



GENERAL CONDITIONS OF PURCHASE

(Issue: September 2019)

1. **Order.** Orders shall only be binding if placed by **Buyer** (means a Linde Engineering entity) in form of a formal, electronic SAP-document. Only the following shall be deemed to be part of the Order, in the following order of precedence: the SAP-Order document, these "General Conditions of Purchase" and Buyer's technical specifications and standards, if attached to or referred to in the Order. Deviating conditions of the Vendor shall only apply to the extent that they have been expressly confirmed by Buyer in writing.
2. **Ordered Items.** The Ordered Items are the supplies and services including documentation to be provided by the Vendor according to the Order.
3. **Inspection and acceptance.** The Buyer, the **Owner** (means the Buyer's client, if any, for which the Ordered Items are intended) and their representatives shall have the right at any time to effect inspections regarding work progress and quality at the premises of Vendor and/or those of its **Subcontractors** (means any natural or legal person, whom the Vendor uses to fulfil its obligations under the Order). Equipment, utilities, material and services required for such inspections shall be provided by the Vendor at no cost to the Buyer.
The Vendor shall bear its own costs incurred in connection with such reviews, tests and inspections with the following exceptions. Buyer's costs for each failed acceptance test shall be borne by the Vendor if such failure was due to his fault. If repeated reviews, tests and/or inspections are necessary in the reasonable estimation of the Buyer because of defects and/or because of delays for which the Vendor is responsible, the Vendor shall bear all the costs including Buyer's cost and those of Third Parties.
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. Neither shall any change notification or approval by the Buyer in the Vendor's technical documentation release the Vendor from its responsibility for the information contained therein, such as dimensions, design, calculation and function of the Ordered Items
4. **Liability for defects.** 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 conform to the generally accepted technical rules ("*allgemein anerkannte Regeln der Technik*") and that they will comply with the statutory, official and professional organisation's regulations, recommendations and guidelines (e.g. on environmental protection, accident prevention and occupational safety, etc.) that are valid in the location in which the Ordered Items will be used.
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 ("*Bauwerk*") or an object that as per its usual kind of use is typically used for a building 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.
In case defects of the Ordered Items appear during the warranty period, the Vendor shall, at Buyer's option, promptly remedy such defects by repairs and/or replacements (hereinafter together "*remedy*") in consultation with the Buyer at Vendor's cost, including but not limited to, cost of materials, labour, documentation, transport to the location of the Ordered Items in the mode of Buyer's reasonable choice as well as cost of dismantling and reassembly. If the applicable law provides for it or if:
 - it is certain that the Vendor will not remedy the defect within the reasonable period of time specified by Buyer, or
 - the remedy of the defect is impossible for the Vendor, or
 - the Buyer has lost confidence in Vendor's ability to perform, or
 - the Vendor has concealed the defect with fraudulent intent, or
 - the defect is due to willful intent on the part of the Vendor, 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 property not owned by the Vendor, or the safety of individuals or the environment is at risk,

Buyer shall have the right, at its option,

- 4.1 to perform or cause to be performed by third parties the remedial work ("*Selbstvornahme*"), and Vendor shall reimburse all costs incurred by the Buyer; and
- 4.2 to reduce the agreed price for the Ordered Items pro rata to the reduction in value of the Ordered Items by reason of such defect; or to rescind the Order ("*Rücktritt*"); and
- 4.3 to be compensated for damages including damages caused outside of the Ordered Items, and to claim reimbursement for expenses incurred in vain, suffered due to such defects of the Ordered Items except where such defect is not due to Vendor's fault.
5. **Breach of duty.** In the event that the Vendor commits a culpable breach of any of its obligations resulting from or in connection with the Order, 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. 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. However, Buyer will not claim loss of production or loss of profit unless such damages or losses are due to gross negligence or willful misconduct on the part of 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.
6. **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.
7. **Confidentiality.** Any information that the Vendor receives from 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** (Buyer or Vendor) 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.
8. **Suspension and termination.** 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. Payment shall be limited to such part of the Order price corresponding to the Ordered Items executed until a suspension by Buyer or a termination by Buyer or Vendor. In addition, the Vendor is only entitled to claim reimbursement of its proven suspension or termination cost, and of a reasonable and proven share of overhead costs for the part of the Ordered Items that was not executed, if the Order was suspended or cancelled for cause attributable to Buyer. 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 Owner for reasons for which the Buyer is not responsible.
9. **Invoicing and payment.** As condition precedent for payment, demands for payment and invoices shall be submitted as a single copy and in an auditable form to Buyer's Cost Accounts dept., indicating Value Added Tax separately as well as the Value Added Tax number of Vendor. The Buyer shall only be deemed to be in delay with payment if he does not pay in spite of a reminder by Vendor received after the expiry of 30 days from the due date of payment and receipt of the invoice, or if he does not pay at the calendar date specified for payment in the Order.
10. **Taxes and duties.** Each Party shall be solely responsible for taxes and tax obligations of any nature arising from the Order. All of the remuneration specified in the Order is specified as net amounts, i.e. exclusive of VAT. 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. 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.
- 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.
- 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. 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.
11. **Assignment.** 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 unreasonably withheld.
12. **Compliance.** 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. 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.
- 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.
- In addition to its other rights, the Buyer shall also have the right to terminate the Order for cause 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. 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.



- 13. Export control.** 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 or any other e-mail address provided by the Buyer.

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 of the Order for cause without observing a period of notice if the Vendor or one of its Subcontractor is a Denied Party.
- 14. Effectiveness and partial ineffectiveness.** The provisions according to section 7, section 12 para 2, section 16 and section 17 as well as the responsibilities according to sections 5 second sentence, section 10 first sentence and section 10 para 3 and the provisions according to this section 14 shall not be affected by a termination of the Order, by the expiration of the main obligations or by rescission ("*Rücktritt*") from the Order, but 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 6 and to the obligations to inform according to section 13 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.

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.
- 15. Place of Fulfilment.** Unless otherwise stated in the Order, the place of performance shall be the place where the Buyer has its registered office.
- 16. Applicable law.** 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). 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.
- 17. Arbitration.** 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 or the breach.