



## CONDITIONS OF PURCHASE FOR SUPPLY CONTRACTS

(Issue: April 2019)

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### 1. Definitions

- 1.1 "Buyer" shall refer to the Linde entity entering into the Order with the Vendor, being either Linde Aktiengesellschaft Linde Engineering, having its business address at Dr.-Carl-von-Linde-Strasse 6-14, 82049 Pullach, Germany, or its branch Schallchen, having the business address at Carl-von-Linde Str. 15, 83342 Tacherting, Germany, or its office Dresden, having the business address at Bodenbacher Str. 80, 01277 Dresden, Germany, or Selas-Linde GmbH having its registered office in

Wolfratshauser Str. 138, 82049 Pullach, Germany. Buyer shall also be referred to herein as "Party".

- 1.2 "Order" shall mean the formal documents comprising the contractual agreements between the Buyer and the Vendor concerning the Ordered Items, including these Conditions of Purchase, irrespective of whether these documents are signed or not. Such documents shall be sent by Buyer to Vendor as original hardcopy, as e-mail attachment, via internet or otherwise. The term "Order" shall also comprise any supplements to the Order referred to.
- 1.3 "Ordered Items" shall mean the supplies and services to be provided by the Vendor according to the Order.
- 1.4 "Owner" shall refer to the client of the Buyer for the Plant for which the Ordered Items is intended.
- 1.5 "Plant" shall mean the overall plant to be supplied to the Owner by the Buyer and for which the Ordered Items is intended.
- 1.6 „promptly“ shall mean without undue delay (*ohne schuldhaftes Zögern*).
- 1.7 "Subcontractor" shall mean a natural or legal person, whom the Vendor uses to fulfil its obligations of the Order. The Subcontractor is a third party in relation to the Order.
- 1.8 "Vendor" shall refer to the contractual partner to which the Order has been awarded by the Buyer and shall also be referred to herein as "Party".
- 1.9 "written" or "in writing" shall refer to a document signed by hand which is transferred by letter (including courier), telefax or e-mail attachment.

### 2. Requirements for design, construction and operation of the Plant

By accepting the Order, the Vendor acknowledges its obligation to take into account all relevant requirements for design, construction and operation



of the Plant when manufacturing and supplying the Ordered Items, and also confirms that the location in which the Plant is situated and the place(s) where the Ordered Items are to be assembled and/or other works on the Ordered Items are to be carried out are known to Vendor.

### 3. Contents of the Order

- 3.1 Any conditions of the Vendor that deviate from or contradict these Conditions of Purchase shall only apply if the Buyer agrees to them in writing or by Order. In particular any references to any other general terms and conditions ("*Allgemeine Geschäftsbedingungen*") in the communications sent and/or in documents produced by the Vendor shall be disregarded and shall be deemed to be obsolete.
- 3.2 Orders and other declarations shall only be binding if they are issued or confirmed in writing by the Buyer or in the form of an Order.
- 3.3 All terms and conditions, specifications, standards and other appendices that are attached to the Order or are listed therein are part of the Order. They shall apply in the following order of precedence:
  - the Order
  - these Conditions of Purchase
  - the Buyer's Packing, Marking and Shipping Instructions
  - the Technical Specifications
  - the General Specifications and the Linde Standards

### 4. Execution of the Ordered Items, subcontracts, approvals, execution of the Order

- 4.1 The Ordered Items shall be executed in full in a manner that ensures that they are fully functioning and safe for operation – taking into account the agreed supply and service exclusions – making it fit for the purpose specified in the Order. Only those supplies and services that are expressly mentioned as such in the Order shall be considered excluded from the Ordered Items.

- 4.2 The Vendor shall carry out the work in a timely manner and in accordance with the requirements of internationally recognised quality management (ISO 9000 et seq. or equivalent).
- 4.3 The Vendor shall supply the technical documentation for all site activities to be performed up to and including the time of commissioning, including the operation and maintenance of the Ordered Items.
- 4.4 The Vendor shall comply with the statutory, official and professional organisation's regulations, recommendations and guidelines (on environmental protection, accident prevention and occupational safety, etc.) that are valid in the location in which the Plant is situated.
- 4.5 If the Vendor has concerns regarding the proposed type of execution, other instructions given by the Buyer, e.g. concerning materials, processing or subcontractors nominated by the Buyer, the quality of materials or equipment provided by the Buyer or the services provided by other contractors, it shall promptly notify the Buyer thereof in writing or by e-mail, if possible before the work begins, and shall develop a solution together with the Buyer.
- 4.6 The Vendor shall only employ Subcontractors with qualifications that can be verified and shall pass on to such Subcontractors any technical and deadline requirements set out in the Order in full. The Vendor shall indemnify and hold the Buyer harmless from any liabilities, claims and fines of third parties or public authorities asserted against the Buyer due to non-compliance with statutory obligations on the part of the Vendor, irrespective of the legal grounds for such claims. In particular, but not limited to this example the Vendor shall, in the event that it uses hired labour, be solely responsible for complying with the applicable laws and regulations regarding temporary employment and for ensuring that the employees used by it and its Subcontractors are in possession of valid work permits.
- 4.7 The Vendor shall pre-assemble the Ordered Items in its workshop as far as is possible and appropriate.
- 4.8 Modifications to the execution of work on the Ordered Items may arise from requirements on the part of the Owner and from the conditions on site. If the Buyer wishes to have these modifications



taken into account by the Vendor without incurring any additional charge, it must have informed the Vendor of these modifications by a reasonable latest date to be specified by the Vendor for this purpose.

- 4.9 The Vendor shall inform the Buyer promptly if it realises that it would have to use a technology, performance value or technical characteristic that is new to it.
- 4.10 If the Vendor requires access to Buyer's IT infrastructure, the Vendor shall obtain Buyer's prior consent in writing or by e-mail and shall comply with Buyer's IT security regulations (Linde Standard LS 940-05 (EN)). The current IT security regulations shall be accessed and consulted on the Internet at "[https://www.linde-engineering.com/en/services/procurement/supplier\\_portal/linde\\_standards\\_for\\_suppliers/index.html](https://www.linde-engineering.com/en/services/procurement/supplier_portal/linde_standards_for_suppliers/index.html)".

## 5. Modifications to the Ordered Items

- 5.1 If the Buyer requests modifications to the Ordered Items, the Vendor shall inform the Buyer promptly in writing of any increase or decrease in price and any effects on the agreed dates and agreed deadlines, backed-up by sufficient proof. The price increase or decrease shall be determined on the basis of the calculation used for the Order. If unit prices have been agreed, the Contractor can only demand an increase in the unit prices in cases in which quantities are reduced if it can furnish evidence of an unreasonable financial burden.
- 5.2 In order to enable the Buyer to react in time within the complex technical and commercial environment of the international business of plant engineering and construction (e.g. coordination of the numerous companies and crafts and reconciliation with Owner), within seven (7) working days of gaining knowledge of any circumstances which the Vendor believes entitles it to increase the Order price or change the agreed dates and/or agreed deadlines, the Vendor shall inform the Buyer in writing about it and lodge such (supposed) claim on the merits at Buyer. Otherwise, any such claim shall be deemed waived by it.
- 5.3 Changes to the Order shall be negotiated by the Parties aiming to a contractual agreement giving

due consideration to mutual interests and the duty of good faith. The Buyer is entitled to postpone the negotiations at the latest until immediately after the fulfilment of the contractual obligations of the Vendor (not including warranty). Once an agreement has been reached on the changes, the Buyer will issue a supplement to the Order setting out the agreed changes and contractual modifications.

- 5.4 The Vendor shall, however, even if changes to the Order have not yet been agreed, promptly proceed to carry out the requested modification based on the terms and conditions of the Order remaining unchanged for the time being.

## 6. Technical documentation

- 6.1 Any change notification or approval by the Buyer in the Vendor's technical documentation shall not release the Vendor from its responsibility for the information contained therein, such as dimensions, design, calculation and function of the Ordered Items.
- 6.2 The Vendor shall advise the Buyer of any changes that it makes to drawings and other documents and shall clearly mark every single change.
- 6.3 In the event that technical documents supplied by the Vendor are incorrect and equipment was manufactured and/or procured elsewhere by the Buyer or the Owner on the basis of such documentation, the Vendor shall correct these technical documents at its expense and reimburse the Buyer for the costs associated with any changes, repairs and/or replacement of such equipment resulting from such errors.
- 6.4 Technical data relating to the Ordered Items which the Vendor generates, collects or measures after delivery, as well as the results of its processing, shall be transmitted to the Buyer promptly.

## 7. Dates, deadlines, liquidated damages

- 7.1 The Vendor shall carry out its own monitoring of the time schedule. The Vendor shall bear sole responsibility for monitoring and directing its Subcontractors to ensure that the agreed dates and agreed deadlines are met and that an up-to-date schedule



showing target status and actual status is available at all times.

- 7.2 The Buyer shall be informed promptly of any potential delays or other problems likely to affect the agreed dates and/or agreed deadlines by e-mail containing the following details: the causes of the delay/causes of the delay risk and forecasted impact on the agreed dates and/or agreed deadlines and acceleration measures planned and already taken including a description of the expected improvement in the scheduling situation. Such notification shall not, however, release the Vendor from its obligation to adhere to the agreed dates and agreed deadlines. If the Vendor culpably fails to submit such a notification, it shall be liable for all damages resulting therefrom
- 7.3 In the event of delays with regard to agreed dates and/or agreed deadlines for which the Vendor is responsible, or in the event of such impending delays, the Vendor shall, promptly after becoming aware of the delay or the risk of delay, take at its own expense the acceleration measures reasonably required to avoid the delay or, if the delay cannot be avoided, to shorten the delay to the greatest extent possible. The acceleration measures include, in particular, increased use of personnel and material resources, multi-shift operations, overtime, work performed on Sundays and public holidays and special shipment(s), which have to be carried out by Vendor upon request of Buyer as far as necessary and reasonable. The Vendor shall also bear the costs for any necessary support taken by the Buyer, as well as appropriate monitoring and control measures taken by the Buyer in connection with the delay and the risk of delay, with remuneration in this regard being paid based on the usual market hourly rates. The provisions set out above shall apply accordingly in the event of reasonable concerns on the part of the Buyer that the Vendor will not fulfil all or some of its obligations arising from, or in connection with, the Order in a timely manner for reasons for which the Vendor is responsible, with the proviso that the acceleration measures are to be taken immediately after notification of the concerns by the Buyer.
- 7.4 If, in spite of receiving a warning, the Vendor fails to take reasonable measures to accelerate the work, or if major damage would occur to the Buyer or to third parties or to the environment caused by the delay or the impending delay, or if the

operational safety of the Plant is at risk due to the delay or the impending delay, then the Buyer may complete himself or have a third party complete the Ordered Items in whole or in part at the expense of the Vendor.

In such event, the Vendor shall also return to the Buyer, at the latter's request, the requested part of the documentation, drawings, plans, data media and other technical documents which were prepared by it and/or its Subcontractors (collectively referred to as the "Work Results") or provided to it (collectively referred to as the "Information Provided") in connection with the Order promptly or at the point in time or milestone specified by the Buyer. With regard to the surrender of the Work Results and Information provided, the Vendor cannot assert any rights of retention or rights to refuse performance.

- 7.5 Liquidated damages and penalties (both "*Vertragsstrafe*") for delays and other contractual obligations can be asserted by the Buyer until the payment of the final invoice, even if no reservation is expressed on acceptance of the Ordered Items. The assertion of any further-reaching claims for damages due to delays is not excluded. Rescission ("*Rücktritt*") or termination shall not affect any claims to payment of liquidated damages, penalties and compensation that have already arisen.

## 8. Force majeure

- 8.1 The Vendor shall not be liable for force majeure. Scenarios in which parts that are decisive for the purposes of meeting deadlines become rejects, delays of its Subcontractors except if caused by force majeure, and any strikes not authorised by the trade union in question shall not constitute cases of force majeure.
- 8.2 The Vendor shall give prompt notice and provide evidence of the start and end of such events, the expected delay and any other consequences. Without such notification with accompanying proof, the postponement of agreed dates and/or agreed deadlines will not be accepted.
- 8.3 The Vendor shall take all reasonable precautions and measures to minimise the effects of force majeure.



8.4 If the force majeure goes on for more than three months, either Party may terminate the Order by written notice. The Buyer shall be entitled to demand the delivery of any parts of the Ordered Items whether completed in full or in part, documents and of any material and equipment intended for the execution of the Order in return for payment of the pro rata price.

## 9. Schedule reviews, quality inspections, tests

9.1 The Buyer, the Owner and their representatives shall be entitled on the Vendor's premises and/or those of its Subcontractors to carry out schedule reviews and quality inspections as well as tests. They shall have access during normal business hours to the workshops and to all drawings and all other documents as necessary for this purpose. The Vendor shall subject its Subcontractors to a corresponding obligation. The Vendor shall only bear its own costs incurred in connection with such reviews, tests and inspections.

9.2 A technical or factory acceptance test or inspection of the Ordered Items shall not be deemed to constitute acceptance by the Buyer in the legal sense.

9.3 The Buyer, the Owner and their representatives shall be entitled to carry out tests (e.g. X-ray and ultra-sound tests) on a random basis. In the event of justified complaints, the Vendor shall bear all costs related to these tests.

A distinctive feature affecting the Ordered Items which, in the reasonable estimation of the Buyer, could pose a direct or indirect risk to other assets, such as life, health, third-party property or the environment, shall entitle the Buyer, the Owner and their representatives to demand that further tests at its sole discretion be performed on the Ordered Items or on parts thereof by the Vendor, or to carry such tests out themselves. The costs of these further tests shall be borne by the Vendor, if a defect is discovered.

9.4 If repeated reviews, tests and/or inspections are necessary in the reasonable estimation of the Buyer because of defects and/or because of delays in production/delivery for which the Vendor is responsible, the Vendor shall bear the costs.

9.5 Testings, inspections, releases or approvals by the Buyer, the Owner or their representatives shall not

release the Vendor from its responsibility or liability for the quality of the Ordered Items, or from its warranty obligation.

9.6 The Vendor shall submit electronically to the Buyer, within one (1) month upon the effective date of the Order if such is agreed, otherwise upon the date of the Order, a time schedule for all of the work on the Ordered Items showing all the main activities in the work from the receipt of the Order to the completion of the contractual obligations in the form of a Gantt chart. This time schedule shall be prepared according to the Buyer's requirements. Updated time schedules shall be submitted electronically by the Vendor, without any corresponding request by Buyer having to be made, to the Buyer monthly. This Gantt chart shall be prepared including a baseline, planned dates as well as actual dates. Furthermore, the Vendor is obliged to submit additional information to the Buyer upon his request to enable Buyer to verify the actual progress of the Order (e.g. unpriced purchase orders of Subcontractors, current photos of manufactured goods etc.).

9.7 If the Vendor wishes to deviate from the Order by moving pre-assembly to other manufacturing facilities, the prior approval of the Buyer will be required.

## 10. Provision of materials or equipment by the Buyer

10.1 If the Buyer or the Owner provide materials or equipment, the Vendor may only use these for the execution of the Order. They shall remain the property of the Buyer or the Owner and as such must be stored separately, labelled, managed, safeguarded and insured by the Vendor as third-party property at its expense. The Vendor shall examine and verify that such materials and equipment are free from defects. Vendor shall be fully responsible for loss of, or damage to, such materials and equipment. The use or installation of materials and equipment provided by the Buyer or the Owner does not release the Vendor from its responsibility or liability for the quality of the Ordered Items or from its warranty obligation.

10.2 Unless the Vendor can prove, for example using recognized drawings and material lists, that material and equipment provided by the Buyer or the Owner has been installed, such material and/or equipment shall be returned to the Buyer. If the



Vendor cannot return such material and/or equipment because it has been lost, substitute materials and/or equipment shall be procured at Vendor's expense. If the materials management is part of Vendor's scope of work, it shall prepare a material administration sheet, showing the description of materials received and, at the very least, information on the date of the material movement (receipt, installation, storage, return) and status, i.e. installed, stored, returned.

## 11. Spare parts

The Vendor shall remain in a position to offer the Buyer spare parts at the latter's request at reasonable prices and according to the conditions of the Order until the end of the normal lifetime of the Ordered Items, but up to 10 years from the date of the Order at the most.

## 12. Shipping, storage

12.1 Partial shipments shall require the express permission of the Buyer and shall be clearly designated as such in the shipping documents. The Vendor shall assume all costs for partial shipments not approved by the Buyer.

12.2 All shipping documents shall duly show the information specified by the Buyer, especially the order no., order item, job no., account code no. as well as dimensions, quantity and weight per item. Buyer's Packing, Marking and Shipping Instructions must be adhered to. The Buyer is entitled to reject deliveries without proper shipping documents, test, inspection or acceptance certificates.

12.3 All supplies shall be suitably packed for shipment, taking into account the intended mode of transport. Any other special packaging regulations agreed in the Order shall also be adhered to. At Buyer's request, the Vendor shall ensure, if necessary by way of a supplementary agreement with the carriers used by it, that the packaging is removed at the time of take-over by the Buyer, transported back to the Vendor or manufacturer and recycled there, all at no cost to the Buyer.

12.4 At the request of the Buyer - even after notification of readiness for shipment - the Vendor shall postpone shipment of the Ordered Items if take-over by the Buyer is temporarily impossible and shall store the Ordered Items appropriately for up to three months at the expense and risk of the Vendor.

If shipment is the event triggering payment, this event shall be deemed to have occurred at the start of the storage period. Any due instalment shall, however, only be paid in return for the premature transfer of title in the Ordered Items to the Buyer based on a contract form provided by Buyer.

## 13. Taking Over, tests, passing of risk

13.1 On occasion of the acceptance of the Plant by the Owner, the Ordered Items will be tested for defects. The Vendor shall be entitled to participate in such tests.

If such a test shows that the Ordered Items are not in accordance with the Order, the Vendor shall, at its own expense, promptly carry out all measures necessary to fulfil the Order. The costs associated with the test, such as Buyer's personnel costs, shall be borne by the Vendor if the latter is at fault.

13.2 The Buyer or the Owner shall be entitled to use the Ordered Items in full or in part even before the abovementioned tests. This shall not be deemed to constitute the full or partial (formal) acceptance or the Ordered Items.

## 14. Warranty for defects

14.1 The Vendor warrants that the Ordered Items will be free from defects, i.e. in particular that they will comply with the characteristics specified in the Order, and will enable safe and disruption-free operation for the intended purpose, that they will be conform to the generally accepted technical rules ("*allgemein anerkannte Regeln der Technik*") and that they will comply with the relevant technical documents and regulations, recommendations and guidelines pursuant to section 4.4.

14.2 Due to the special nature of plant construction, testing of the Ordered Items and, if applicable, notification of defects, can generally only be carried out after the Ordered Items have been installed and commissioned. As a result, any notification of





defects, incorrect delivery or incorrect quantities shall be deemed to have been made on time if it is issued promptly after unpacking, installation or use, as the case may be.

- 14.3 Unless otherwise agreed in the Order, the warranty period for the Ordered Items, insofar as they constitute a movable object or relates to a moveable object, shall be thirty-six (36) months from the time of acceptance of the Ordered Items by the Buyer. However, in the event that the Ordered Items constitute a building or an object that as per its usual kind of use is typically used for a building ("*Bauwerk*") or if the Ordered Items relate to a building, the statutory warranty period of five (5) years from acceptance of the Ordered Items by the Buyer shall remain applicable.
- 14.4 If defects of the Ordered Items arise within the warranty period, the Buyer shall be entitled, as it chooses, to instruct the Vendor to remedy these defects promptly and in consultation with the Buyer by way of repair or replacement (hereinafter together "remedy") free of charge for Buyer. The Vendor shall bear all additional costs incurred in this regard, in particular the material and labour costs, documentation costs, transportation and travel costs to the respective place(s) where the Ordered Items are being used and the costs of dismantling and reassembly. The Buyer shall be entitled to choose the mode of transport.
- 14.4.1 If necessary, the remedy of the defects shall be carried out with increased use of staff and/or material resources, working in multi-shift operations and/or overtime or, to the extent permitted under the laws and regulations that apply in the country in which the work is to be carried out, also on Sundays and public holidays.
- 14.4.2 If, under the warranty, parts are modified or replaced by other parts, any spare parts corresponding to the replaced or modified parts that have been already supplied must also be modified or replaced by Vendor free of charge and the technical documentation amended accordingly free of charge.
- 14.4.3 If, due to the defects, the Ordered Items cannot be used either in full or in part, the warranty period shall be extended by the period during which the Ordered Items could not be used.

In such cases and where it makes sense to do so, the Vendor shall promptly make provisional arrangements at its own expense and maintain these until the defect has been remedied with definitive effect in order to prevent or minimise any interruption in use.

- 14.4.4 If, in spite of repeated remedial action, the same type of defect keeps occurring or if other parts of the Ordered Items are likely to be also affected by the defect, the Vendor shall in addition remedy the underlying cause of the defect at its own expense by using suitable means, e.g. by changing the design and/or using other materials, or shall agree to a reasonable extension of the Warranty Period, as requested by the Buyer, for the parts in question.
- 14.5 If the Vendor has failed to duly remedy the defect by repair and/or replacement despite being granted a reasonable period in which to do so, the Buyer shall have the right, as it chooses:
- 14.5.1 to perform such remedial work and/or arrange for a replacement to be supplied by itself or via third parties (substitute performance, "*Selbstvornahme*"). All costs relating to the substitute performance (e.g. material, wage, transportation costs, cost for documentation, installation and dismantling costs, as well as Buyer's own expense based on the usual market hourly rates) shall be borne by the Vendor.

Insofar as a defect is not (completely) remedied by substitute performance that has been carried out, the Vendor shall remain liable for this defect in accordance with the provisions of the Order.

and

- 14.5.2 to demand a reduction of the price by reducing the payment of Buyer in the proportion which, at the date of the Order, the value of the Ordered Items in a state free of defects would have had to its actual value. If the Buyer has already paid more than the reduced remuneration, the Vendor shall reimburse the excess amount.

or

- 14.5.3 to rescind the Order. In the event of rescission ("*Rücktritt*"), the Vendor shall, at the Buyer's request, promptly and at its own expense, professionally dismantle the parts of the Ordered Items



installed in the Plant (by it, the Buyer or third parties) and remove the dismantled parts from the site. Insofar as this becomes necessary as a result of the dismantling, the Vendor shall take the necessary safety measures in order to avoid damage to the Plant and risks to life, limb and property (e.g. proper closure of pipelines which are open as a result of the dismantling, sealing off of hazardous areas, etc.)

and

14.5.4 to be indemnified by the Vendor for its full damages and losses caused by the defect of the Ordered Items, including damages caused outside of the Ordered Items, or to claim reimbursement for expenses incurred in vain, unless the Vendor is not responsible for the defect.

14.6 The Buyer shall be entitled to the rights according to section 14.5 of this Conditions of Purchase without the need to set a deadline in advance for remedying the defect, provided that

- a) the Vendor has seriously and definitively refused performance or the remedy of the defect, or
- b) the remedy of the defect has failed, or is unreasonable for the Buyer, or
- c) it is certain that the Vendor will not remedy the defect within the reasonable period of time, or
- d) the remedy of the defect is impossible for the Vendor or
- e) there are special circumstances that justify the immediate exercise of some or all of the rights listed in section 14.5, taking into account the interests of both Parties. This can be the case, in particular, if
  - the Buyer has lost confidence in the Vendor's ability to perform, or
  - the Vendor has concealed the defect with fraudulent intent or
  - the defect is due to wilful intent on the part of the Vendor or
  - the withdrawal of the operating permit for the Ordered Items or the Plant is imminent as a result of defect(s) of the Ordered Items, meaning that it would be unreasonable to wait for the expiration

of the deadline for Vendor to remedy the defect, or

- there is a risk of disproportionate damage to the Buyer or to third parties as a result of waiting due to a deadline for Vendor to remedy the defect, or
- the safety of the Plant or of property not owned by the Vendor, or the safety of individuals or the environment is at risk.

## 15. Product liability, breach of duty

15.1 The Vendor shall indemnify and hold the Buyer harmless from claims arising in the context of manufacturer's liability or under the German Product Liability Act (*Produkthaftungsgesetz*), insofar as the damage has been caused by a defect of the Ordered Items. The Vendor shall bear all costs and expenses in this respect, including, but not limited to, cost of legal defence and of any recall, unless the cause behind the defect did not lie in its sphere of responsibility. The Vendor shall be informed of the content and scope of any recall.

15.2 In the event that the Vendor commits a culpable breach of any of its obligations resulting from, or in connection with, the Order, the Buyer shall have the right to be indemnified by the Vendor for any damages or losses incurred as a result, including damage caused outside of the Ordered Items. By way of derogation from the above, however, the Buyer will not claim loss of production or loss of profit unless such damages or losses are due to gross negligence or wilful misconduct on the part of the Vendor, such claim is asserted in turn against the Buyer by the Owner or third parties in this respect, or such damages are covered by an insurance taken out by the Vendor.

## 16. Guarantee for function

In addition to the warranty the Vendor also provides a guarantee for the proper functioning of the Ordered Items for an operation period of 12 months, subject to the specific process and operating conditions of the Plant as specified in the attachments to the Order and under local conditions in the location in which the Plant is situated, as well as guarantees that the Ordered Items will be free from defects in design, material and workmanship.





**17. Third-party rights**

If claims are asserted against the Buyer by a third party due to a defect in title, infringement of patent, trademark or copyright etc. for which the Vendor is at fault, the Vendor shall indemnify and hold the Buyer harmless from and against such claims, shall reimburse the Buyer for the resulting damage and expenses and/or shall arrange for the required rights to be obtained from the holders of such rights.

**18. Ownership, Confidentiality, Data protection**

- 18.1 Documents, drawings, data and objects which the Vendor receives from the Buyer for the execution of the Order shall remain the property of the Buyer.
- 18.2 Any information that the Vendor receives from the Buyer and any documents, drawings, data and objects prepared or otherwise created by the Vendor on the basis thereof as well as the conditions of the Order, shall be treated as confidential, including the technical, commercial and personal data contained or embodied therein. They may only be used to process the Order and must also not be copied, published or made available to third parties (e.g. Subcontractor) without the written or by e-mail or in the Order given approval of the Buyer. The approval regarding Subcontractor is given herewith except a Non-Disclosure-Agreement between the Parties or the Order stipulates otherwise. Disclosure to approved third parties (including Subcontractor) requires in addition that these third parties are subject to an equivalent confidentiality obligation.
- 18.3 The documents, drawings, data and objects handed over by the Buyer and those prepared or otherwise created by the Vendor on the basis thereof shall, at the Buyer's request, be handed over to the latter promptly and/or erased from the Vendor's data media, unless the Vendor is legally obliged to archive them. The Vendor shall brief its employees and the Subcontractors commissioned by it accordingly and subject them to corresponding obligations.

**19. Publications, advertising**

Without the Buyer's written or by e-mail given permission, the Vendor must not make public any information in connection with the Order or the Plant or cause any such information to be made public. This shall also apply to the use of such information as a reference.

**20. Suspension, termination**

- 20.1 The Buyer is entitled to suspend or terminate the execution of the Order, either in full or in part, immediately or at a certain point in time or milestone, at any time by submitting a written notice to the Vendor, without having to adhere to a notice period or provide grounds for its decision. In such case, the Vendor shall be entitled to payment of the pro rata price for the Ordered Items performed in accordance with the conditions of the Order, plus a reasonable, proven share of overhead costs for the part of the Ordered Items that was not executed. The Buyer is entitled to demand delivery of all or parts of the cancelled Ordered Items which have already been completed and/or those which have not yet been completed.
- 20.2 The Buyer and the Vendor are entitled to terminate the Order in full or in part for cause without observing a period of notice.

The term "cause" refers to a scenario in which

- the other Party is insolvent or overindebted, or
- the other Party cease its payments towards third parties, or
- an application has been filed for insolvency proceedings or comparable legal proceedings in relation to the assets of the other Party, such proceedings have been opened or the opening of such proceedings has been rejected due to a lack of assets, or
- the Owner terminates the contract between the Buyer and the Owner regarding the Plant for reasons for which the Buyer is not responsible.

If the "cause" relates to a breach of a duty arising from the Order, termination is only permissible if this breach is a major one and then only after the expiry of a reasonable deadline set to remedy the scenario to no avail or after an unsuccessful re-proof, which included the declaration to terminate



in case of a second breach. The setting of a deadline or the reproof can be dispensed with if (a) the debtor (Party) seriously and definitively refuses performance or (b) the debtor does not effect performance by a date or deadline specified in the Order, even though timely performance is essential for the creditor (Party) based on a notification submitted by the creditor to the debtor before or at the time of the conclusion of the Order or even through the date or deadline is penalized or (c) there are special circumstances which justify immediate termination after weighing up the interests of both Parties.

If a Party terminates for cause, the Buyer may, at its discretion,

- demand delivery of all or parts of the cancelled Ordered Items that have already been completed and, at the Vendor's expense, either complete and supply these Ordered Items including documentation, drawings, plans and other technical documents itself, or have them completed and supplied by third parties. For the Ordered Items which the Buyer has received according to its request, the Vendor shall receive the pro rata price of the Order, less any additional costs and expenses incurred by the Buyer as a result of the alternative completion; or
- waive the delivery of all Ordered Items and claim damages in lieu of performance. The costs of any dismantling, removal and other costs incurred in connection with the termination shall be borne by the Vendor. The Buyer is entitled to use the Ordered Items free of charge until a replacement solution is ready for operation, but for a period of no more than 12 months. Furthermore, the Vendor shall reimburse the Buyer for all payments made concurrently against the return of (the concerned parts of) the Ordered Items.

20.3 In the event of termination or suspension, the Vendor shall, either promptly or at a certain point in time or milestone specified by the Buyer:

- a) stop work on the cancelled Ordered Items;
- b) not issue any further orders to third parties in respect of the cancelled Ordered Items;
- c) make every effort to immediately cancel or suspend orders concerning the cancelled Ordered Items that it has awarded to third parties; in cases of suspension, however, it shall

only do so to the extent requested by the Buyer, and

- d) safeguard all material intended for execution of the cancelled (part of the) Order and all cancelled Ordered Items currently being worked on or which have already been completed, whether these are with the Vendor or its Subcontractors, until further instructions are issued by the Buyer, and shall follow the Buyer's instructions in this regard.

20.4 In the event of termination, the Vendor shall return to the Buyer, at the latter's request, all or the requested part of the documentation, drawings, plans, data media and other technical documents which were prepared by it and/or its Subcontractors (collectively referred to as the "Work Results") or provided to it (collectively referred to as the "Information Provided") in connection with the cancelled (part of the) Order promptly or at the point in time or milestone specified by the Buyer. With regard to the surrender of the Work Results and Information Provided, the Vendor cannot assert any rights of retention or rights to refuse performance.

20.5 Following termination, either Party can require the other to cooperate in a joint determination of the level of performance. If a Party refuses to cooperate or fails to cooperate at an agreed date or at a date determined by the other Party within a reasonable period of time for the determination of the performance status, it shall bear the burden of proof for the performance status at the time of termination. This shall not apply if the Party fails to meet this obligation as a result of circumstances for which it is not responsible and which it has promptly reported to the other Party.

20.6 In the event that the execution of the Order (in full or in part) is suspended and recommenced, the Vendor can claim compensation for the resulting appropriate and proven additional costs and is also entitled to request an appropriate extension of the agreed dates and/or agreed deadlines.

## 21. Payment, invoicing, guarantees, offsetting, default in payment, assignment, taxes, duties

21.1 Requests for payment, invoices and credit and debit notes shall be submitted as a single copy and in an auditable form, stating the Order number, to Buyer's Cost Accounts Department. Value added



tax, if applicable, shall be shown separately. In addition, the Vendor must state its value added tax number in the invoice.

21.2 Payments will also only be made if all precondition for payment of the instalment in question and of the previous instalments have been fulfilled. If payment is related to delivery, then the precondition for this payment is the delivery of all order items for which one and the same delivery date has been agreed in the Order.

21.3 If it has been agreed that the warranty retention can be redeemed by way of a guarantee, the Buyer is entitled to refuse the redemption of the retention for such time as the Owner withholds payments from the Buyer for any reason attributable to the Ordered Items.

21.4 The Vendor is only entitled to offset the Buyer's claims for payments against its own claims if these are undisputed or have been determined by final court or arbitration award.

The Buyer is entitled to offset claims for payment by the Vendor against not only its own counter-claims but also, on the basis of the powers granted to it, against all claims of other companies in the LINDE Group (section 18 of the German Stock Companies Act ("*Aktiengesetz*"). If these claims are due on different dates, the Buyer's claims shall be settled at the latest when the Buyer's liabilities fall due and shall be accounted on the value date.

21.5 The Buyer will only be deemed in default in payment if it fails to pay on receipt of a written reminder by the Vendor after the expiry of thirty (30) days from the due date and receipt of invoice pursuant to sections 21.1 and 21.2, or if it fails to pay on the calendar date stated in the Order.

21.6 In the event of Buyer's default in payment, it shall owe interest of 5% p.a., unless the Vendor can prove that it has suffered more substantial damages due to such default.

21.7 In order to be effective an assignment by the Vendor of its claims against the Buyer shall require Buyer's written consent, which shall not be withheld unreasonably.

21.8. Each Party shall be solely responsible for taxes and tax obligations of any nature arising from the Order.

21.9 All of the remuneration specified in the Order is specified as net amounts, i.e. exclusive of VAT.

21.10 The Vendor shall fulfil all formal, content-related and legal requirements in connection with the issuance of invoices in order to ensure the correct reimbursement of VAT.

21.11 If, as a result of measures taken by the authorities, the VAT payment burden of one Party is increased or the input tax of one of the Parties is reduced, both Parties shall be obliged to correct the invoice concerned accordingly.

21.12 Direct taxes levied on the basis of the payments in the country of the Buyer shall be borne by the Vendor. All amounts payable in respect of the Order will be paid after deduction of any taxes, duties or administrative fees that have to be withheld at source and paid to the responsible tax authorities by the Buyer on the basis of statutory provisions. If the relevant Double Taxation Treaty provides for a reduction in, or exemption from, withholding tax, the Buyer will only pay the corresponding amount if and when the Vendor has presented a valid exemption certificate to the Buyer on the date of payment at the latest.

21.13 The Vendor is responsible for meeting all further obligations imposed on the Vendor by law. Claims or disadvantages arising for the Buyer as a result of the Vendor disregarding these obligations shall be borne by the Vendor.

21.14 The Vendor shall be responsible for all customs duties, fees and taxes of any kind, including taxes and duties on salaries, wages and other remuneration paid to its employees and third-party employees, incurred in the execution of the Order.

21.15 Invoices for unit price orders shall be based on the auditable calculation of material quantities (known as "calculation of quantities"). If it was agreed in the Order that several invoices may be issued, the calculation of quantities shall state the quantities completed by the end of the contractually agreed period covered by the invoice, as well as the total quantities of the individual services.



21.16 Final invoices shall be marked as such and shall be submitted within four (4) weeks after acceptance of the Ordered Items, including a breakdown by the account code no. specified in the Order and all prior requests for payment, including the invoice number, invoice date, invoice amount, retention amount, as well as the aggregate amount of retention, due payments and value added tax. In addition, and if applicable, the certificate on mechanical completion, as signed by the Buyer and the Vendor for the purposes of payment approval, shall be attached.  
Payment of the final invoice shall not release the Vendor from any of its contractual obligations or warranties.

## 22. Compliance

- 22.1 The Vendor undertakes to comply with the requirements of the 'Code of Conduct for Suppliers of the Linde Group' (hereinafter referred to as the 'Supplier Code of Conduct'), which can be accessed and consulted on the Internet at [https://www.the-linde-group.com/en/corporate\\_responsibility/business\\_and\\_governance/supply\\_chain/code\\_of\\_conduct\\_for\\_suppliers/index.html](https://www.the-linde-group.com/en/corporate_responsibility/business_and_governance/supply_chain/code_of_conduct_for_suppliers/index.html).
- 22.2 The Vendor shall demonstrate compliance with the requirements of the 'Supplier Code of Conduct' at Buyer's request by making corresponding data available or conducting self-assessments and submitting the results to the Buyer.
- 22.3 If the Buyer has reason to believe that Vendor may be in material breach of the requirements set out in the Supplier Code of Conduct, the Buyer or a third party appointed by the Buyer may conduct audits on the Vendor's premises in order to verify the Vendor's compliance with the requirements of the Supplier Code of Conduct. The Buyer shall use all reasonable efforts to ensure that the audits will be conducted in accordance with any applicable data protection law and other provisions and shall neither unreasonably interfere with the Vendor's business activities nor violate any of the Vendor's confidentiality agreements with third parties. The Vendor undertakes to reasonably cooperate in any audits conducted. Each Party shall bear its own expenses in connection with such audits.

22.4 In addition to its other rights, the Buyer shall also have the right to terminate the Order for cause pursuant to section 20.2 without observing a period of notice if the Vendor commits a material breach of the Supplier Code of Conduct and (a) fails to remedy the breach after written notification by the Buyer or (b) was previously given a written warning by the Buyer related to this material breach.

22.5 Material breaches include, but are not limited to, incidents of forced or child labour, corruption and bribery, and failure to comply with the Supplier Code of Conduct's environmental protection requirements.

## 23. Export control

- 23.1 The Vendor is obliged to ensure that the Ordered Items are not subject to any export or import restrictions that prohibit its export or import into the country where the Plant is situated and in countries where the Ordered Items will be assembled and/or other works on the Ordered Items are carried out. If the Ordered Items, its individual parts and/or parts dismantled for transportation are subject to other applicable export or import restrictions, the Vendor shall notify the Buyer promptly by sending an e-mail to [customs.pullach@linde-le.com](mailto:customs.pullach@linde-le.com) or any other e-mail address provided by the Buyer.
- 23.2 The Vendor shall inform the Buyer in writing promptly if it or any of its Subcontractors is or becomes a Denied Party. The Vendor shall not use any Denied Party for the performance of this Order, shall not transmit any information from or about the Buyer or the Order to any Denied Party and shall not supply any items of the Buyer to any Denied Party. A Denied Party is a natural or legal person (i) with whom/which the Buyer is not authorised to provide any economic resources either directly or indirectly and/or (ii) with whom/which the Buyer is not authorised to have a business relationship, be it directly or indirectly. The Buyer has the right to termination for cause pursuant to section 20.2 of this Conditions of Purchase without observing a period of notice if the Vendor or its Subcontractor is a Denied Party.



## 24 Effectiveness, partial ineffectiveness

- 24.1 The provisions according to section 18, section 19, section 22.3, section 26 and section 27 as well as the responsibilities according to sections 4.6, 21.8 und 21.13, and the provisions according to this section 24.1 shall not be affected by a termination of the Order, by the expiration of the main obligations or by rescission ("Rücktritt") from the Order, the Parties kept be bound by it even in case of termination, expiration or rescission. In addition, the foregoing also applies to the provisions according to section 17 and to the obligations to inform according to section 23 related to the Ordered Items taken over by Buyer in case of termination. Notwithstanding the termination of the Order either Party shall retain the rights that have already arisen prior to the effective date of termination.
- 24.2 Should any provision of these Conditions of Purchase or other components of the Order be or become ineffective and/or impracticable, the validity of the remaining provisions shall not be affected.

## 25. Place of fulfilment

Unless otherwise stated in the Order, the place of performance shall be the place where the Buyer has its registered office.

## 26. Applicable law

- 26.1 The Order shall be governed by the law of the Federal Republic of Germany, albeit excluding the conflict of law provisions, the Hague Uniform Laws of Purchase and the Vienna UNCITRAL Convention on the International Sale of Goods (CISG).
- 26.2 English language terms used in these Conditions of Purchase or other documents of the Order are describing German legal concepts only and shall not be interpreted by reference to any meaning attributed to them in any jurisdiction other than Germany. Where a German term has been inserted in brackets and/or italics, this German term alone shall be authoritative for the purpose of the interpretation of the relevant term.

## 27. Place of jurisdiction/arbitration

- 27.1 For Vendors with their main place of business in the European Union, the United Kingdom, Norway, Iceland or Switzerland:

All disputes arising from or in connection with this Order or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institution (*Deutsche Institution für Schiedsgerichtsbarkeit e.V. DIS*), without recourse to the ordinary courts of law. The place of arbitration shall be Munich. The language of arbitration shall be English. The Buyer is also entitled to bring action at any place of jurisdiction that is justified for the Vendor.

- 27.2 For Vendors with their main place of business outside of the countries referred to in section 27.1:

All disputes arising out of or in connection with the Order shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance to the said rules, on the basis of German procedural law and without recourse to the ordinary courts. The Arbitration shall be held in Munich in the English language. The Buyer is also entitled to bring action at any place of jurisdiction that is justified for the Vendor.