



CONDITIONS OF PURCHASE for Engineering Services (short version) (Issue: October 2020)

- 1. Order.** Orders shall only be binding if placed by the **Company** (means herein: a Linde Engineering entity) in form of a written or electronic approved document. Only the following shall be deemed to be part of the Order, in the following order of precedence: the order letter, these "Conditions of Purchase for Engineering Services (short version)", Company's technical specifications and standards if attached to or referred to in the Order. Deviating conditions of the Contractor shall only apply to the extent that they have been expressly confirmed by the Company in writing.
- 2. Ordered Items.** The Ordered Items are the services, including drawings, data media and other documents and objects to be supplied by the Contractor according to the Order.
- 3. Execution of the Ordered Items.** The Contractor shall carry out the Ordered Items under its own responsibility with suitably qualified persons. The Contractor shall nominate a project manager, who shall be competent and responsible to brief, direct and supervise Contractor's staff in all matters, whether related to the profession or to labor, as the person responsible for the execution of the Ordered Items and as the contact person of the Company.

If the Order is executed on Company's premises, the Company shall provide the Contractor with suitable rooms. The Contractor shall ensure that its staff comply with the safety and accident prevention regulations that apply in any location in which the Contractor works, in particular on Company's premises. The Contractor shall indemnify the Company against all claims arising from Contractor's failure to comply with such obligations.

The Contractor shall provide all equipment, tools and appliances required for the execution of the Order. In the event that the Contractor uses equipment, tools or appliances of the Company, the same shall be returned in an orderly state **promptly** (means herein: without undue delay) after use. The Contractor shall be liable for any loss of or damage to such equipment, tool or appliance.

If the Contractor requires access to Company's IT infrastructure, the Contractor shall obtain the Company's prior consent in writing or by e-mail and shall comply with Company's IT security regulations (Linde Standard LS 940-05 (EN)). The current IT security regulations can be accessed and consulted on the Internet at "https://www.linde-engineering.com/en/images/LS-940-05-EN_tcm19-551315.pdf".
- 4. Inspection, acceptance.** The Contractor shall have sole responsibility for providing guidance and instructions to, as well as for supervising, its staff. This shall not affect the following right to check the Ordered Items.

The Company, the **Owner** (means herein: Company's customer, if any, for the plant for which the Ordered Items are intended) and their representatives shall have the right at any time to effect reviews regarding the work progress and inspections regarding the quality at the premises of the Contractor and/or those of its **Partners** (means herein: any natural or legal person, whom the Contractor uses to fulfil its obligations under the Order). Equipment, materials and services required for such inspections and reviews shall be provided by the Contractor at no cost to the Company or the Owner. The Contractor shall bear its own costs incurred in connection with such reviews and inspections. Company's and/or Owner's costs for each unsuccessful formal acceptance attempt shall be borne by the Contractor if the latter is at fault.

A review or an inspection of the Ordered Items shall not be deemed to constitute an acceptance by the Company in the legal sense. Neither shall any revision or approval mark by the Company in Contractor's documents release the Contractor from its responsibility for the information contained therein.
- 5. Dates, deadlines.** The Contractor shall carry out the Ordered Items in accordance with the agreed dates and deadlines. The Contractor undertakes to monitor the deadlines itself. It is the sole responsibility of the Contractor to monitor and manage its Partners in such a way that the agreed dates and



deadlines are adhered to and that an up-to-date schedule showing the target status and the actual status is available at all times.

6. **Warranty for defects.** The Contractor warrants that the Ordered Items are free of any defects, i.e. in particular that they have the characteristics described in the Order and enable safe and trouble-free operation in accordance with their intended purpose, that they comply with the generally accepted technical rules, and with the statutory, official and workers' compensation board regulations, recommendations and guidelines (environmental protection, accident prevention and occupational safety, etc.) that apply in the place where the Hardware (means herein: a movable or immovable item created on the basis of the Ordered Items, e.g. the plant or part of the plant) is to be used. Unless otherwise agreed in the Order, the warranty period for the Ordered Items, to the extent that the Ordered Items consist of services for movable items, shall be 36 months following the acceptance of the Ordered Items by the Company. If, on the other hand, the Ordered Items consist of services for a building, the statutory warranty period of 5 years from the time of acceptance of the Ordered Items by the Company shall continue to apply. If any defects affecting the Ordered Items occur during the warranty period, the Company is entitled, at its discretion, to have the Contractor, in consultation with the Company, remedy such defects promptly and free of charge by performing repair work or replacing the Ordered Items (collectively referred to as "remedy") and bear all additional costs for changes to the Hardware caused by such defects affecting the Ordered Items, in particular material and labor costs, documentation costs, transport and travel costs to the place of use of the Hardware and costs associated with dismantling and reassembling the Hardware. The Company shall be entitled to choose the mode of transport of the Hardware. If the Contractor has failed to duly remedy the defect within a reasonable deadline specified by the Company, or if
- it is certain that the Contractor will not or cannot remedy the defect within such a deadline, or
 - the remedy of the defect is unreasonable for the Company, or
 - there are special circumstances that justify the immediate exercise of some or all of the rights set out hereinafter, taking into account the interests of both Parties, for instance that the Company has lost confidence in Contractor's ability to perform, or the Contractor has concealed the defect with fraudulent intent, or the defect is due to willful intent on the part of the Contractor, or there is a risk of disproportionate damage to the Company or to third parties as a result of waiting due to the deadline for the Contractor to remedy the defect, or the safety of the Hardware or of property not owned by the Contractor, or the safety of individuals or the environment is at risk,
- the Company shall have the right, at its option,
- a) to carry out the remedy itself or have them carried out by third parties ("Self-Performance"). All costs in connection with the Self-Performance shall be borne by the Contractor; and
 - b) to reduce the agreed price of the Ordered Items in line with the ratio of the value of the Ordered Items in a defect-free condition to their actual value at the time of the Order (order date); or to rescind the Order; and
 - c) to claim full compensation for any damage caused by defects affecting the Ordered Items, and for damage occurring outside of the Ordered Items, or compensation for expenses incurred in vain unless the Contractor is not responsible for the defect.
7. **Breach of duty.** If the Contractor culpably breaches any obligation arising from, or in connection with, the Order, the Company is entitled to claim compensation for any damage incurred as a result, including damage occurring outside of the Ordered Items. The Contractor shall indemnify and hold the Company harmless from any liabilities, claims and fines asserted against the Company under public and private law due to non-compliance with statutory obligations on the part of the Contractor, irrespective of the legal grounds for such claims. Notwithstanding the foregoing, however, the Company shall only assert claims



for loss of production or loss of profit if the Contractor acted with willful intent or gross negligence, or if the Company, for its part, has claims asserted against it by the Owner or by third parties for this reason, or if this damage is covered by an insurance policy taken out by the Contractor.

8. **Third-party rights.** If claims are asserted against the Company by a third party on account of a defect in title for which the Contractor is responsible, the Contractor shall be obliged to indemnify the Company against such claims, to reimburse it for any damage and expenses incurred and/or to obtain the necessary rights from the eligible party.
9. **Ownership, confidentiality.** All information that the Contractor receives from the Company, the documents, drawings, data and objects produced, or otherwise created, by the Contractor on the basis of this information, and the terms and conditions of the Order, including technical, commercial and personal information contained or embodied therein, shall be treated as confidential. It must only be used in order to process the Order and must not be copied, published or made available to third parties (e.g. Partners of the Contractor) without the written consent, or consent granted by e-mail or in the Order, of the Company. With regard to Partners of the Contractor, permission to disclose the information is hereby granted, unless a confidentiality agreement between the **Parties** (Company or Contractor) or the Order provides otherwise. Dissemination to authorized third parties (including Partners of the Contractor) is permitted insofar as these third parties are subject to an equivalent confidentiality obligation.
All drawings, data media and other documents and objects (a) which the Contractor receives from the Company remain the Company's property and (b) which are produced by the Contractor in the context of the Order shall become the intellectual and physical property of the Company upon delivery, and all documents mentioned in (a) and (b) shall at the Company's request, be handed over to the latter without delay and/or erased from the Contractor's or its Partner's data media, unless the Contractor is legally obliged to archive them.
10. **Suspension, termination.** The Company is entitled, without setting a deadline and without having to cite reasons, to suspend or terminate the execution of the Order in full or in part, either with immediate effect or at a specific point in time or upon completion of a specific milestone, at any time by issuing written notice to this effect to the Contractor. In such a case, the Contractor is entitled to payment of the pro rata price for the services performed in accordance with the Order until the date of suspension or termination, and to claim reimbursement of its proven suspension or termination costs, and reimbursement of a reasonable and proven share of overhead costs for the part of the Ordered Items that was not executed. The same applies in case the Contractor terminated for cause. If, however, the Order was suspended or cancelled for cause attributable to the Contractor, Contractor shall only be entitled to claim the payment as mentioned above.
The term "cause" refers to a scenario in which
 - the other Party is insolvent or overindebted, or
 - the other Party ceases its payments to 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 agreement between the Company and the Owner regarding the plant for reasons related to Contractor's sphere of responsibility.
11. **Invoicing, payment.** As condition precedent for payment, payment requests and invoices must be submitted in a verifiable form, as a single copy to Company's accounting control department, indicating VAT separately and stating Contractor's VAT number. The Company shall only be in default if it has still not paid after 30 days from the due date of payment and receipt of the invoice following a reminder issued by the Contractor, or if it fails to pay by a payment deadline specified as a calendar day in the Order.
The Contractor must submit a report on services which are invoiced on the basis of hourly or daily rates confirmed by the technical contact person or the site management of the Company. This report is to be drawn up per working day and must show the order number, the relevant Linde project, a detailed



description of the work performed, the number of days/hours worked, indicating work performed during normal working hours, during the night and on Saturdays, Sundays and public holidays. If remuneration is to be paid for hours spent travelling, these hours must be shown separately from the working hours in the report. Remuneration for materials, components, appliances, tools and auxiliary equipment provided by the Contractor shall only be paid if this is provided for in the Order.

12. **Taxes, duties.** Each Party is responsible for its own taxes and tax obligations of all kinds arising from the Order. All remuneration stated in the Order refers to net amounts, i.e. in each case without statutory value added tax (VAT). The Contractor must prepare its invoices in a due and proper manner in terms of the formal requirements, the requirements governing content and the legal requirements in order to ensure that the VAT is correctly refunded. If, as a result of measures taken by the authorities, the VAT payable by a Party is increased or the input tax of a Party is reduced, both Parties are obliged to correct the invoice concerned accordingly.

Direct taxes which are levied on the basis of the payments in the Company's country shall be borne by the Contractor. All amounts to be paid on the basis of the Order shall be paid out following the deduction of all taxes, duties or administrative fees which are withheld at source and which the Company is required by law to pay to the relevant tax authorities on the basis of statutory provisions. If the relevant double taxation agreement provides for a reduction in, or exemption from, withholding tax, the Company shall only pay the relevant amount if the Contractor has submitted a valid tax-exemption certificate to the Company, and no later than on the date of payment.

The Contractor is responsible for all other obligations imposed on it by law. The Contractor shall be liable vis-à-vis the Company for all claims or disadvantages suffered by the Company due to Contractor's breach of these obligations. The Contractor shall be liable for all customs duties, fees and taxes of any kind, including taxes and duties on wages, salaries and other remuneration paid to its employees and employees of third parties incurred by it in connection with the execution of the Order.

13. **Assignment, offsetting.** The assignment of claims against the Company shall in order to be effective require the Company's written consent, which will not be unreasonably withheld. The Contractor can only offset claims that are not disputed by the Company or that have been established in a final and unappealable judgment against claims of the Company.

14. **Copyrights.** Insofar as copyrightable works are created in connection with the Ordered Items, only the Company is entitled to exercise all property rights, in particular to use and exploit them.

15. **Compliance.** The Contractor undertakes to adhere to the provisions set out in the "Code of Conduct for Suppliers of the Linde Group". The Code can be accessed and consulted on the Internet at "https://www.linde-engineering.com/en/images/Linde-supplier-code-of-conduct_tcm19-115749.pdf".

The Contractor shall, at the Company's request, furnish evidence of its compliance with the provisions set out in the "Code of Conduct for Suppliers of the Linde Group" by making corresponding data available or performing a self-audit and submitting the results of the audit to the Company.

If the Contractor commits a material breach of the provisions set out in the "Code of Conduct for Suppliers of the Linde Group" and (a) fails to remedy this breach despite being asked to by the Company, or (b) was previously given a written warning by the Company related to this breach, the Company is entitled, over and above its other rights, to terminate the Order for cause without notice. A material breach shall, in particular but not exclusively, constitute instances of forced or child labor, corruption and bribery or breaches of the environmental provisions set out in the "Code of Conduct for Suppliers of the Linde Group".

16. **Export control.** The Contractor is obliged to ensure that the Ordered Items are not subject to any export or import restrictions that prohibit their export or import into the country of use specified by the Company. If the Ordered Items and/or their individual parts are subject to other applicable export or import



restrictions, the Contractor shall notify the Company promptly by sending an e-mail to customs.pul-lach@linde-le.com or to any other e-mail address provided by the Company.

The Contractor shall not use a Denied Party for the performance of the Order, shall not transmit any information from or about the Company or the Order to a Denied Party and shall not deliver any objects of the Company to a Denied Party. The Contractor shall inform the Company promptly in writing if it or one of its Partners is or becomes a Denied Party. Any natural person or legal entity that the Company (i) cannot provide directly or indirectly an economic resource to, and/or (ii) cannot otherwise deal with according to an embargo is considered to be a Denied Party. An embargo is any law or regulation that directly or indirectly prohibits certain activity and/or transactions or dealings with certain natural persons or legal entities. A legal entity which is directly or indirectly majority-owned by a Denied Party according to the aforementioned definition or is controlled by a Denied Party according to the aforementioned definition shall itself also be considered as a Denied Party. The Company has the right to termination for cause without notice if the Contractor or any of its Partners is a Denied Party.

17. **Effectiveness, partial ineffectiveness.** The provisions set out in section 9, section 18 and section 19, as well as the responsibilities set out in section 7 sentence 2, section 12 sentence 1 and section 12 (3) and the provisions set out in this section 17 are not affected by the termination of the Order, the expiry of the principal obligations or the rescission of the Order; the Parties remain bound by them even in the event of termination, expiry or rescission. With regard to the parts of the Ordered Items that are taken over by the Company in the event of termination, this shall also apply additionally to the provisions set out in section 8, as well as to the information obligations referred to in section 16. Furthermore, and notwithstanding a termination of the Order, each Party retains the rights that arose before the termination took effect. Should any provision of these Conditions of Purchase or other components of the Order be or become invalid and/or unenforceable, this shall not affect the validity of the remaining provisions.
18. **Applicable law.** The Order shall be governed exclusively by the law of the Federal Republic of Germany, but excluding the conflict of laws provisions, the Hague Uniform Sales Laws and the Vienna UNCITRAL Convention on the International Sale of Goods (CISG).
19. **Place of jurisdiction, arbitration.** All disputes arising from, or in connection with, the Order or its validity shall be settled with definitive effect in accordance with the Rules of Arbitration of the German Institution for Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V. DIS), excluding any recourse to the general courts of law. The place of arbitration shall be Munich. The language of arbitration is German. Documents can be submitted in both English and German. The Company is also entitled to bring action at any place of jurisdiction that is justified.