

**STANDARD PURCHASE ORDER TERMS AND  
CONDITIONS FOR VENDORS AND SITE SERVICES**

Identifier: &amp;AF K-BX 2002 (EN)

Issue: 4

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# STANDARD PURCHASE ORDER TERMS AND CONDITIONS FOR VENDORS AND SITE SERVICES

Issue	Date	Issued for	Prepared by	Reviewed by	Approved by
4	19.11.19	Revisions	Andrew Taraboletti	Tom Gutting	Brett Boerema
3	01.07.18	Revisions	Michael Hope	Mateen Shaikh	Jason Uthe
2	19.07.16	Revisions	Amit Shah	Thomas Deiting	Onno Schuessler
1	Feb 2016	Certified (This document replaces &AJ-A-BX -105 (EN) Rev. 4)	Amit Shah	Thomas Deiting	Onno Schuessler

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**1. Definitions.**

"Affiliated Company(s)" means a company that owns or controls, or is owned or controlled by a party to the Purchase Order, or two or more companies under common control or ownership of a parent company, through owning or controlling 50% (fifty per cent) or more of the voting stock of such company or party respectively, either directly or indirectly through a chain of ownership or control of 50% (fifty per cent) or more of the voting stock in each tier of such chain

"Buyer" shall mean Linde Engineering North America Inc.

"Client" shall mean the person or business entity with whom Buyer has contracted to supply the Work, which in certain cases could also be the Owner/User.

"Company Group" means the Buyer and its Affiliated Company(s), their employees, agents, officers, directors, stockholders, representatives, and insurers. Company Group does not include Seller and its subcontractors, vendors, and suppliers.

"Equipment" means all materials, components, and services which Buyer is required to provide to Client which is associated with the Work.

"Indemnified Parties" means Company Group and the Client and/or Owner/User, their subcontractors, vendors, and suppliers participating in the Project, and all of their employees, agents, officers, directors, stockholders, and insurers.

"Owner/User" shall mean the owner and/or operator of the facilities in which the Work is installed.

"Project" means the engineering and procurement project, and/or construction project at a plant site, in which the Work is a part thereof.

"Purchase Order" shall mean and refer to the purchase order issued by Buyer to Seller in connection with the Work, together with all documents attached thereto or incorporated therein by reference.

"Seller" shall mean the person or business entity identified as the seller of Work in the Purchase Order.

"Work" shall mean, refer to, and include the products, materials, supplies, equipment and/or services covered by the Purchase Order of which these Standard Purchase Order Terms and Conditions for Vendors and Site Services are a part.

**2. Integration and Acceptance.** The Purchase Order, including all attachments referenced and incorporated therein, operates as an offer and constitutes the entire terms of the contract. There are no other agreements, understandings, terms, conditions, or attachments except as set forth in the Purchase Order. The Purchase Order shall not be modified except by mutual written agreement signed by both Buyer and Seller. The order of precedence of Purchase Order documents shall be the Purchase Order, Standard Purchase Order Terms and Conditions for Vendors and Site Services, and referenced attachments to the Purchase Order in the order as listed. Seller's acceptance of the Purchase Order may be made by Seller by (i) signing the acknowledgment copy in the attached Purchase Order set and returning same to Buyer, (ii) making shipment, or (iii) Seller's commencement of work on or purchase of material for performance of this Purchase Order, or (iv) any other conduct by Seller evidencing the existence of the Purchase Order. This Purchase Order is subject to, and expressly conditioned upon, Seller's unconditional acceptance thereof in its entirety. **UNLESS SPECIFICALLY AGREED TO IN WRITING BY BUYER, OR SPECIFICALLY REFERENCED IN THE PURCHASE ORDER, BUYER'S TERMS AND CONDITIONS REPRESENT THE ONLY TERMS AND CONDITIONS APPLICABLE TO THE ORDER NOTWITHSTANDING ANY STATEMENTS TO THE CONTRARY WHICH**

**MAY BE CONTAINED IN SELLER'S WRITTEN PROPOSAL OR ACKNOWLEDGMENT OR ANY OTHER DOCUMENT PROVIDED BY SELLER, WHICH ARE HEREBY OBJECTED TO BY BUYER.**

Seller's failure to sign and return an acknowledgement copy of the Purchase Order within 15 calendar days will constitute Seller's unqualified acceptance of the terms and conditions set forth herein. Further, **FINAL INVOICE WILL BE PAID UNTIL BUYER HAS RECEIVED A SIGNED ACKNOWLEDGEMENT COPY OF THE PURCHASE ORDER.**

**3. Interpretation.** The Purchase Order and attachments are intended to be read as a whole, and any requirement set forth in one part and not mentioned in another shall be executed to the same extent and purpose as though required by all. Should a question or doubt arise as to the intent and meaning of any part of the Purchase Order, Seller shall immediately notify Buyer in writing before the part of the Work affected is performed. Where specific governing standards are not specified in connection with the Work, the highest applicable industry codes and standards shall govern. Seller acknowledges and agrees that it shall provide all labor, services, equipment, materials, supplies, documentation and other such items necessary or appropriate to perform and complete the Work in conformity with and as reasonably inferred from the Purchase Order, notwithstanding the fact that each such necessary or appropriate item may not be expressly specified herein. In case any term or provision of the Purchase Order should prove to be invalid or ineffective, the validity of the other terms and provisions shall not be affected thereby. Buyer's waiver of any breach of, or failure to enforce, any of the terms, obligations, and/or conditions of the Purchase Order at any time shall not be deemed to be a continuing waiver of any subsequent or continuing breach of such terms, obligations, or conditions. Any such waiver or failure to enforce shall not in any way affect, limit, or waive, by reason of course of dealing, usage of the trade or otherwise Buyer's right thereafter to compel strict compliance with every term, obligation, and condition thereof. All shipping and transportation terms shall be construed in accordance with the rules and regulations of Incoterms 2010 which shall be incorporated into this Purchase Order, except insofar as they conflict with any other express provisions of the Purchase Order.

**4. Warranties.** Seller expressly warrants and represents to Buyer, Client, and/or Owner/User of the Work as follows:

- (a) The Work shall be new and of merchantable quality, free of defects in design, engineering, materials, and workmanship, free of rights of third parties, free of all liens and encumbrances, and fit for the purpose intended as shown or implied from the specifications which are part of the Purchase Order. The Work shall comply with good and sound design/engineering practices and shall comply in all respects to the Law, shall be of good workmanship and quality, and shall conform in all respects to the specifications, drawings, performance guarantees, and requirements of the Purchase Order. Unless otherwise stated in the Purchase Order, The above warranties will be in effect for a period of the longer of (i) eighteen (18) months from the date such products are used or placed in operation and such services are performed and (ii) the standard warranty period provided by Seller for such products and/or services or twenty-four (24) months after the date of completion of delivery of all components of the Work, including documentation, or in the event of latent defects or non-conformities, within the time

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periods established by applicable Law. All repairs or replacements shall carry an additional warranty of not less than (12) months after the date of the repair or replacement. If Seller does not replace, repair or re-perform, as applicable, within a reasonable time after notice, Buyer may do so at seller's expense. This warranty shall not prevent or otherwise limit Buyer from enforcing any legal guarantees or warranty rights or remedies under applicable Law.

- (b) Professional services provided shall comply with the highest engineering standards and practices and shall conform in all respects to the specifications, drawings, and requirements of the Purchase Order.
- (c) The use and sale of the Work will not infringe any patent, design, trademark, name, copyright, trade secret or other intellectual property right. In the event of patent infringement, in addition to other remedies of Buyer, Seller shall, upon the written consent of Buyer, either replace or modify the Work to the extent required to avoid infringement, or procure an irrevocable, royalty-free license to use, modify, repair and maintain the Work at the plant site of the Project. The foregoing indemnity shall not apply to the extent of any designs and engineering provided by Buyer in connection with the Work.
- (d) The Work will be adequately contained, packaged, marked and labeled in compliance with all applicable laws and regulations, and that instructions and information, including but not limited to, Material Safety Data Sheets, required by Law or necessary for the safe and proper use of the Work, will be provided to Buyer.

5. **Breach of Warranty.** In the event of defects and nonconformities in the Work, Seller will, at Buyer's option and at Seller's expense, either repair or replace same without delay. In the event that the making of such repairs or replacements requires the field removal of materials and equipment and/or the uncovering, reinstallation, and/or recovering of any Work in place, same shall be done at Seller's expense. Seller shall also be responsible for all indirect costs (including, but not limited to, transportation costs) associated with repair or replacing of defective equipment, materials or supplies. In the event that the Seller requests Buyer to return the materials and equipment (or any parts or components thereof) to Seller, Buyer will do so in conformance with Seller's instructions and at Seller's expense. In the event that Seller fails to repair or replace defects or nonconformities within a reasonable period of time, Buyer, may at its sole option, repair or replace the defects or nonconformities and recover all costs from Seller. The foregoing remedies are cumulative and are in addition to any other remedies available to Buyer at law, in equity or under the Purchase Order.

6. **Indemnity.** SELLER AGREES TO INDEMNIFY, DEFEND AND HOLD INDEMNIFIED PARTIES FREE AND HARMLESS FROM ANY AND ALL ACTUAL OR ALLEGED LIABILITY, EXPENSES, CLAIMS, LOSSES, LITIGATION COSTS (ATTORNEYS' FEES, EXPERT WITNESS FEES, ETC.) WHICH IN ANY MANNER ARISE OUT OF, RELATE TO, OR ARE CONNECTED WITH THE PERFORMANCE OF THE WORK BY SELLER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, AND SUPPLIERS, INCLUDING BUT NOT LIMITED TO, DAMAGES ARISING OUT OF PERSONAL INJURY OR DEATH TO ANY PERSON (INCLUDING BUT NOT LIMITED TO EMPLOYEES OF SELLER, ITS SUBCONTRACTORS OR SUPPLIERS), PROPERTY OR ENVIRONMENTAL DAMAGE, VIOLATION OF LAW, OR OTHERWISE, EXCEPT ONLY FOR CLAIMS

PROXIMATELY RESULTING FROM THE SOLE NEGLIGENCE OF INDEMNIFIED PARTIES. TO THE EXTENT THAT ALL OR ANY PART OF THIS PARAGRAPH VIOLATES APPLICABLE LAW, THIS PARAGRAPH SHALL NEVERTHELESS REMAIN OPERATIVE FOR THE EXPRESSED PURPOSES AND SHALL BE ENFORCED TO THE FULLEST EXTENT AS MAY BE ALLOWED BY LAW.

SELLER AGREES, AT SELLER'S EXPENSE, TO PROTECT, INDEMNIFY, AND DEFEND INDEMNIFIED PARTIES FROM ANY AND ALL CLAIMS, DEMANDS, OBLIGATIONS, LIABILITIES, LOSSES, INJURIES, DAMAGES, COSTS, EXPENSES, ATTORNEYS' FEES, CAUSES OF ACTION, SUITS AND/OR JUDGMENTS ARISING OUT OF THE INFRINGEMENT OF ANY PATENT, DESIGN, TRADEMARK, NAME, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT.

SELLER WILL INDEMNIFY AND SAVE INDEMNIFIED PARTIES HARMLESS FROM ALL LIABILITY ARISING FROM SELLER'S FAILURE TO MAKE ANY PAYMENTS FOR TAXES, DUTIES, AND PERMITS.

7. **Insurance.** Prior to performing any activities hereunder, Seller will obtain, and thereafter maintain at all times, the minimum insurance coverage and limits as set forth in Attachment A.

TO THE FULLEST EXTENT POSSIBLE, SELLER AGREES TO A WAIVER OF SUBROGATION IN EACH OF THE INSURANCE POLICIES PROVIDED BY SELLER HEREIN OF ALL RIGHTS OF RECOVERY AGAINST INDEMNIFIED PARTIES, REGARDLESS OF THE CAUSE OF THE LOSS OR DAMAGE AND REGARDLESS OF FAULT. INDEMNIFIED PARTIES SHALL BE NAMED AS ADDITIONAL INSURED IN EACH OF SAID INSURANCE POLICIES. THE COVERAGE AFFORDED SAID ADDITIONAL INSURED SHALL APPLY AS PRIMARY INSURANCE AND NOT REQUIRE CONTRIBUTION FROM SIMILAR INSURANCE COVERAGE MAINTAINED BY INDEMNIFIED PARTIES AND SHALL PROVIDE FOR A SIXTY (60) DAY NOTICE TO BUYER OF CANCELLATION. SELLER SHALL PROVIDE AN INSURANCE CERTIFICATE EVIDENCING SAID COVERAGE WHICH SHALL BE A CONDITION PRECEDENT TO PAYMENT UNDER PARAGRAPH 21.

8. **Delivery Schedule.** Strict compliance with the delivery dates set forth in this Purchase Order shall be considered a material obligation of Seller hereunder. A monthly production schedule referencing the Purchase Order number shall be submitted to Buyer by the 10th of each month unless otherwise provided in the Purchase Order. Buyer shall be notified immediately of any deviation from the stated schedule. Time is of the essence hereof. If any products are not delivered within the time specified in this order, or within a reasonable time if no time is specified, Buyer may either (i) refuse to accept such products and terminate this order, or (ii) cause Seller to ship the products by the most expeditious means of transportation whereupon any additional transportation charges in excess of those which would apply for the usual means of transportation shall be for the account of Seller, or (iii) Buyer may procure replacement products or services and Seller will be responsible for all costs incurred by Buyer as a result of such late deliveries. If delays are due to Seller, Seller shall take necessary acceleration measures, including, but not limited to, working multiple shifts, overtime, using special transportation as required by the Buyer, all at Seller's cost. Seller shall also pay any additional supervision,

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monitoring or support costs incurred by Buyer as a result of the delay. The failure of Seller to comply with the delivery schedule, accelerate its performance if requested, or to provide adequate assurance of compliance with the delivery schedule shall be sufficient basis for Buyer to cancel this Purchase Order for cause per paragraph 18.

**9. Liquidated Damages for Late Delivery.** This paragraph shall be applicable only if the text of the Purchase Order provides for liquidated damages for late delivery. In such event Buyer shall be entitled to demand, as liquidated damages from Seller for the period of the delay beyond the scheduled delivery date, the liquidated damages set forth in the text of the Purchase Order. In the event that Seller continues to fail to deliver after the expiration of the period when liquidated damages are assessed, or if Seller fails to give adequate assurance of delivery within said period, or if Buyer is required to ship by any expedited means, Buyer reserves the right to claim such additional damages or losses as may be allowed by Law.

**10. Taxes, Duties, and Permits.** Seller shall pay all applicable income and other taxes imposed generally on Seller's business operations, and foreign and/or United States federal, state or local income, franchise, payroll (including Medicare, FICA, unemployment taxes, and other employee mandated withholding taxes for employees of Seller or its subcontractors, vendors, or suppliers), import duties, custom fees, value added taxes, and sales/use taxes on equipment, machinery, tools, consumables, supplies and systems, purchased, owned, rented, or leased by Seller or its subcontractors, vendors, and suppliers for use in accomplishing the Work. The aforementioned taxes are included in the prices set forth in the Purchase Order and Seller shall remit same directly to the appropriate taxing authorities. Buyer shall pay state and local sales or use taxes in the U.S.A. (unless otherwise exempt) normally imposed on Buyer to the extent applicable to Buyer's purchase of materials or services from Seller associated with the Work, and said taxes shall separately itemized in all invoices presented to Buyer and are included in the prices set forth in the Purchase Order. Seller shall not invoice any taxes where Buyer has "direct pay" permit. Seller shall not invoice taxes with rate exceeding the rate specified in Buyer's Purchase Order. Seller shall obtain all permits, authorizations, registrations, or approvals from any governmental authority as may be required to execute the Work at the expense of Seller which costs are included in the Purchase Order price.

**11. Variation Orders.** The Purchase Order price is firm and not subject to any cost extras or escalation. No additional charges of any kind by Seller are authorized other than as provided in a variation order issued in writing by Buyer. Buyer reserves the right to make changes or modifications to the Work from time to time, including, but not limited to, scope and delivery schedule. If any such change initiated by Buyer has an effect upon the Purchase Order price or delivery schedule, or if Seller encounters an event or condition which Seller believes may entitle Seller to a change in price or delivery schedule, Seller must submit to Buyer a request for variation order in writing within ten (10) Days thereafter on a prescribed variation order request form which shall be provided by Buyer. The request for variation order shall specify the total monetary amount claimed by Seller and, if Seller claims an extension to the delivery schedule, said request shall specify the number of days extension requested supported by a critical path analysis. Failure to utilize said prescribed variation order form and submission within said ten (10) Day period shall operate as a waiver of Seller's right to request a variation order for cost extra or extension to the delivery schedule. The parties may agree under appropriate circumstances to provide additional time to submit supporting

documentation and analysis provided Buyer has submitted the initial notice on the prescribed form within said ten (10) Day period. Buyer's representative at the project site has no authority to approve variation order requests other than to acknowledge that the Work was completed. Seller shall have no right to suspend or delay its performance hereunder while Buyer is reviewing Seller's request for a variation order or if Buyer fails to approve any such request. Seller agrees that suspension of performance or delay by Seller under such circumstances shall be considered a material breach of this Purchase Order by Seller. In the event of failure to agree, Seller shall continue performance of the Work if requested by Buyer, and, if not resolved amicably, said dispute shall be submitted to arbitration at the conclusion of the Work. No claim for damages or costs of any nature shall be made or asserted by Seller by reason of delays or interference from any cause whatsoever, and Seller's sole remedy for such delays shall be an application for an extension of time, provided however, that this clause shall not apply to delays or interference caused by Buyer's bad faith or willful or malicious conduct or Buyer's abandonment or material breach of the Purchase Order. Upon the issuance and acceptance by Buyer and Seller of a variation order, Seller hereby fully and completely waives, releases and discharges Company Group, and Client and/or Owner/User from (1) all further claims for extension to the delivery schedule or further equitable adjustments, direct or indirect costs, inefficiencies, disruptions, or expenses related to, or arising out of the facts and circumstances associated with any given issued variation order and (2) for any and all cumulative impact or ripple effect in combination with other variation order requests, or issued variation orders, whether past, present, or future. **NO COST EXTRAS WILL BE PAID OR WORK AUTHORIZED EXCEPT PURSUANT TO A WRITTEN VARIATION ORDER SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER AND ISSUED FROM BUYER'S HOME OFFICE.**

**12. Inspection and Quality Control.** Seller represents that it has instituted a quality control/quality assurance program capable of providing the finished goods to quality required and in compliance with contract specifications. If requested, Seller shall provide written documentation regarding Seller's quality control program. Buyer shall be entitled at any time to inspect and examine the Work at Seller's or its subcontractor's facilities. If any tests are to be performed, Buyer shall be given at least 10 days advance written notice so that Buyer may exercise its option to witness said tests. Seller shall advise Buyer or his nominated inspection representative ten (10) days in advance of the date of shipment of the Work to allow for final inspection or for performance tests, if required. The Work is also subject to inspection by Client and Owner/User at any time. Review and/or approval of drawings, designs or technical information provided by Seller, or inspection, waiver of inspection, or failure to properly inspect the Work, by Buyer or Client and/or Owner/User, shall in no event operate as an acceptance of the Work or as a waiver of any rights of Buyer with respect to defects therein, or in any way release Seller from responsibility to conform to the Purchase Order requirements, specifications, warranties, and good workmanship. Seller shall not be released from its contractual or warranty obligations with respect to said Work by virtue of acceptance or review/approval, final payment, inspection, or waiver of inspection.

**13. Acceptance; Title and Risk of Loss.** Except as otherwise expressly provided in this order, acceptance of any of the products and or services shall not occur until Buyer has been given a reasonable opportunity to inspect and test such products and services after arrival at destination or after completion of installation or completion of the services, if Seller is obligated to install the

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products or perform any services. Buyer may reject any non-conformance or defective products at any location at which Buyer discovers the non-conformance or defect in the products or services, if Seller fails to promptly correct said non-conformance or defect after being given the opportunity to do so. Seller shall pay the cost of inspecting and testing of products rejected and all transportation charges thereon. Except as otherwise mutually agreed in writing, delivery will occur, and title and risk of loss will transfer, when: (i) with respect to products not incorporated into services, products are accepted and are placed in operation or into Buyer's storage facility; and (ii) with respect to product incorporated into services, the completed services have been accepted by Buyer.

14. **Confidentiality.** All specifications, data, drawings, and information which are supplied by Buyer to Seller in connection with this Purchase Order shall remain the property of Buyer, and shall not be disclosed to third parties or used for any purpose other than the performance of the Work under the Purchase Order. All of said information, including all copies thereof, shall be returned to Buyer upon request.

15. **Seller Drawings/Work Product.** All equipment, parts, drawings, technical data, engineering, or designs comprising the Work under this Purchase Order prepared or provided by Seller shall be considered work for hire ("Work Product"). Title to, and full and unrestricted ownership of all of said Work Product shall at all times be and remain vested exclusively in Buyer, including all intellectual property rights, copyrights, and/or patent rights associated therewith, notwithstanding any proprietary legends or confidentiality or other notices provided by Seller to the contrary. All such information comprising the Work Product shall be delivered by Seller promptly upon completion of performance of the Purchase Order. Seller shall assign to Buyer during and subsequent to its engagement all right, title, and interest to the Work Product and Seller shall sign and/or obtain the signatures of its agents or employees including agents or employees of subcontractors, vendors, and suppliers on all documents necessary to assign to Buyer all patent and intellectual property rights and to obtain for the benefit of Buyer all patents, copyrights, or other intellectual property rights in the name of Buyer.

Any errors, discrepancies or conflicts in the Purchase Order, attachments, or any other technical documents and drawings which are discovered by Seller shall be immediately brought to Buyer's attention for written clarification. Any costs or expenses resulting from failure to follow this procedure shall be borne by Seller. Buyer's approval or failure to approve Seller's Drawings, Specifications and Documents is strictly for the convenience of the Buyer and does not in any way excuse the Seller from compliance with the terms and conditions set forth in the Purchase Order. Any repair or re-work as a result of the errors in Seller's technical document and/or drawings, at Buyer's option, shall be performed by Buyer or Seller, at the cost of Seller.

16. **Termination/Suspension.** Buyer may terminate all or any part of this Purchase Order at any time upon written notice to Seller(i) for convenience, (ii) if Seller fails to complete or deliver any part thereof when required, (iii) if Seller is in breach of any material term of this order, or (iv) if Seller is insolvent, makes a general assignment for the benefit of creditors, has any proceeding brought by or against it seeking any reorganization, rearrangement, composition, readjustment, liquidation, dissolution, or similar relief, under the present or any future bankruptcy or other statute, law or regulation. If terminating for convenience, Buyer will pay Seller termination charges equal to the cost of materials and labor incurred (and not otherwise

mitigated) on ordered products or services prior to the date of Buyer's termination notice; provided Seller takes all steps reasonably necessary to mitigate such costs. Seller will notify Buyer of the actual termination charges within thirty (30) days after termination. If termination is due to a failure of completion or delivery or breach of any material term of the order, or insolvency or other bankruptcy event described above, no termination charges will apply and Buyer may procure substitute products or services and Seller will be liable to Buyer for any excess costs incurred by Buyer. In such event the Purchase Order price shall be equitably adjusted. Payment shall be limited to the part of the Purchase Order price corresponding to the work performed until such termination or suspension. Seller shall not be entitled to compensation for anticipated or prospective profits on work unperformed or materials or equipment unfurnished, or indirect or consequential losses. In no event shall Buyer be liable for anticipated or prospective profits on work unperformed or materials and equipment unfurnished, or indirect or consequential losses. In no event shall Buyer's liability exceed the Purchase Order price. In the event Buyer requests that delivery of materials be delayed, Seller agrees to withhold delivery for a period of 90 days after scheduled delivery date or the date when the Work is ready for shipment, whichever is later, without assessment of storage charges or other costs or expenses against Buyer.

17. **Waiver of Liens.** Unless otherwise waived in the Purchase Order, as a condition of any progress or final payments to Seller, Seller, and its subcontractors, suppliers, and vendors, shall execute and provide waivers of lien in the form and in accordance with the procedures as approved in the state in which the Work will be installed, or in the form as attached to the Purchase Order. To the extent of receipt of payment with respect to any progress or final payment, SELLER HEREBY WAIVES THE RIGHT TO FILE A MECHANICS OR MATERIALMAN'S LIEN, OR CLAIM OR RIGHT OF SUCH LIEN WHICH NOW EXISTS OR MIGHT OTHERWISE ARISE BECAUSE OF THE LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED UNDER THIS CONTRACT. In the event that any such liens are filed by Seller, or its subcontractors, suppliers or vendors, Seller agrees to remove same by posting bond or otherwise, and shall indemnify and save harmless Indemnified Parties from all costs and expenses, including reasonable attorneys' fees, incurred by Indemnified Parties in connection therewith. Buyer reserves the right to pay any of said subcontractors, suppliers, or vendors directly and deduct said amount from any payments or retainage otherwise due Seller.

18. **Transportation Charges.** Except as otherwise mutually agreed to in writing, (a) where transportation charges are separately charged to Buyer by Seller, such charges shall in no event exceed the lowest legal freight charges via the carrier or routing specified herein, in effect on the date of shipment, and (b) where transportation charges are allowed to Buyer by Seller, such allowance shall not exceed the actual freight charges paid by Buyer.

19. **Packing and Shipping.** DO NOT SHIP WITHOUT WRITTEN AUTHORIZATION AND SHIPPING INSTRUCTIONS FROM BUYER. No partial shipments allowed unless authorized in advance by Buyer in writing. Seller is responsible for adequate crating, blocking, packaging and/or other proper preparation for shipment to prevent damage and deterioration at no additional cost to Buyer. All oversized shipment shall be designed for self-supporting during transportation, loading, and off-loading. If this Purchase Order involves export shipment, the Work shall be suitably packaged to have the capability of being off-loaded and loaded onto the ship and otherwise handled for ocean shipment, and to be protected during ocean shipment

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against physical and environmental damage or loss, including, but not limited to, damage caused by humidity, moisture, rain, dust, sand, mud, salt air, salt spray and seawater. Any bare steel materials shall be coated with a preservative as part of export packaging. Seller shall be liable for any expense, loss or damage arising from failure to follow these instructions, including any costs of repairs/replacements of damaged Work and/or costs of repackaging the Work. **UNLESS OTHERWISE SPECIFIED IN THE SHIPPING TERMS SET FORTH IN THE BODY OF THE PURCHASE ORDER, SELLER SHALL BEAR ALL RISK OF LOSS OR DAMAGE UNTIL RECEIPT AT THE NAMED DESTINATION WITH ALL FREIGHT COSTS, INSURANCE, PACKAGING AND OTHER EXPENSES TO THE NAMED DESTINATION TO BE BORNE BY SELLER AND INCLUDED IN THE PURCHASE ORDER PRICE.**

20. **Weather Protection of Equipment.** Seller must take all appropriate measures to protect Work or components thereof against weather damage during all phases of fabrication, storage, and delivery, and, if applicable, field installation. Seller shall indemnify Buyer from all costs and expenses and damages to the Work resulting from the failure to take such measures.

21. **Invoices, Payment, Security, and Retainage.** Unless otherwise stated in the Purchase Order, payment terms shall be 100 per cent net within ninety (90) days after final shipment and acceptance of the Work and receipt of acceptable invoices by Buyer. In the event of progress payments if stated in the Purchase Order, Buyer shall withhold 10% of each payment as retainage which retainage shall be released at time of final acceptance, net of any monies owed to the Buyer under the terms of the Purchase Order. Buyer reserves the right to require additional security for the performance of Seller's obligations, including cash holdbacks, bank guarantees, letters of credit, or performance bonds. Invoices with identifying Purchase Order number shall be submitted to Buyer in three (3) copies, including bills of lading or proof of shipment, a complete itemized packing list, and such other information as required by Buyer or as requested in the Purchase Order. For off-shore purchases involving ocean shipments, (5) copies of invoices, (2) copies of the clean on-board bill of lading as well as (2) non-negotiable copies of the bill of lading, and a complete itemized packing list for each package of each shipment is required. Invoices shall bear date of actual shipment. Discounts shall run from date of actual receipt of acceptable invoices from Seller. When freight is prepaid by Seller and chargeable to Buyer, freight bills must accompany invoices. Unless otherwise stated in the Purchase Order, Seller shall prepare all invoices for submission to Buyer with a separately stated breakdown of cost as follows; (1) Services (examples include basic and detail engineering, design services, project management services, transportation costs, etc.), (2) materials/equipment provided by Buyer, and (3) labor associated with manufacture, fabrication, or processing of materials/equipment provided by Buyer. Invoices not conforming to this paragraph shall not be accepted and shall be returned to Seller. The time period for payment shall commence upon receipt of the corrected invoice. **NO INVOICES WILL BE PAID UNTIL BUYER HAS RECEIVED A SIGNED ACKNOWLEDGMENT COPY OF THE PURCHASE ORDER.**

Seller shall not assign, sub-contract or transfer this Purchase Order in whole or in part without previous written approval of Buyer.

22. **Material Provided by Buyer.** Upon receipt of Buyer's property, Seller shall provide a written "Receiving Record" within (3) working days of receipt. This record shall indicate the date of receipt, quantity received, a description

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of items and indication of any apparent damage at time of delivery to Seller. Seller shall bear all risk of loss of Buyer's property while in Seller's possession and shall supply evidence of adequate property insurance coverage upon request.

23. **Security Interest.** As security for any and all advance payments made by Buyer, and/or equipment/materials of Buyer received by Seller to be incorporated into said Work, if any, Seller agrees that Buyer shall retain and maintain a security interest in the Work upon identification to the Purchase Order. Seller shall segregate and identify said items purchased, equipment/materials advanced, or work in progress, as being the property of Buyer and Seller shall not assign, sell, transfer, lease, pledge, discount, encumber, or otherwise hypothecate same without the prior written consent of Buyer. Seller consents to the execution of financing statements by Buyer necessary to perfect the security interest herein granted. Said security interest shall include all proceeds arising from the sale, lease, or transfer of said Work.

24. **Force Majeure.** Any delay in or failure of performance by either party hereto shall be excused if and to the extent caused by a "Force Majeure Event". A Force Majeure Event is an occurrence beyond the reasonable control and without the fault or negligence of the party affected and for which the affected party is unable to prevent or provide against by the exercise of reasonable diligence or foresight which shall include acts of God or the public enemy, terrorist attacks, landslides, expropriation or confiscation of facilities, law, (civil) war, rebellion, sabotage or riots, earthquakes, floods, hurricanes, fires, explosions, or other catastrophes. As follows are examples of occurrences which would not be deemed a Force Majeure Event and would not operate to extend the delivery schedule: (1) breakdown in machinery or equipment used to perform the Work; or (2) difficult weather conditions, such as extended rain events or wind storms, snow, and ice, which could be reasonably expected to be encountered, or (3) strike or labor conflict, or (4) insolvency or failure or inability to pay its debts by Seller or its subcontractors, vendors, and suppliers, or (5) shortages, delays, or inability to obtain labor, services, materials, or equipment, unless caused by conditions that constitute a Force Majeure Event. In the event Seller by reason of a Force Majeure Event is rendered unable to perform any of its obligations or comply with any conditions under the Purchase Order, Seller shall give written notice to Buyer not later than three (3) Days after the occurrence of such Force Majeure Event, with a description of the particulars of the Force Majeure Event, including the estimated duration and the effect thereof and the probable impact on the delivery schedule. Seller shall use reasonable and diligent efforts to remedy, eliminate, and/or mitigate the effects and consequences thereof with all reasonable dispatch. The time for Seller's performance may be extended, but such relief shall be conditioned upon Seller's initial and continued satisfaction of the notice, reporting, remedy and mitigation, and other requirements of this paragraph in relation to said Force Majeure Event. Under no circumstances shall Seller be entitled to any compensation or damages of any kind or character by virtue of a Force Majeure Event, other than an extension of time for performance submitted under paragraph 10 which shall be Seller's sole remedy. Buyer shall be entitled at its option to cancel this Purchase Order at any time if the duration of the Force Majeure Event is expected to extend more than thirty (30) days.

25. **Independent Contractor.** It is the express intention of the parties hereto that at all times the status of Seller shall be that of an independent contractor, and the relationship of Buyer and Seller shall in no event be construed to be that of principal and agent or master and servant or be

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considered a joint venture for any purpose. Buyer shall not have authority to control the means and details of the Work or supervise and instruct Seller's employees, representatives, or subcontractor, vendors, or suppliers. Seller acknowledges that it has the duty to provide continuous adequate supervision of its personnel and subcontractors, suppliers, and vendors in connection with the performance of the Work.

26. **Anti-Discrimination.** Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

27. **Export Control.** Seller agrees to fully comply with all applicable United States export control laws, regulations, and orders as amended, and the export and/or import control laws and regulations of other countries. If applicable, Seller assumes responsibility for obtaining any export license or other approvals. Seller agrees to notify Buyer in advance if any deliverable under this Purchase Order or method of transportation is restricted or prohibited by any export control laws or regulations. SELLER SHALL INDEMNIFY AND DEFEND BUYER FROM ALL COSTS, EXPENSES, PENALTIES, ACTIONS, CLAIMS, OR LIABILITIES, INCLUDING ATTORNEYS' FEES, ARISING FROM A VIOLATION OF THE PROVISIONS OF THIS CLAUSE. To the extent that all or any part of this paragraph violates applicable or local law, this paragraph shall be enforced to the fullest extent as may be allowed by law.

In this document, "Law(s)" means the latest revision or enactment of all valid applicable laws, rules, regulations, standards, codes, charter, act, statute, ordinance, code, regulation, final judgment, decrees, order of court, or legislative or administrative action, issued by any national, supranational, federal, state, municipal, or local governments or any legislative or administrative action of any agency, department, authority, political subdivision or other instrumentality thereof having jurisdiction over Seller or the Work including, but not limited to, all those pertaining to transportation, labor, safety, health, packaging, labeling, environmental, material, manufacturing, workmanship, design, engineering, fabrication, installation, or otherwise applicable to the performance of the WORK. Law(s) shall include specified standards or objective criteria contained in any applicable permit or approval (which standards or criteria must be met in order for the Work to be performed or operated lawfully) and professional engineering standards applicable to the Work. Law(s) also includes, but is not limited to, FAR 52.219-8 "Utilization of small business concerns", FAR 52.222-26 "Equal opportunity"; FAR 52.222-35 "Equal opportunity for disabled veterans and veterans of the Vietnam era"; FAR 52.222-36 "Affirmative action for workers with disabilities"; FAR 52.222-39 "Notification of employee rights concerning payment of union dues and fees"; and FAR 52.247-64 "Preference for privately owned U.S.-flag commercial vessels."

28. **Governing Law and Dispute Resolution.** ALL CLAIMS, DISPUTES AND OTHER MATTERS IN QUESTION ARISING OUT OF, OR RELATING TO, THIS PURCHASE ORDER OR THE BREACH THEREOF, SHALL BE DECIDED BY BINDING ARBITRATION IN ACCORDANCE WITH THE

CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, TO BE HELD IN TULSA, OKLAHOMA, U.S.A. Notice of the demand for arbitration shall be filed in writing with the other party or parties to this Purchase Order and with the American Arbitration Association. In no event shall the arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Any decision or award rendered by at least a majority of the arbitrators shall be final and judgment may be entered upon it under the Federal Arbitration Act or state law as may be applicable. The Purchase Order shall be governed by and construed in accordance with the laws of the State of Oklahoma excluding the law of conflict. The UN Convention for the international sale of goods shall not apply. Seller consents to the venue and personal jurisdiction of Oklahoma federal or state courts exclusively to adjudicate disputes arising out of this contract or to enforce the provisions of this arbitration clause.

29. **Corporate Responsibility**

- (a) Seller shall comply with the requirements of the 'Code of Conduct for the Linde Group, a copy of which may be found at [Linde's website](#) (hereinafter referred to as "Code of Conduct").
- (b) Seller shall demonstrate compliance with the requirements of the Code of Conduct at the request and to the satisfaction of Buyer by providing data or conducting self-assessments.
- (c) If Buyer has reason to believe that Seller may be in material breach of the requirements laid out in the Code of Conduct, Buyer or a third party appointed by Buyer may conduct inspections at Seller's premises in order to verify Seller's compliance with the requirements of the Code of Conduct. Buyer 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 Seller's business activities nor violate any of Seller's confidentiality agreements with third parties. Sellers shall reasonably cooperate with any inspections conducted. Each party shall bear its own expenses in connection with such inspection.
- (d) In addition to any other rights and remedies, if Seller is in material breach of the Code of Conduct or fails to remedy any breach, after written notification about the breach by Buyer, Buyer shall have the right to terminate the Purchase Order without any liability whatsoever.
- (e) Material breaches include, but are not limited to, incidents of forced or child labor, corruption and bribery, and failure to comply with the Code of Conduct's environmental protection requirements.

30. **NO GRATUITY; FCPA.** Neither party will offer or give any gratuity to induce any person or entity to enter into, execute or perform any term or condition of this order or any other agreement between the parties. Each party further represents that it has knowledge and understanding of the Foreign Corrupt Practices Act of the United States of America ("FCPA"), and that no principal, partner, officer, director or employee of Seller is or will become an official of any governmental body of any country (other than the U.S.) in which Seller provides Products for Buyer during the term period which this order covers. Each party agrees that it shall not, in the conduct of its performance under this order, and with regard to any funds, assets, or records relating thereto, offer, pay, give, or promise to pay or give, directly or indirectly, any payment or gift of any money or thing of

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value to (i) any non-U.S. government official to influence any acts or decisions of such official or to induce such official to use his influence with the local government to effect or influence the decision of such government in order to assist that party in its performance of its obligations under this order or to benefit the other party; (ii) any political party or candidate for public office for such purpose; or (iii) any person if that party knows or has reason to know that such money or thing of value will be offered, promised, paid, or given, directly or indirectly, to any official, political party, or candidate for such purpose. Seller shall defend, indemnify, and hold harmless Buyer, from and against any and all claims, losses, damages, expenses and liabilities, including attorney fees, arising from the failure of Seller to comply with the FCPA. In addition in the event Seller violates the FCPA, Buyer may terminate this order, without liability and the order shall in the event of termination by Buyer be rendered void.



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**ATTACHMENT A**

**MINIMUM INSURANCE REQUIREMENTS**

Seller shall purchase and maintain in full force and effect, at its own expense, the following minimum insurance coverages and limits:

(a) Statutory Worker's Compensation and Employer's Liability Insurance with minimum limits of not less than indicated below:

Required Limits – Statutory limits, with Employer's Liability Coverage as follows:

Bodily Injury by Accident	\$5,000,000.00
Bodily Injury by Disease Each Employee	\$5,000,000.00
Bodily Injury by Disease Policy Limit	\$5,000,000.00

The policy must be in the name of the Seller or contain an endorsement naming Owner as the Alternate Employer.

(b) Commercial General Liability Insurance, including the coverages identified below, with minimum limits indicated below:

Each Occurrence	\$5,000,000.00
General Aggregate	\$10,000,000.00

The Commercial General Liability Policy will include the following coverages where applicable:

- Bodily injury & Property damage on an "Occurrence" basis
- Premises & Operations
- Independent Contractors
- Personal Injury Liability

(c) Business Automobile Insurance for all owned, non-owned, and hired vehicles with minimum limits indicated below:

Combined Single Limit BI & PD	\$5,000,000.00
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(d) Professional Liability/Errors and Omissions Insurance for any engineering, architectural and/or design Work with minimum limits indicated below:

Required Limits	\$1,000,000.00
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(e) Environmental Liability Insurance with minimum limits indicated below:

Combined Limit	\$5,000,000.00
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2. Each of Seller's liability insurance policies shall be primary to and non-contributing with, any other insurance carried by, or for the benefit of the Buyer. Insurance may be provided under a single limit policy, or two or more policies with combined limits for the required amount of coverage.

3. Seller's workers' compensation, employers' liability, commercial automobile liability, commercial general liability, and excess liability insurance policies shall be endorsed to waive all rights of subrogation in favor of Buyer and its affiliates, and their shareholders, directors, officers, members, employees and agents.

4. Buyer and its employees, officers, directors, owners, advisors, consultants and agents shall be included as additional insureds without limitation on all policies (except workers' compensation), under the form of additional insured endorsement providing the maximum protection to Buyer allowed by applicable law. Further, Seller represents and warrants that: (i) all such policies will be endorsed to reflect thirty (30) days notice of cancellation to Buyer, and Seller shall not cause or permit its insurance to be canceled, non-renewed or invalidated; and (ii) prior to the commencement of [any activities hereunder] Work, Seller shall provide certificates of insurance and policy endorsements as required herein from issuing insurance company(s).

5. All Seller's insurance shall be issued by insurance carriers licensed to do business in all states where work is performed under this agreement. At the time the policy is issued and rated by A.M. Best Company as A-VII or better and confirmed by one or more insurance certificates listing Buyer name and address as a Certificate Holder. Certificates of insurance shall be prepared on an Accord form 25-S or similar form.

6. With respect to any coverage maintained on a "claims-made" policy form, Seller shall maintain such coverage for two (2) years following termination of this Agreement or completion of all Work associated with this Agreement, whichever is later; provided that, if a "claims-made" policy is maintained, the retroactive date must precede the date of commencement of Work under this Agreement.

7. Seller shall not commence Work under this Agreement until Seller has obtained all required insurance and until such insurance has been received and approved by Buyer. Seller's failure to fulfill these insurance requirements within ten (10) days after receipt of Buyer's notice to proceed shall not be considered cause for any adjustment to Seller's compensation or schedule. Buyer's approval of Seller's insurance shall not relieve or decrease the liability of Seller hereunder.

8. If Seller fails to obtain or renew the above required insurance and furnish to the Buyer acceptable evidence thereof, Buyer shall have the right, but not the obligation, to: (i) procure such insurance and reduce the Agreement amount by the cost thereof; or (ii) deem as material breach of this Agreement the Seller's failure to do so.

9. Nothing herein shall reduce or alter any obligation Seller has to indemnify, defend or hold any entity harmless under the Agreement. Limits of insurance required hereby shall not limit Seller's liability in any way.

10. In the event Seller enters into a subcontract with a subcontractor, the Seller will require the subcontractor to procure at a minimum all insurance specified to be carried by the Seller, in the like form specified herein.

11. Seller and, as applicable, its Subcontractors shall bear all risks and be responsible for any uninsured loss due to policy deductibles, self-insured retentions, exclusions, limitation inadequacy and/or absence of coverage, whether such policies are purchased by Seller, Subcontractor and/or Buyer.