

**工程服务采购条款**  
**CONDITIONS OF PURCHASE**  
**for Engineering Services**  
(2013 版/Edition)

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## 1 定义/Definitions

- 1.1 “买方”指的是林德工程（杭州）有限公司 中国杭州市莲花街333号莲花商务中心北楼，邮编310012  
"Buyer" shall mean Linde Engineering (Hangzhou) Co.,Ltd., North Building, Lotus Business Center, No.333 Lianhua Street, Hangzhou, 310012, China.
- 1.2 “业主”指买方的客户，装置的所有者。  
"Owner" shall mean the client of the Buyer for the Plant for which the Work is intended.
- 1.3 “订单”指买方和卖方关于施工购销所达成的协议文件。  
"Order" shall mean the documents comprising the agreements between the Buyer and the Vendor concerning the Work.
- 1.4 “施工”指卖方根据订单提供的施工和服务。  
"Work" shall mean the work and services to be executed by the Vendor according to the Order.
- 1.5 “装置”指买方提供给业主的所订产品为之配套的全套装置。  
"Plant" shall mean the total plant to be supplied to the Owner by the Buyer and for which the Work is intended.
- 1.6 “硬件”指基于施工内容而制造，建造，构建及/或安装的装置部分。  
"Hardware" shall mean that part of the Plant to be fabricated, built, constructed and/or erected on the basis of the Work.
- 1.7 “卖方”指获得买方订单的工程公司。  
"Vendor" shall mean the engineering company to which the Order has been awarded.

## 2 装置的设计、建造和操作要求 / Requirements for Design, Construction and Operation of the Plant

一旦接受订单，卖方应确保其在施工过程中将执行与装置设计、建造和操作有关的所有相关要求，且知晓现场地址。

By accepting the Order, the Vendor acknowledges his obligation to take into account all relevant requirements for design, construction and operation of the Plant when executing the Work and also that the location of the Plant is known to him.

## 3 订单内容/Contents of the Order

- 3.1 卖方的任何与本采购条款相偏离或相矛盾的条款，须经买方书面同意后方可有效。  
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.
- 3.2 订单和其他声明只有经买方书面确认或提出后方可生效。  
Orders and other declarations shall only be binding if they are confirmed or given in writing by the Buyer.
- 3.3 所有的条款、技术规格书、标准和其他订单附件或其中所列内容均应作为订单的一部分，条款之间如有冲突，应按以下优先顺序执行：  
All conditions, specifications, standards and other appendices that are attached to the Order or are listed therein shall form a part of the Order. In case of conflicting provisions, they shall apply in the following order of precedence:
- 采购订单  
the Purchase Order
  - 本采购条款  
these Conditions of Purchase
  - 买方的技术规格书和标准  
the Buyer's Technical Specifications and Standards.
- 如果在技术规格书中没有另行约定，则这些标准和技术规范自合同生效时即生效。  
If not stipulated otherwise in the Technical Specifications the standards and technical principles as valid at the time of the Order shall be valid.

## 4 施工执行，分包 / Execution of the Work, Subcontracts

- 4.1 卖方应主动并及时的按照国际公认的质量管理要求（ISO9000 及其序列版本或同等标准）开展工作。  
The Vendor shall carry out the Work in a diligent and timely manner and in accordance with the requirements of internationally recognised quality management (ISO 9000 et seq. or equivalent).

- 4.2 卖方应遵守硬件使用地（如卖方知晓此地点）当地实施的关于工人恤养保险，环境保护、事故防范和安全生产等的法律法规、建议和指导方针。

The Vendor shall comply with the statutory, official and workmen's compensation insurance regulations, recommendations and guidelines (on environmental protection, accident prevention and safety at work, etc.) that are valid at the location where the Hardware will be used.

- 4.3 由于卖方违反其有关雇佣和雇员的法定责任导致买方陷于来自第三方或政府当局的可能性的债务、索赔及罚金风险，卖方应当予以赔偿并使买方免于此等危害。

The Vendor shall indemnify and hold the Buyer harmless from any liabilities, claims and fines of third parties or public authorities which may arise against the Buyer due to the non-compliance by the Vendor with any of his statutory obligations relating to his work or to his staff.

- 4.4 卖方保证其施工无任何进出口限制。

The Vendor warrants that the Work is not subject to any export or import restrictions.

- 4.5 卖方应自行负责对其雇员进行指导，指引和监管，保证买方在任何时候为核实订单执行情况（包括但不限于质量和进度）对施工进行检查的权利。

卖方应指定一名联系人负责答复买方所有问题直至装置成功启动。

The Vendor shall be exclusively responsible for briefing, directing and supervising his personnel, without prejudice to the Buyer's right to inspect the Work at any time for verification of its execution in accordance with the Order in respect of, but not limited to, quality and schedule.

The Vendor shall nominate a contact person to be available for any queries up to start-up of the Plant.

- 4.6 卖方应仅使用经证实合格的分包商且应将订单中规定的所有的技术要求和时间进度要求传递给分包商。

The Vendor shall only employ proven and qualified subcontractors and shall pass on to such subcontractors any technical and time schedule requirements given in the Order.

- 4.7 如果卖方在买方现场进行施工，买方将提供适当的办公场所。卖方应保证其人员遵守一切有关安全和事故防范以及秩序维护和管理的规定，卖方应对其因未能遵守这些规定而造成的一切索赔或其他后果予以赔偿并使买方免于此危害。

If the Work is carried out on the Buyer's premises, the Buyer will provide suitable office space. The Vendor shall ensure that his personnel complies with all regulations pertaining to safety and prevention of accidents, as well as any regulations pertaining to order and conduct, and shall indemnify and hold the Buyer harmless from any claims or other consequences arising out of the non-compliance with such regulations.

## 5 施工变更 / Changes to the Works

- 5.1 若买方对施工，施工范围或执行方式提出变更要求，卖方应立即书面通知买方相应的价格增减和对交期的影响并随附相关依据。价格的增减应基于原订单的计价方法。

If the Buyer requires changes to the Work, the scope of Work, or the manner of execution, the Vendor shall inform the Buyer promptly in writing of any increase or decrease in price and any effects on the completion date, backed-up by sufficient proof. The price increase or decrease shall be determined on the basis of the calculation used for the Order.

- 5.2 双方应基于相互的利益和义务对订单的变更进行友好协商。买方将就己同意的施工和订单变更内容签发一份书面的补充订单。

Modifications to the Order shall be negotiated in good faith by the parties taking into due account their mutual interests and obligation of good faith. The Buyer will issue a written change order stating the agreed changes to the Work and modifications to the Order. Changes or additions to the scope of Work will only be remunerated if a written change order has been so issued.

- 5.3 然而，即使对订单变更尚未完全达成一致，若买方指示，卖方仍应根据在原订单条款和条件暂且维持不变的情况下立即执行买方所要求的变更工作。

The Vendor shall, however, even if modifications to the Order have not yet been agreed, if so instructed by Buyer, promptly proceed to carry out the required changes with the terms and conditions of the Order remaining unchanged for the time being.

## 6 卖方索赔 / Claims of the Vendor

卖方应在 7 天内将其认为将导致订单价格上涨或影响完工时间的任何情形书面告知买方，否则此索赔要求将被视为无效。

The Vendor shall inform the Buyer within seven (7) days in writing of gaining knowledge of any event pursuant to which he believes to have a claim to an increase in the Order price or a change to the time of completion. Otherwise any such claim based on such event shall be deemed waived.

## 7 完工期限、逾期罚款 / Time for Completion, Liquidated Damages for Delay

- 7.1 如因卖方原因导致施工延误，卖方应采取必要措施自费加快工作进度。这些措施包括但不限于：增加人手和原材料、安排多班工作、加班、周日及公共假日加班、按买方要求安排特别运输等，并且承担买方的监控或支持的费用。如果卖方虽已收到了书面警告，但仍不采取合理措施来加快工作进度，或对买方或第三方产生重大损害，或对装置的操作安全产生风险，买方有权决定由自己或第三方完成全部或部分施工，由此产生的风险和费用由卖方承担。

If delays in the Work occur through the fault of the Vendor, he shall take the necessary measures to accelerate the Work at his own expense. These include, but are not limited to increased use of staff and material resources, working multiple shifts, overtime and on Sundays and public holidays, special transport as required by the Buyer and the costs of monitoring or support by the Buyer. If, in spite of receiving a written warning, the Vendor fails to take reasonable measures to accelerate the Work, or if major damage would otherwise occur for the Buyer or to third parties, or if the operational safety of the Plant is at risk, the Buyer may complete himself or have a third party complete the Work in whole or in part at the risk and expense of the Vendor.

- 7.2 即使在施工验收时没有提出，买方也可在最终发票支付前对卖方进行逾期罚款、其他规定的罚款或性能罚款。订单的取消或终止将不影响买方对已经发生的罚款，赔偿和其他损失的索赔。

Liquidated Damages or Penalties for delay, other agreed penalties and penalties or liquidated damages for performance guarantees may be claimed by the Buyer until the payment of the final invoice, even if no reservation is expressed on acceptance of the Work. Cancellation or termination of the Order shall not affect any claims to payment of penalties or liquidated damages and other damages that have already accrued.

## 8 验收 / Acceptance

- 8.1 除非双方另有约定，买方对施工的验收需由买方提供验收声明。仅作为参照的国际贸易术语条款（即使在采购订单中已规定）将不被视作“除非双方另有约定”的情形。

Unless otherwise agreed, Acceptance of the Work by the Buyer will take place only by an express declaration of Acceptance by the Buyer. A mere reference to Incoterms clauses – even if made in the Order – shall not by any means be considered as being "otherwise agreed" in this sense.

- 8.2 如果验收显示施工和订单不符，卖方应立即自费用采取一切必要措施，按照订单纠正或完成其施工。若因卖方原因导致验收失败，所有费用例如买方的人工费、试验费和检验机构的费用等应由卖方承担。If the Acceptance test shows that the Work is not in accordance with the Order, the Vendor shall immediately carry out all measures necessary to rectify or complete the Work in accordance with the Order, at his own expense. The costs of the failed Acceptance test, such as Buyer's personnel costs, cost of test and inspection agencies, shall be borne by the Vendor if the failure was due to his fault.

- 8.3 若无重大缺陷，且卖方承诺在买方规定的合理期限内纠正其缺陷，买方可自行决定给予临时验收。

In the event of defects that are not substantial, provisional Acceptance may be granted at the sole discretion of the Buyer, subject to the provision that such defects are remedied within a reasonable period as determined by the Buyer.

- 8.4 买方对施工的验收并不视为对其任何权利的放弃，尤其是质保期内的索赔，逾期完工索赔，合同罚款，违约索赔等。

Acceptance of the Work shall not be deemed a waiver of any of Buyer's rights, especially warranty claims, claims for damages for delays, contractual penalties, liquidated damages etc.

## 9 质量保证 / Warranty for Defects

- 9.1 卖方应保证施工没有缺陷，包括但不限于：其施工将至少满足订单规定的所有性能指标并保证硬件达到安全稳定运行的目的，符合最新的可接受的工艺技术水平和经济效能，并符合本采购条款第3.3和4.4条中所列的相关技术文件、规定、建议和准则的要求。

除非卖方在接收买方提供的零部件和材料时不能合理察觉的缺陷之外，由买方提供的零部件和材料也将包含在卖方的保证范围内。

The Vendor warrants that the Work will be free from defects, including, but not by way of limitation, that it will at least meet all properties and performances specified in the Order and will enable the Hardware

to be fully and safely operable for the purpose intended, that it conforms to the latest accepted state of the art and economic efficiency, and comply with the relevant technical documents and regulations, recommendations and guidelines as listed in Art. 3.3 and 4.4 of these Conditions of Purchase.

- 9.2 由于装置安装的特殊性，施工验收和缺陷通知将只有在硬件安装和投入使用后（如适用）方能进行。因此，若无过度延误，买方在硬件安装和投入使用后（视情况）向卖方发出缺陷索赔通知仍应视为及时有效。Due to the special nature of plant construction, testing of the Work and, if applicable, notification of defects, can only be carried out after the Hardware has been installed and taken into use. Therefore, Buyer's notice to Vendor claiming defects shall be deemed to be in time if issued without undue delay after testing, or taking into use, as the case may be, of the Hardware.

- 9.3 除非在订单中另有约定，施工的质保期为验收后 36 个月。对涉及土建施工的工程，则应适用自施工验收后 5 年的法定质保期。

Unless otherwise agreed in the Order the Warranty Period for the Work shall be thirty-six (36) months from Acceptance of the Work. For engineering regarding civil works the legal statute of limitations of 5 years from Acceptance of the Work shall remain applicable.

- 9.4 卖方应根据买方的选择并自负费用对质保期内出现产品缺陷立即以返工或重新施工的方式进行整改。卖方应就整改措施提前与买方进行磋商。所有费用包括但不限于必要的现场硬件的维修费及文件费将由卖方承担。

The Vendor shall be obliged to promptly remedy any defects that arise within the Warranty Period by reengineering or new engineering at Buyer's choice and at Vendor's expense. The Vendor shall consult Buyer before any changes are made. All cost shall be for Vendor's account, including but not limited to any cost necessary for resulting repairs or modifications of the Hardware free on Site, and documentation.

- 9.5 如果卖方未能在买方通知的合理期限内纠正缺陷，或卖方已经最终拒绝采取措施纠正缺陷，或卖方所采取的措施未能纠正缺陷，或所提出的纠正措施不能被买方合理接受，或因情况特别紧急不再可能通知卖方关于缺陷和缺陷危害并为卖方纠正缺陷设定一个适当的时限，买方有权作如下选择：

If

the Vendor has failed to remedy a defect within a reasonable period notified to him by the Buyer to that effect, or

the Vendor has conclusively refused to carry out measures to remedy the defect, or

measures by the Vendor have failed to remedy the defect, or

the proposed measures to remedy the defect are not reasonably acceptable to the Buyer, or

it is not possible any more to inform the Vendor about the defect and the damage threatening due to particular urgency and to set an adequate time limit to Vendor for Vendor's rectification of defects, the Buyer shall have the right, at his option,

- 9.5.1 买方可以自己或请第三方实施整改工作，由此产生的所有费用将由卖方承担。除非该整改工作证明是错误的，否则卖方的保证责任将不受此整改工作的影响。如发生装置的运行存在安全隐患，或可能发生其他重大危害的情形，买方将应具有上述权力。

to perform such remedial work or cause it to be performed by third parties. All costs arising for such remedial work shall be paid for or reimbursed by the Vendor. The Vendor's Warranty shall not be affected by such action except to the extent that such remedial work is proven to be faulty.

The Buyer shall also have the aforesaid right, if the operational safety of the Plant is at risk, or if substantial damages would otherwise occur;

or 或:

- 9.5.2 按照因缺陷造成的施工贬值比例对订单价格进行相应的扣减，如果该订单项下已经支付的金额超出了需扣除的金额，卖方应偿还差额部分。

to a reduction of the price of the Work agreed to in the Order, pro-rata to the reduced value of the Work by reason of such defect. If the part of the Order price already paid exceeds the reduced price, the Vendor shall reimburse the balance;

or 或:

- 9.5.3 由卖方赔偿买方所遭受的损害和损失，包括但不限于：对施工范围以外的财物造成的损失及耗费的费用，除非该过失不是由于卖方的疏忽造成。

to be indemnified by the Vendor for his damages and losses, including, but not limited to, damages caused to property other than the Work, and frustrated expenses, except to the extent the defect is not due to the Vendor's negligence;

or 或:

9.5.4 取消订单，此订单取消将无损于第9.5.3中规定的买方对其损失要求赔偿的权利。如在特殊情况下基于对双方利益的考虑认为立即取消订单将显得更为必要合理时，买方也应有权取消合同。

to cancel the Order, which cancellation shall be without prejudice to Buyer's right to claim damages as provided in 9.5.3. Buyer shall also have the right to cancel the Order in the event of special circumstances warranting the immediate cancellation, in consideration of the reasonable interest of both parties.

9.6 时效法中关于订单终止，中断，或重启的规定，将适用于质保期或时效限定期，视情而定。

The provisions of law regarding the stopping, interruption, or re-start of the statute of limitations shall apply to the Warranty Period or statute of limitations, as the case may be.

9.7 即使在装置验收前买方也有权行使此第9条中的权利。

The Buyer shall be entitled to avail himself of the rights under this Article 9 also prior to Acceptance.

## 10 产品责任、违约 / Product Liability, Default

10.1 卖方应保障并使买方免于遭受由于其施工缺陷引起的任何索赔。除非此施工缺陷并不属于卖方责任范围，卖方应承担全部费用和开支，包括但不限于法律辩护和任何产品召回的费用。卖方应被告知任何产品召回的方式和范围。

The Vendor shall indemnify and hold the Buyer harmless from any claims caused by a defect in the Work. The Vendor shall bear all costs and expenditures including, but not limited to, costs of legal defence and of any recall action except where the defect did not occur within his domain of responsibility. The Vendor shall be informed of the manner and extent of any recall action.

10.2 如果卖方违反订单项下的任何责任和义务，买方将有权对由此违约造成的任何损害或损失包括但不限于对施工以外的财物造成的损失要求卖方赔偿。买方将不会对其生产损失或利润损失向卖方索赔，除非此等损失是因卖方的重大疏忽或恶意行为而造成的，或买方业主或第三方已就此等损失向买方提出索赔，或卖方已对此等损失进行了保险。

In the event of the Vendor defaulting against any of his obligations pursuant to the Order, the Buyer shall have the right to be indemnified by the Vendor for any damages or losses suffered by reason of such default, including, but not limited to, damages caused to property other than the Work. 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 by the Vendor, or claims are made in turn against the Buyer by the Owner or third parties in this respect, or such damages are covered by an insurance held by the Vendor.

## 11 知识产权保证 / Intellectual Property Warranty

若卖方施工或硬件存在任何侵权行为（包括侵犯专利权，商标权或版权）卖方应予以赔偿并使买方免于遭受由此造成的任何索赔和损失、损害、责任、成本和费用。

The Vendor shall indemnify and hold the Buyer harmless from and against any and all claims and losses, damage, liabilities, cost and expense resulting from or arising in connection with any defect of title (including infringement of patent, trademark or copyright) owing to Vendor with respect to the Work or to the Hardware.

## 12 保密，所有权 / Secrecy, Ownership

12.1 卖方为执行订单从买方处收到的文件、数据和物料以及其中包含的技术和商业信息应视为买方财产并予以保密。无买方书面同意，不得用于订单以外的目的或复制、发布或透露给第三方。且卖方应根据买方的要求立即归还和/或从卖方的电脑或其他数据文件中删除此等信息，卖方应据此指导并督促其员工。

Documents, data and objects which the Vendor receives from the Buyer for the execution of the Order shall remain the property of the Buyer and shall be treated as confidential, including the technical and commercial information contained or embodied therein. They may not be used other than for the Order, copied, published or made available to third parties without the written permission of the Buyer, and they shall, on request of the Buyer, promptly be returned to the Buyer and/or be deleted from computers or other data files of the Vendor. The Vendor shall instruct and oblige his personnel accordingly.

12.2 卖方为执行订单而准备的所有图纸、模版和其他文件的所有权都应归属于买方。

Title in all drawings, models and other documents that the Vendor prepares for the Order shall be vested in the Buyer.

## 13 发布，广告/ **Publications, Advertising**

未经买方书面同意，卖方不得公开发布有关订单或装置的任何信息或促成类似信息被公布。卖方也不得例如出于销售等目的将此作为业绩对外公布。

Without the Buyer's written permission, the Vendor may 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 for use of the same as reference, e.g. for sales purposes.

## 14 暂停，终止 / **Suspension, Termination**

### 14.1 买方可以在任何时候书面通知卖方暂停或终止执行订单。在收到此等通知后，卖方应：

The Buyer may at any time suspend or terminate the execution of the Order by written notice to the Vendor. On receipt of such notification, the Vendor shall:

- a) 停止施工；  
stop the work;
- b) 不再向第三方签发涉及该施工的任何分包订单；  
not issue any further orders to third parties in respect of the Work;
- c) 如买方要求，尽一切努力取消或暂停已经签发给其分包商的涉及该产品的分包订单；  
make every effort to cancel or suspend orders that he has awarded to subcontractors in respect of the Work if requested to do so by the Buyer;
- d) 保护好为执行此订单而采购或预留的所有材料以及当前正在执行或已完成的服务，无论这些物料是在卖方处还是在分包商处，直到买方签发进一步的指示；  
safeguard all material procured or reserved for execution of the order and all services currently being worked on or which have already been completed, whether these are with the Vendor or his subcontractors, until further instructions are issued by the Buyer;
- e) 遵循买方关于这些服务的指示。  
follow the Buyer's instructions concerning these services.

### 14.2 如果由于业主原因（如停止付款或取消合同）导致买方终止订单，卖方有权要求买方根据订单按比例支付已完成的施工价格。此外，卖方将有权要求偿还其合理的经证实的直接取消费用。如果买方从业主处成功获得相应的赔偿，卖方可合理分享其未完成施工部分的管理费用。

If the Buyer terminates the Order for reasons attributable to the Owner (e.g. cessation of payment or cancellation of the contract), the Vendor shall be entitled to payment of the pro rata price for the Work completed according to the Order. In addition, Vendor shall be entitled to claim for reimbursement of the reasonable and proven direct costs of cancellation, and, to the extent of Buyer succeeding in enforcing a corresponding claim against the Owner, a reasonable share of the overhead costs for the part of the Work that has not been completed.

### 14.3 如果订单被暂停后又重新执行，若卖方能提供充足的证明，卖方可对其已发生的合理费用要求补偿和/或合理调整产品交货期。

Vendor may, if the Order is suspended and later restarted, demand reimbursement of reasonable cost and/or reasonable adjustment of the completion deadlines, provided Vendor can provide sufficient proof of such cost or delay.

### 14.4 如果因卖方原因导致买方终止该订单，买方可以：

If the Buyer terminates the order for reasons due to the Vendor, the Buyer may

- 要求卖方交付已经完成的施工。并在卖方承担费用和风险的前提下，买方可自行决定是否由自己或是安排第三方来继续完成尚未完工的部分，条款第 9.5.1 条将相应适用。卖方应有权要求买方按比例支付其已交付给买方的那部分施工的订单价值，买方为完成并交付未完成部分所产生的超出剩余订单价值部分的费用将在付款中予以扣除。

demand delivery of such part of the Work already completed. At Vendor's risk and expense, Buyer may decide whether to complete and deliver himself the Work that has not yet been completed or arrange for said portion of the Work, to be completed and delivered by third parties. Art. 9.5.1, of these Conditions of Purchase shall apply accordingly. The Vendor shall be entitled to the pro rata Order price for the Work taken over by the Buyer. Any cost and expenses in excess of the remaining Order price incurred by Buyer for completion and delivery shall be deducted from the payment to Vendor;

or 或:

- 放弃继续施工并要求卖方赔偿因其未能履行合同所造成的损失。因订单终止而产生的额外费用应由卖方承担。此外，卖方还应将已经支付的所有款项退还买方以换取买方退还其已完工的施工或部件。

waive completion of the Work and claim for damages for non-fulfilment of contract. Any additional costs incurred in connection with the termination shall be borne by the Vendor. In addition, the Vendor shall refund to the Buyer all payments made, in exchange for the return of the Work or of the parts in question.

因卖方导致终止订单的原因包括，但不限于：

Reasons for termination due to the Vendor shall include, but not by way of limitation:

- 卖方停止付款；

cessation of payment by the Vendor;

- 卖方进入资产清算或破产申请程序；

application for opening of settlement or bankruptcy proceedings for the Vendor's assets;

- 施工缺陷无法修复，或其整改措施不能被买方合理地接受，或由于此等缺陷根据官方要求硬件或装置被禁用或运行严重受限；

defects of the Work that are incapable of being remedied, or the rectification of which is not reasonably acceptable to the Buyer, or due to which the operation of the Hardware or the Plant is prohibited or made unduly onerous by official requirements;

- 因卖方材料质量或交付进度不能满足要求而危及到现场施工的次序或按时完工且未能在买方的违约通知中所设定的合理期限内进行纠正；

material defaults by the Vendor in respect of quality or time schedule which jeopardize the orderly or timely completion of the Work, which have not been remedied within a reasonable deadline set in a notice of default by the Buyer.

14.5 如果订单被终止，卖方应将买方准备的或提供给他与该订单有关的所有图纸、方案和其他文件归还给买方。

In the event of termination of the Order, the Vendor shall return to the Buyer all drawings, plans and other documents which were prepared by him or given to him in connection with the Order.

15 付款、发票、保证金、抵销帐户、延迟付款、分包、税收 / Payment, Invoicing, Bonds, Offsetting Accounts, Delay in Payment, Assignment, Taxes

15.1

15.1.1 任何一方都应各自承担因履行订单而产生的纳税责任和义务。

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

15.1.2 根据订单规定对产品的所有补偿应为净值，即不含增值税。

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

15.1.3 卖方应履行与发票开具有关的所有正式的法定要求以确保正确的增值税抵扣程序（若有）。

The Vendor shall fulfill all formal and legal requirements in connection with the issuance of invoices in order to ensure a correct VAT refund procedure, if any.

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

If as a result of regulatory action taken by the authorities (increased VAT is claimed) or the input tax of one of the contracting parties is reduced, both parties shall be obliged to correct the affected invoice correspondingly.

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

Direct taxes, which will be levied due to the payments in the country of the Buyer, are borne by the Vendor. All amounts payable in respect of the contract will be paid after deduction of any taxes, levies, duties or administrative fees that must be withheld at source and paid to the respective tax authorities by the Buyer due to legal requirements. If the relevant Double Tax Treaty provides for a reduction or exemption of withholding tax, the Buyer will pay the corresponding amount only if and when the Vendor has presented a valid exemption certificate to the Buyer on the date of payment at the latest.

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



- The Vendor is responsible to meet all further obligations imposed on the Vendor by law. Claims or disadvantages arising to the Buyer due to disregarding of aforementioned obligations by the Vendor will be borne by the Vendor.
- 15.1.7 卖方应承担订单执行过程中产生的所有关税和其他税费,包括但不限于其员工及第三方员工的工资税、收入税和其他所得税。
- The Vendor shall be responsible for any cost for customs, duties, taxes of any description, including but not limited to taxes and duties on salaries, wages and other remuneration of this employees and of third parties' employees, incurred in the execution of the Order.
- 15.2 双方同意的适用包干价的施工款凭卖方提供的完工证据进行支付。
- Work for which a lump sum price has been agreed will only be remunerated if the Vendor provides evidence that such work has been executed.
- 15.3 付款申请、发票和借贷票据应标明订单号并以适当形式提交给买方财务部门。增值税(若有)应单列,此外,卖方应标明其增值税税号,最终发票也应如此标注。
- Requests for payment, invoices and credit and debit notes shall be submitted in an appropriate form, stating the Order number, to the Buyer's Cost Accounts Department. Value Added Tax, if applicable, shall be shown separately. In addition, the Vendor must state his Value Added Tax number. The final invoice shall be labelled as such.
- 15.4 当期分期付款将只有在所有付款条件已经满足且前期分期付款已经支付的前提下予以支付。
- Payments will only be made, if all criteria for payment of the instalment **in question** and of the previous instalments have been fulfilled.
- 15.5 若采购订单规定以质保金的形式作为保证手段,若因卖方产品原因导致业主扣留对买方付款,买方有权拒绝返还此质保金。
- If the Order provides that the warranty retention can be redeemed by a warranty bond, the Buyer may refuse the retention to be redeemed for such time as the Owner withholds payments from the Buyer by any reason attributable to the Work.
- 15.6 卖方只可用其自己的索赔权(如果此等索赔权是无争议的或已由最终法院或仲裁机构裁定)来冲抵买方对他的索赔。买方可以用其自己的或用无论直接或间接,全部或部分隶属于买方的其他公司的所有索赔权来冲抵的卖方对他的索赔。
- 如果这些索赔权在不同的日期到期,买方的索赔权应最迟在买方的所有债务到期前结算完毕。
- The Vendor may only offset the Buyer's claims for payments against his own claims if these are undisputed or have been determined by final court or arbitration award.
- The Buyer may offset claims for payment by the Vendor against not only his own claims but also against all claims of other companies wholly or partly affiliated to Linde Engineering(Hangzhou) Co.,Ltd. either directly or indirectly.
- 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.
- 15.7 只有当买方在即使收到卖方在付款到期且发票收讫后发出的书面提醒30天后依然未能支付,或未按订单中规定的付款日期支付时,方被视为付款延迟。
- The Buyer will be deemed in delay with payment only if he fails to pay on receipt of a written reminder by the Vendor after the expiry of thirty days from the due date and receipt of invoice, or if he fails to pay on the calendar date stated in the Order.
- 15.8 如果买方延迟付款,应按5%年息支付卖方利息,除非卖方证明其因此延迟付款遭受了更大的损失。
- In the event of Buyer's delay of payment, he shall owe interest of 5% p.a., unless the Vendor can prove that he has suffered higher damages due to such delay.
- 15.9 卖方对买方的索赔权进行转让必须经买方书面同意,买方不得无理由拒绝。
- Assignment by the Vendor of claims against the Buyer shall require Buyer's written consent which shall not be withheld unreasonably.
- 16 **保险 / Insurance**
- 卖方应在整个施工期间自付费用以最低EUR500,000/票的保额标准投保并维持第三方责任险,卖方应向买方提交适当的保险凭证作为证据。

For the duration of the Work, the Vendor shall take out and maintain at his own expense a third party liability insurance with a minimum coverage of EUR 500.000 per case of loss. The Vendor shall submit to the Buyer suitable insurance certificates as proof of such insurance.

## 17 版权 / Copyrights

如果在施工过程中产生出任何版权，则仅买方有权行使与之有关的一切权利，例如，但不限于使用和开发这些版权的权利。

In the event that copyrightable work is created as part of the Work, only the Buyer shall be entitled to exercise any rights in connection therewith, such as, but not limited to the right of use and exploitation.

## 18 共同责任/Corporate Responsibility

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

Vendor shall comply with the requirements of the 'Code of Conduct for Suppliers of the Linde Group', a copy of which has been provided to the Vendor and which may be found at [www.linde.com/supplier-CoC](http://www.linde.com/supplier-CoC) (hereinafter referred to as the 'Supplier Code of Conduct').

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

Vendor shall demonstrate compliance with the requirements of the 'Supplier Code of Conduct' at the request and to the satisfaction of Linde, e.g. by providing data or conducting self-assessments.

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

If Linde has reason to believe that Vendor may be in material breach of the requirements laid out in the Supplier Code of Conduct, Linde or a third party appointed by Linde may conduct inspections at Vendor's premises in order to verify Vendor's compliance with the requirements of the Supplier Code of Conduct. Linde shall use all reasonable efforts to ensure that all inspections will be conducted in accordance with any applicable data protection law and shall neither unreasonably interfere with Vendor's business activities nor violate any of Vendor's confidentiality agreements with third parties. Vendor shall reasonably cooperate with any inspections conducted. Each party shall bear its own expenses in connection with such inspection.

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

In addition to any other rights and remedies Linde shall also have the right to terminate this agreement and any purchase order issued hereunder without any liability whatsoever, if Vendor is in material breach of the Supplier Code of Conduct or fails to remedy any breach, after written notification about the breach by Linde.

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

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

## 19 局部失效 / Voidness in Part

如在本采购条款或订单条款中有任何条款被证明是无效的或不可操作的，其它剩余条款的有效性应不受影响。

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

## 20 适用法律 / Applicable Law

订单应受“中华人民共和国合同法”管辖并按其解释。

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

## 21 管辖、仲裁地/Place of Jurisdiction/Arbitration

- 21.1 若卖方主要营业地址在中华人民共和国境内：  
凡因本订单引起的或与本订单有关的任何争议，双方应通过友好协商解决。如果协商不能解决，应提交杭州仲裁委员会在杭州进行仲裁。诉讼裁决是终局的，对双方都有约束力。诉讼费用由败诉方承担。买方也可以在对卖方有法律管辖权的任何其他地点提请诉讼。

**For Vendors having their main place of business in People's Republic of China:**

Any dispute arising from or in connection with this purchase order, shall be settled amicably through friendly negotiation. In case no settlement can be reached through negotiation, the case shall then be submitted for arbitration to Hangzhou arbitration commission with venue in Hangzhou. The arbitral award is final and binding upon both parties. Arbitration fee shall be borne by the losing party. The Buyer may also take legal action in any place of jurisdiction valid for the Vendor.

- 21.2 若卖方主要营业地址在其他国家：  
凡因本订单引起的或与本订单有关的任何争议，双方应通过友好协商解决。如果协商不能解决，则任何一方可以将争议提交给中国国际经济贸易仲裁委员会根据该会有效的仲裁规则，由指定的3名仲裁员最终裁决。诉讼裁决是终局的，对双方都有约束力。诉讼费用由败诉方承担。

**For Vendors having their main place of business in other Countries:**

Any dispute arising from or in connection with this purchase order, shall be settled amicably through friendly negotiation. In case no settlement can be reached through negotiation, either Party may submit the dispute to China International Economic and Trade Arbitration Commission for final arbitration according to its effective rules by three arbitrators appointed in accordance with said Rules. The arbitral award is final and binding upon both parties. Arbitration fee shall be borne by the losing party.