prepare for and cancel installation.
- Designated Locations and Delivery.** This Agreement is applicable to all Buyer's activities carried on at the Designated Locations, and if such activities are expanded, relocated, or consolidated to other locations, then, at Seller's option, this Agreement shall be applicable at such locations. The delivery point for Product delivered by Seller's vehicle is the point of connection between Seller's delivery vehicle and the Equipment, and title and risk shall pass from Seller to Buyer at the delivery point.
- Term.** The initial Term of this Agreement shall be 60 months beginning as of March 10, 2016, or as of the date of first delivery (written notice of which shall be provided by Seller), whichever is later, and the Term shall continue after the initial Term from year to year unless and until terminated by either party as of the end of the initial Term, or as of the end of any such subsequent 12-month period, by not less than twelve (12) months' prior written notice of termination. If Buyer is party to an existing contract with a third party supplier as of the date of execution of this Agreement, Buyer represents that its contract with the third party supplier may be properly terminated as of March 10, 2016, and Buyer agrees that it shall take all steps as are necessary and proper to cause such contract to terminate on or before such date so that supply by Seller of Buyer's requirements may commence hereunder.
- Unit Price and Monthly Charge Adjustment.** The Price for Product, which consists of the Unit Price and the Monthly Charge, is subject to increase by Seller upon 15 days' prior written notice to Buyer. If within such 15 day period Buyer is able to show Seller written evidence of a lower total price for like quantity, quality and delivery method from a responsible supplier, Seller shall have the option to meet the lower price offered or reinstate its previous pricing in effect at time of notification. If Seller does not exercise such option within 15 days of receiving the written evidence, Buyer may, by written notice within 10 days after the end of such 15 day period, terminate this Agreement as to the applicable Product and Designated Location only. If Seller agrees to meet the third party offer, Seller reserves the right to extend the Term of this Agreement with respect to the applicable Product and Designated Location to the end of the term provided for in the third party offer. Seller is not obligated to supply more than the Estimated Monthly Volume in the table above. If Buyer has requirements in excess of the Estimated Monthly Volume, and if Seller is willing to supply such excess requirements at the Price set forth herein, then Buyer shall be obligated to purchase such excess requirements from Seller at the Price, plus any additional costs incurred by Seller. This paragraph does not apply to Delivery or Hazmat Charges or Surcharges or to adjustments in the Unit Price or Monthly Charge due to replacement or addition of Equipment.
- Representation.** Buyer represents and warrants that, as of the date of first delivery of Product to the Designated Location, Buyer will not be obligated under the terms of any other contract to purchase Product for the Designated Location. Buyer shall (i) indemnify, defend and hold harmless Seller from and against all claims, demands and suits to the contrary that may be asserted by any third party, and (ii) pay Seller for breach of contract damages, including without limitation, costs and expenses incurred by Seller to prepare for and cancel Equipment installation or to install and remove Equipment. Buyer also represents and warrants that Product purchased under this Agreement is solely for Buyer's use and consumption.
- Entirety of Contract.** This Agreement, including the additional terms and conditions that follow on the reverse side and/or attached page(s) contains the entire understanding between the parties, superseding any prior agreements, and cannot be revised or amended unless stated in writing and signed by authorized representatives of each party. This Agreement is subject to acceptance by a duly authorized representative of Seller. Any purchase orders or acknowledgements used by either party shall be deemed intended for record purposes only and shall not add to or modify this Agreement. Each party shall keep the terms and conditions of this Agreement confidential. Electronic documents and signatures will be permitted in substitution for paper-based documents and signatures.

AST WATERJET
 By: [Signature]
 Name: Kathy Woodard
 Title: Customer Care
 Date: 3-10-15

AIR PRODUCTS AND CHEMICALS, INC.
 By: [Signature]
 Name: Rudy De la Fuente
 Title: Commercial Manager
 Date: 3-10-2015

ADDITIONAL TERMS AND CONDITIONS

1. **Warranty.** Seller warrants that Product shall conform to Seller's standard specifications. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW, INCLUDING, WITHOUT LIMITING, THE GENERALITY OF THE FOREGOING. ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Seller's sole liability for breach of warranty shall be replacement of Product not meeting specifications at Seller's sole cost.
2. **Liability.** Seller shall not be liable in contract or tort (including negligence and strict liability) for any indirect, special, incidental, or consequential damages, and Seller's liability to Buyer, whether arising out of performance or nonperformance of the Agreement, negligence or other legal theory, shall in aggregate not exceed the total price for Product consumed, or forecasted if not consumed, in the first year of the Initial Term.
3. **Hazards.** Buyer acknowledges that there are hazards associated with the Product, that it understands such hazards, and that it is the responsibility of Buyer to warn and protect its employees and others exposed to such hazards through the storage and use of the Product after delivery. Seller shall provide Buyer with copies of Material Safety Data Sheets relating to the Product for Buyer to make such warnings, and Buyer assumes full responsibility and risk and releases Seller from liability for loss, damages or injury to persons or to property of Buyer or others arising out of the storage or use of the Product after delivery to Buyer.
4. **Force Majeure.** Neither party hereto shall be considered in default in the performance of its obligations hereunder (other than its obligation to make any payment of money hereunder), or be liable in damages or otherwise for any failure or delay in performance which is due to strike or other industrial disturbance, fire, explosion or other natural catastrophe, epidemic, terrorist, civil disturbance, curtailment, shortage, rationing or allocation of normal sources of supply of labor, materials, transportation, energy, or utilities; accident; act of God; delay of subcontractors or vendors; act of government or compliance with government regulations (whether or not valid); embargo; machinery or equipment breakdown; or any other similar or dissimilar cause which is beyond the reasonable control of the party claiming excuse hereunder. Neither party shall be required to make any concession or grant any demand to bring to an end any strike or other concerted act of workers.
5. **Curtailment of Supply.** If Force Majeure impacts the facility normally serving the Designated Location, Seller may prorate any available supply among Buyer and Seller's other customers in a fair and equitable manner. At Buyer's request or authorization, Seller may use commercially reasonable efforts to obtain Product from another source or take other action to perform, provided Buyer reimburses Seller for any additional costs and expenses incurred by Seller.
6. **Equipment.** Title, possession, and control of Equipment supplied by Seller shall at all times remain in Seller (unless and to the extent otherwise provided in an Addendum to this Agreement), and Seller shall maintain and repair Equipment in accordance with Seller's standard practice at its expense except for damage caused by Buyer or third parties, which shall be paid for by Buyer. Seller may remove and replace any item of Equipment at its expense, but if relocation, replacement or addition of Equipment becomes warranted due to changes in Buyer's requirements, methods or locations of use, or changes in the Buyer's facilities, Seller may charge Buyer for costs and expenses incurred and/or change the Monthly Charge and Unit Price, and a new Initial Term shall begin from the date of first delivery of Product utilizing the relocated, replaced or additional Equipment. Upon any termination or expiration of this Agreement, Buyer shall pay Seller's costs to remove the Equipment and shall pay Seller's unamortized or otherwise unrecovered installation costs and expenses, if any, and upon Seller's receipt of same, Buyer's applicable Monthly Charge shall cease.
7. **Buyer's Obligations.** Buyer shall, without cost to Seller, (i) furnish Seller an area meeting applicable federal, state and local legal requirements and satisfactory to Seller for the location and installation of Equipment ("Equipment Site"); (ii) comply with all federal, state and local legal notification, reporting and/or permit requirements which may be associated with the storage or use of Product, including without limitation, all relevant reporting obligations under the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001-11050 (EPCRA, also commonly known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III)) resulting from the presence of the Product supplied under the Agreement; (iii) notify Seller of changes in its operation that may impact Buyer's rate of use of Product; and (iv) comply with its obligations under the Scope of Work attached hereto or subsequently executed in connection with this Agreement. If Seller determines that the delivery of Product would be unsafe or in violation of applicable law due to a condition present at the Designated Location, Seller may refuse to make further deliveries of Product until Buyer removes the condition, and Seller may terminate this Agreement if Buyer does not promptly remove the condition.
8. **Surcharges.** Surcharges may be assessed in order for Seller to recover increases in its production or delivery costs (e.g., increases in the cost of diesel fuel, natural gas and/or electric power, or increases arising out of utility deregulation or change in laws).
9. **Invoicing and Payment.** Seller may invoice Buyer as each delivery of Product is made, monthly for monthly charges, and as incurred or at Seller's discretion for other amounts owed. All invoices shall be payable date of invoice by credit card, unless agreed by the parties to be payable by direct debit not 30 days. All claims of Buyer relating to any invoice must be made in writing within 30 days of receipt of invoice or shall be deemed waived. Buyer's failure to make timely payments shall entitle Seller, in addition to other rights or remedies, to change payment terms (e.g., to prepayment), suspend deliveries, or terminate the Agreement.
10. **Taxes.** Seller shall bear and pay all federal, state and local taxes based upon its net income and corporate existence. Any other tax, however denominated and measured, imposed upon Equipment or its installation or operation, or upon Seller's and its affiliates' producing facilities, or upon the production, storage, inventory, sale, transportation, delivery, use or consumption of Product, shall be paid directly by Buyer, or if paid by Seller shall be invoiced to Buyer as a separate item and paid by Buyer to Seller.
11. **Assignment.** This Agreement may not be assigned by Buyer without the prior written consent of Seller. It shall inure to the benefit of and be binding upon the successors and, if properly assigned, the assigns of both parties. In the event of the sale, lease, license or any other transfer of any of Buyer's right, title or interest in applicable assets to a third party, Buyer shall assign to and require assumption of this Agreement by (in whole or in part as applicable) such third party, subject to Seller's prior written consent.
12. **Termination for Breach.** Either party may terminate this Agreement for material breach by the other party that is not cured within 30 days of receipt of written notice thereof; provided, however, if such breach cannot reasonably be cured within 30 days, and provided the breach is not a failure to pay, the other party shall be deemed not to be in breach if that party commences remedial action within the 30 days and diligently prosecutes the remedial action to completion within a reasonable time thereafter.
13. **Waiver.** A waiver by either party of strict conformance with any of the terms and conditions of the Agreement shall not be a waiver of any subsequent failure to comply with such terms and conditions.
14. **Governing Law.** THE AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAWS.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS CamCara, Inc. d/b/a AST Waterjet, individually and behalf of all others similarly situated
(b) County of Residence of First Listed Plaintiff Tarrant, Texas
(c) Attorneys (Firm Name, Address, and Telephone Number)
See attached.

DEFENDANTS Air Products and Chemicals, Inc.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)(2)(A)
Brief description of cause:
Putative class action for breach of contract and duty of good faith in connection with contract for Defendant's goods

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ >\$5,000,000
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE
DOCKET NUMBER

DATE 09/22/2020
SIGNATURE OF ATTORNEY OF RECORD /s/ Gregory V. Varallo

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Civil Cover Sheet – Attachment

I(c) Plaintiff's Attorneys (*Firm Name, Address, and Telephone Number*)

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Air Products and Chemicals 'Arbitrarily' Assessed Unnecessary Surcharges](#)
