

通用采购条款

GENERAL CONDITIONS OF PURCHASE

(2013 版/Edition)

1. Purchase Order/采购订单

采购订单和其他声明只有经买方书面签署或确认后才生效。仅以下采购订单的附件将作为采购订单的一部分，并按以下优先顺序执行：采购订单，此通用采购条款，买方的技术规格书和标准。卖方的偏离条款，只有经买方明确地书面同意后才有效。

Purchase Orders and other declarations shall only be binding if placed or confirmed by Buyer in writing. Only the following shall be deemed part of the Purchase Order, in the following order of precedence: the Purchase Order document, these "General Conditions of Purchase", and Buyer's technical specifications and standards, if attached to, or referred to in, the Purchase Order. Deviating conditions of the Vendor shall only apply to the extent that they have been expressly confirmed by Buyer in writing.

2. Subject of Order/订单标的

依照采购订单所提供的产品应完整（除经同意不在供应范围之内）以确保其安全性和操作性完全达到采购订单对此产品的使用要求。

The Goods to be supplied pursuant to the Purchase Order shall be complete – other than for the agreed exclusions from the scope – so as to ensure that they are fully safe and operational for the purpose intended under the Purchase Order.

3. Inspection and Acceptance/检验和验收

买方、买方或买方业主的代表有权在任何时候到卖方的场所就工作进度和质量实施检验，此检验所需的设备，用具及相关配备应由卖方免费提供。

The Buyer and its or its Client's agents shall have the right at any time to effect inspections regarding work progress and quality at the premises of Vendor. Equipment, utilities and services required for such inspections shall be provided by the Vendor at no cost to the Buyer.

如需对产品进行验收测试，卖方和买方应分别承担各自的人员费用，且卖方还应承担所有材料费用。除非双方另有约定，买方对产品的验收需由买方提供验收声明。仅作为参照的国际贸易术语条款（即使在采购订单中已规定）将不被视作“除非双方另有约定”的情形。技术测试或工厂测试或买方对产品的检验均不应视作最终验收。若因卖方过失导致验收失败，则买方的费用应由卖方承担。

In the event an acceptance test is provided for the Goods, Buyer and Vendor shall each bear the cost for their personnel, and the Vendor shall bear any cost for material. Unless otherwise agreed, acceptance of the Goods by Buyer will require Buyer's express declaration of acceptance. A mere reference to Incoterms clauses – even if it is made in the Purchase Order – shall in no event be construed as being "otherwise agreed" in this sense. A technical or factory test or inspection of the Goods by Buyer shall not be deemed as final acceptance. Buyer's costs for each failed acceptance test shall be borne by the Vendor if such failure was due to his fault.

4. Suspension, Termination/暂停，终止

即使工作进度没有延误，买方仍有权暂停或终止执行采购订单。例如，但不限于：如买方的客户取消或变更其订单导致无法交货，客户付款暂停或预计付款将暂停，或卖方未能履行采购订单项下的责任和义务。买方的付款义务将仅限于订单暂停或终止时为止卖方已完成的工作内容，若因买方原因导致订单暂停或终止，卖方可以仅对其已经证实的暂停或终止费用要求补偿。

The Buyer shall have the right, even if there is no delay in work progress, to suspend or terminate the Purchase Order, for example, but not limited to, if Buyer's client cancels or changes its purchase order, is unable to take delivery of the Goods, suspends payments or if suspension of its payments is to be expected, or the Vendor defaults in his obligations under the Purchase Order. Payment shall be limited to such part of the Purchase Order price corresponding to the work performed until such suspension or termination. The Vendor may only claim reimbursement of its proven suspension or termination cost, if the Purchase Order was suspended or cancelled for reasons attributable to Buyer.

5. Liability for Defects/缺陷责任

卖方应保证产品没有缺陷，即：特别要保证产品与采购订单要求一致，满足采购订单所规定的全部性能指标，完全满足安全稳定运行的目的，符合最新的可接受的工艺技术水平和经济效能，并符合相关技术文件、规定、建议和准则。

The Vendor warrants that the Goods will be free from defects, i.e. in particular will conform to the descriptions contained in the Purchase Order, meet all properties and performances specified and be fully and safely operable for the purpose intended, conform to the latest accepted state of the art and economic efficiency and comply with the relevant technical documents, regulations, recommendations and guidelines.

除非在采购订单中双方另有约定，保证期为被买方验收（如果是施工和服务合同）或卖方交付货物（如果是货物销售合同）后 36 个月。但是，如果卖方所供产品或服务用于建筑物或其典型用途通常用于或涉及到建筑物，则应适用服务经买方验收（如果是施工和服务合同）或卖方交付货物（如果是货物销售合同）之日起 5 年的法定保证期。

Unless otherwise agreed in the Order the warranty period shall be 36 months from Buyer's acceptance of the services (in case of a contract for works and services) or from supply of the Goods (in case of a sales agreement). However, in case the Goods or services constitute a building or a thing that as per its usual kind of use is typically used for building or if the Goods relate to a building, the statutory Warranty Period of five (5) years from Buyer's acceptance of the services (in case of a contract for work and services) or from supply of the Goods (in case of a sales agreement) shall remain applicable.

如果在保证期内出现产品缺陷，卖方应与买方进行协商并根据买方的选择，立即以维修或替换（“补救措施”）的方式对这些缺陷进行整改，所有费用，包括但不限于：材料费、人工费，至产品安装现场的运输费以及拆卸和重装费等由卖方承担。

In case defects of the Goods appear during the warranty period, the Vendor shall, at Buyer's option promptly remedy such defects, by repairs and/or replacements ("supplemental fulfillment"), in consultation with the Buyer, at Vendor's cost, including but not limited to, cost of materials, labour, transport to the location of the Goods as well as cost of disassembly and re-assembly.

如果买方已通知卖方并为其补救措施规定了一个合理的期限，而卖方未能在此期限内完成，或者如果：

If Buyer has notified Vendor specifying a reasonable period for fulfillment or supplemental fulfillment of the Purchase Order and Vendor has failed to implement such fulfillment or supplemental fulfillment within such period, or if:

- 卖方已经确切地拒绝执行所应当执行的对采购订单的补救措施，或
Vendor has seriously and conclusively refused owed fulfillment or supplemental fulfillment of the Purchase Order, or
- 对采购订单的补救措施失败，或
supplemental fulfillment of the Purchase Order has failed, or
- 补救措施不合理遭买方拒绝，或
supplemental fulfillment would not be reasonably acceptable to the Buyer,
- 如果情况特别紧急，不再可能通知卖方关于缺陷和损坏的危害并为其纠正缺陷设定一个适当的时限。
it is not possible any more to inform the Vendor about the defect and the damage threatening due to particular urgency and to set an adequate time limit to Vendor for Vendor's rectification of defects,

买方有权自行选择：

Buyer shall have the right, at his option:

5.1 可以自己执行或让第三方执行补救措施，且卖方应补偿买方所有费用；如果可能发生重大危害或装置运行存在安全隐患，买方应具有同等权力。

to perform or cause to be performed by third parties remedial work, and Vendor shall reimburse all costs incurred by the Buyer; the Buyer shall have the same right in case major damages would otherwise occur, or in case the operational safety of the plant is at risk;

5.2 按照因缺陷造成的产品价值贬值比例对合同价格进行相应的递减。

to a reduction of the agreed price for the Goods pro rata to the reduction in value of the Goods by reason of such defect;

- 5.3 要求卖方赔偿由此产品缺陷导致其遭受的损失，除非此缺陷不是由卖方过失所造成。

to be compensated for damages suffered due to such defects of the Goods except where such defect is not due to Vendor's fault;

- 5.4 取消采购订单。如在特殊情况下认定取消订单是基于双方利益的考虑，买方应具有同等权力。

to cancel the Purchase Order. The Buyer shall have the same right if there are special circumstances justifying the immediate cancellation of the Purchase Order under consideration of the mutual interest of the parties.

采购订单的取消应无损于买方对其所遭受损失进行索赔的权力。

Cancellation of the Purchase Order shall be without prejudice to Buyer's right to claim compensation of damages suffered.

6. Breach of Contract/违约

如果卖方违反采购订单规定的或与之相关的任何责任和义务，买方有权对由此遭受的损失，包括但不限于第三者的损失，向卖方要求全部赔偿，除非此违约不是因卖方过失造成。然而买方向卖方的索赔将不包含生产损失或利润损失，除非卖方存在重大疏忽或恶意行为，或买方客户或第三方已就此等损失向买方提出索赔，或此等损失已包含在卖方投保范围内。

If Vendor breaches any obligation resulting from or in connection with the Purchase Order, the Buyer shall be entitled to claim full compensation of his damages suffered due to such breach including but not limited to damages arising outside the Goods, except where such breach is not due to Vendor's fault.

However, Buyer will not hold Vendor liable for loss of production or loss of profit except to the extent damages or losses are due to Vendor's gross negligence or wilful misconduct, or claims are made in turn against the Buyer by his client or third parties in this respect, or such damages or losses are covered by an insurance held by Vendor.

7. Defect of Title/侵权

如果因卖方的产品、服务或任何零件或部件引起任何第三方对买方提出关于侵权的索赔（包括侵犯专利权、商标权或版权），卖方应立即予以保护并使买方免于遭受由此索赔引起的伤害以及任何后续责任、义务、费用和损失。

If any third party asserts a claim against Buyer in connection with any defect of title (including infringement of patent, trademark or copyright) owing to Vendor with respect to Goods or services or any parts or components thereof, Vendor shall promptly indemnify and hold Buyer free and harmless from such claims and any resulting liabilities, obligations, costs, and damages.

8. Invoicing, Payment/发票，付款

作为付款的先决条件，付款请求、发票或收据应提交给买方的财务部门。只有当买方在即使收到卖方在付款到期且发票收讫后发出的书面提醒30天后依然未能支付，或未按订单中规定的付款日期支付时，方被视为付款延迟。

As condition precedent for payment, demands for payment and invoices or receipts shall be submitted to Buyer's Finance dept.. The Buyer shall only be deemed to be in delay with payment if he does not pay in spite of a reminder by Vendor received after the expiry of 30 days from the due date of payment and receipt of the invoice, or if he does not pay at the calendar date specified for payment in the Purchase Order.

9. Taxes/税收

- 9.1 任何一方都应各自履行因采购订单产生的纳税责任和义务。

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

- 9.2 根据订单规定对产品的所有补偿应为净值，即不含增值税。

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

- 9.3 卖方应履行与发票相关的所有正式和法定的规范，以确保正确的增值税抵扣或退还程序（如有）。

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.

- 9.4 如果因国家税务部门的法定调控行为导致增值税税率提高或合同当事人其中一方的进项税调低，双方应负责对受到影响的发票作相应修正。

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.

- 9.5 在买方国家对付款所征收的直接税费由卖方承担，所有合同项下的应付金额将在扣除一切依照法律规定须在源泉扣缴并支付给各税务部门的税费或行政管理费后予以支付，如根据相关的避免双重征税协定可对代扣所得税予以减免，买方将只有在不迟于付款日前收到卖方提交的有效免税证明后方可支付相应减免金额。

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.

- 9.6 卖方应履行法律对其规定的所有责任和义务，若因卖方未能履行前述责任和义务而引起的对买方的索赔或不利将由卖方负责。

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.

- 9.7 卖方应承担订单执行过程中产生的所有关税和其他税费，包括但不限于员工及第三方员工的工资税、收入税和其他所得税。

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.

10. Assignment/分包转让

卖方对采购订单的任何分包转让或卖方对买方的任何索赔，必须经买方书面同意，买方不能无理由拒绝。Any assignment of the Purchase Order or of claims against the Buyer shall require Buyer's written consent which shall not be unreasonably withheld.

11. 共同责任/Corporate Responsibility

- 11.1 卖方应遵循“林德集团供应商行为准则”的要求，此文件已提供给供应商并可在 www.linde.com/supplier-CoC 网页中找到（以下称“供应商行为准则”）。

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 (hereinafter referred to as the 'Supplier Code of Conduct').

- 11.2 应林德要求，卖方应以提交相关数据或自我评估的方式向林德证实其已遵循了“供应商行为准则”的各项要求并获得林德的认可。

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.

- 11.3 如果林德有理由认为卖方可能实质性违反了供应商行为准则的要求，则林德或其指定的第三方可至卖方的经营场所进行核查以验证其是否遵守了供应商行为准则。林德应采取一切合理措施来确保其所有的核查将满足所有适用的数据保护法的相关规定，且既不对卖方的商业活动造成不合理的干预也不对卖方与第三方之间的任何保密协议造成侵犯。卖方应合理配合所有的核查工作。与核查有关的费用由各方自行承担。

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.

- 11.4 如果卖方实质性违反了供应商行为准则或在林德书面通知其违反行为后未能对此做出纠正，则除了享有任何其他权利和救济外，林德也应有权终止在此签订的协议以及任何订单且无须承担任何责任。

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.

11.5 实质性违反行为包括但不限于：强迫劳动或使用童工，腐败和贿赂以及违背供应商行为准则中有关环境保护要求等。

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.

12. Voidness in Part/局部失效

如在本通用条款或订单条款中有任何条款被证明或即将成为无效的或不可操作的，其它剩余条款的有效性应不受影响

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

13. Place of Fulfilment/履行地点

除非在采购订单中双方另有规定，履行地应为买方的营业地。

If not otherwise agreed in the Purchase Order, place of fulfillment shall be Buyer's place of business.

14. Jurisdiction/仲裁

如对采购订单出现任何争议，仲裁地为中国杭州。买方也可自行选择，在卖方总部所在地提起仲裁。

Place of jurisdiction for all disputes arising out of the Purchase Order shall be Hangzhou, PRC.

Alternatively and at its sole option, Buyer may sue Vendor at the venue of Vendor's head office.

采购订单应受“中华人民共和国仲裁法”管辖并按其解释。

The Purchase Order shall be governed by and construed in accordance with "Arbitration law of the People's Republic of China".