

## CONDITIONS OF PURCHASE for Engineering Services (Short Form) (April 2013 edition)

### *Table of Contents*

1	<i>Placing of the Order and Execution of the Work</i>
2	<i>Time for Completion</i>
3	<i>Payment, Invoicing, Delay in Payment, Taxes</i>
4	<i>Assignment</i>
5	<i>Insurance</i>
6	<i>Warranty for Defects, Liability</i>
7	<i>Secrecy, Ownership</i>
8	<i>Copyrights</i>
9	<i>Suspension, Termination</i>
10	<i>Corporate Responsibility</i>
11	<i>Applicable Law</i>
12	<i>Place of Jurisdiction</i>
13	<i>Voidness in Part</i>

### **1. Placing of the Order and Execution of the Work**

1.1 Orders, as well as any changes or amendments thereto, shall only be binding if they are confirmed or given in writing by the Buyer. Solely the conditions, specifications, standards and other appendices that are attached to the Order or are listed therein shall form a part of the Order. In case of conflicting provisions, they shall apply in the following order of precedence:

- the Purchase Order
- these Conditions of Purchase
- the Technical Specifications and Standards of the Buyer.

Any conditions of the Vendor which deviate from, or contradict these Conditions of Purchase or any of the foregoing shall only apply if they are agreed to in writing by the Buyer.

1.2 In the event the Vendor's engineering services (the "Work") are carried out on the premises of the Buyer, the Buyer will provide suitable office space to the Vendor. The Vendor shall provide all equipment, tools and appliances required for the Work. In the event the Vendor uses equipment, tools or appliances of the Buyer, the same shall be returned in an orderly state promptly after use. The

Vendor shall be liable for any loss of or damage to such equipment or appliances.

1.2.1 The Vendor shall carry out the Work under his own responsibility with suitably qualified personnel directly employed by him using their own tools. The Vendor shall nominate a Project Manager as the person responsible for the execution of the Order, who shall be competent and responsible to brief, direct and supervise his personnel in all matters, whether related to the Work or to labour, and who shall be the sole person to report to, or to receive instructions from, the Buyer.

1.2.2 The Vendor shall be exclusively responsible for briefing, directing and supervising his personnel, without prejudice to the Buyer's right to inspect the Work at any time for verification of its execution in accordance with the Order in respect of, but not by way of limitation, quality and schedule.

1.2.3 The Vendor shall ensure that his personnel complies with all regulations applicable on the premises of the Buyer relating to behaviour, safety and prevention of accidents, including but not limited to those contained in Buyer's leaflet relating to personnel of companies working on his premises. The Vendor shall indemnify and hold the Buyer harmless from any liabilities, claims and fines of third parties or public authorities which may arise against the Buyer due to the non-compliance by the Vendor with any of his statutory obligations relating to his work or to his staff.

### **2. Time for Completion**

The Vendor shall carry out the Work in accordance with the time schedule, milestones and completion time agreed in the Order.

### **3. Payment, Invoicing, Delay in Payment, Taxes**

3.1 Requests for payment, invoices and credit and debit notes shall be submitted in an appropriate form, stating the Order number, to the Buyer's Cost

Accounts Department. Value Added Tax, if applicable, shall be shown separately. In addition, the Value Added Tax number of the Vendor must be stated. The final invoice shall be labelled as such.

3.2 The Buyer will be deemed in delay with payment only in the event that he fails to pay on receipt of a written reminder by the Vendor after the expiry of thirty days from the due date of the payment and receipt of invoice, or if he fails to pay on the calendar date stated in the Order.

3.3 In the event of Buyer's delay in payment, he shall owe interest of 5% p.a., unless the Vendor shows that he has suffered higher damages due to such delay.

3.4

3.4.1 Each party shall be solely responsible to comply with its tax liabilities and obligations arising from the Purchase Order.

3.4.2 The remunerations for the Goods agreed on and to be rendered according to the Purchase Order are net-amounts, i.e. exclusive of VAT.

3.4.3 The Vendor shall fulfill all formal and legal requirements in connection with the issuance of invoices in order to ensure a correct VAT refund procedure, if any.

3.4.4 If as a result of regulatory action taken by the authorities (increased VAT is claimed) or the input tax of one of the contracting parties is reduced, both parties shall be obliged to correct the affected invoice correspondingly.

3.4.5 Direct taxes, which will be levied due to the payments in the country of the Buyer, are borne by the Vendor. All amounts payable in respect of the contract will be paid after deduction of any taxes, levies, duties or administrative fees that must be withheld at source and paid to the respective tax authorities by the Buyer due to legal requirements. If the relevant Double Tax Treaty provides for a reduction or exemption of withholding tax, the Buyer will pay the corresponding amount only if and when the Vendor has presented a valid exemption certificate to the Buyer on the date of payment at the latest.

3.4.6 The Vendor is responsible to meet all further obligations imposed on the Vendor by law. Claims or disadvantages arising to the Buyer due to disregarding of aforementioned obligations by the Vendor will be borne by the Vendor.

3.4.7 The Vendor shall be responsible for any cost for customs, duties, taxes of any description, including but not limited to taxes and duties on salaries, wages and other remuneration of this employees and of third parties' employees, incurred in the execution of the Goods.

#### 4. Assignment

Assignment of claims against the Buyer by the Vendor shall require Buyer's written consent which shall not unreasonably be withheld.

#### 5. Insurance

For the duration of the Work, the Vendor shall take out and maintain at his own expense a third party liability insurance with a minimum coverage of EUR 500.000 per case of loss. The Vendor shall submit to the Buyer suitable insurance certificates as proof of such insurance, together with the confirmation of the Order.

#### 6. Warranty for Defects, Liability

6.1 The Vendor shall carry out the Work in accordance with the latest accepted state of the art, and with the relevant technical documents standards and regulations, recommendations and guidelines as listed in Art. 1.1, free from defects and rights of third parties. In the event of defects or any default by the Vendor, the Buyer shall have the rights and remedies available to him at law.

6.2 Any instructions as to changes or approvals by the Buyer shall not release the Vendor from his responsibility for the correctness of the Work.

6.3 The Warranty Period for the Work shall be thirty-six (36) months from Acceptance of the Work. For engineering regarding civil works the legal statute of limitation of 5 years from Acceptance of the Work shall remain applicable.

## 7. Secrecy, Ownership

- 7.1 Documents, data and objects which the Vendor receives from the Buyer for the execution of the Order shall remain the property of the Buyer and shall be treated as confidential, including the technical and commercial information contained or embodied therein.
- 7.2 They may not be copied, published or made available to third parties or used other than for the purpose of Order without the written permission of the Buyer.
- 7.3 They shall, on termination or completion of the Order, promptly be returned to the Buyer, or be deleted from computers or other data files of the Vendor, as the case may be. The Vendor shall instruct and oblige his personnel accordingly.
- 7.4 Title in all drawings, models and other documents that the Vendor prepares for the Order shall be vested in the Buyer.

## 8. Copyrights

In the event that copyrightable work is created as part of the Work, only the Buyer shall be entitled to exercise any rights in connection therewith, such as, but not limited to the right of use and exploitation.

## 9. Suspension, Termination

- 9.1 The Buyer may at any time, even if the Vendor is not in delay with any part of the Work, suspend or terminate the execution of the Order by written notice to the Vendor, in which event the Vendor shall be entitled to payment of the pro rata price for the Work completed according to the Order.
- 9.2 The Buyer shall have such right for example, but not by way of limitation, if and when the client of the Buyer cancels, terminates or changes his order, or is temporarily or permanently unable to take over the supplies and services of the Buyer for which the Work is intended, if the client becomes insolvent or insolvency is to be expected, or if the Vendor materially defaults against the Order. The Vendor shall only be entitled to reimbursement of proven

cost of suspension or termination, if the suspension or termination occurred for reasons attributable to the Buyer.

## 10. Corporate Responsibility

- 10.1 Vendor shall comply with the requirements of the 'Code of Conduct for Suppliers of the Linde Group', a copy of which has been provided to the Vendor and which may be found at [www.linde.com/supplier-CoC](http://www.linde.com/supplier-CoC) (hereinafter referred to as the 'Supplier Code of Conduct').
- 10.2 Vendor shall demonstrate compliance with the requirements of the 'Supplier Code of Conduct' at the request and to the satisfaction of Linde, e.g. by providing data or conducting self-assessments.
- 10.3 If Linde has reason to believe that Vendor may be in material breach of the requirements laid out in the Supplier Code of Conduct, Linde or a third party appointed by Linde may conduct inspections at Vendor's premises in order to verify Vendor's compliance with the requirements of the Supplier Code of Conduct. Linde shall use all reasonable efforts to ensure that all inspections will be conducted in accordance with any applicable data protection law and shall neither unreasonably interfere with Vendor's business activities nor violate any of Vendor's confidentiality agreements with third parties. Vendor shall reasonably cooperate with any inspections conducted. Each party shall bear its own expenses in connection with such inspection.
- 10.4 In addition to any other rights and remedies Linde shall also have the right to terminate this agreement and any purchase order issued hereunder without any liability whatsoever, if Vendor is in material breach of the Supplier Code of Conduct or fails to remedy any breach, after written notification about the breach by Linde.
- 10.5 Material breaches include, but are not limited to, incidents of forced or child labor, corruption and bribery, and failure to comply with the Supplier Code of Conduct's environmental protection requirements.

**11. Applicable Law**

The Order shall be governed by German law, excluding, however, its conflicts of law provisions, the Hague Uniform Laws of Purchase and the Vienna UNCITRAL Convention on the International Sale of Goods (CISG).

**12. Place of Jurisdiction**

The place of jurisdiction for all disputes arising out of or in connection with the Order shall be Munich. Alternatively, and at its sole option, the Buyer may also take legal action in any place of jurisdiction valid for the Vendor.

**13. Voidness in Part**

Should any provision in these Conditions of Purchase or in the Order prove to be void, ineffective or inoperable, the validity of the remaining provisions shall not be affected.