



## CONDITIONS OF PURCHASE for Engineering Services (Issue: October 2022)

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### **1 Definitions**

- 1.1 The "Plant" shall refer to the entire facility to be delivered by the Buyer to the Owner for which the Ordered Items are intended.
- 1.2 The "Vendor" is the Buyer's contractual partner for the Order. The Vendor is hereinafter also referred to as the "Party".
- 1.3 The "Buyer" is Linde Arabian Contracting Co. Ltd., Eastern Cement Tower, 9<sup>th</sup> floor, suite 901, Dammam – Khobar Highway, P.O. Box 31431, Al Khobar, KSA . The Buyer is hereinafter also referred to as the "Party".

- 1.4 The "Ordered Items" shall refer to the services, including drawings, data media and other documents and objects to be supplied by the Vendor as part of the Order.
- 1.5 The "Order" means the formal documents containing the contractual agreements between the Buyer and the Vendor relating to the Ordered Items, including these Conditions of Purchase and regardless of whether they have been signed or not. These documents shall be sent by the Buyer to the Vendor as an original hard copy, as an attachment to an e-mail or via the Internet or otherwise. The term "Order" also includes all supplements to the Order referred to.
- 1.6 The "Owner" shall mean the Buyer's customer for the Plant for which the Ordered Items are intended.
- 1.7 "Hardware" shall mean a movable or immovable item created on the basis of the Ordered Items, e.g. the Plant or part of the Plant.
- 1.8 The expression "in writing" means a document signed by hand and transmitted as a letter (including by courier service), fax or as an attachment to an e-mail.
- 1.9 "Subcontractor" shall mean a natural person or legal entity whose services are used by the Vendor to fulfil its obligations under the Order. The Subcontractor is a third party in relation to this Order.
- 1.10 "Immediate" means without undue delay.
- 1.11 "Affiliate" means any legal entity which controls, is controlled by, or is under common control with another legal entity. An entity is deemed to control another if it directly or indirectly owns (a) 50% or more of such other entity, or (b), if it holds a sufficient voting interest to elect a majority of the directors or an equivalent governing authority or to otherwise direct the affairs and management of the other entity.



**2 Requirements for design, construction and operation of the Plant**

By accepting the Order, the Vendor confirms its obligation to take all requirements for the design, construction and operation of the Plant into account when creating the Ordered Items, and also confirms that the location of the Plant is known to it.

**3 Content of the Order**

3.1 Any terms and conditions of the Vendor that contradict, or deviate from, these Conditions of Purchase shall only apply if the Buyer acknowledges them in writing or in the form of an Order. In particular, any reference to General Terms and Conditions of Business in the Vendor's communication and/or in the Vendor's documents shall be disregarded and considered obsolete.

3.2 Orders and other declarations are only binding if they are placed or confirmed by the Buyer in writing or in the form of an Order.

3.3 All terms and conditions, specifications, standards and other appendices attached to the Order or listed therein are considered to form part of the Order. The documents below apply in the following order of precedence:

- the order letter (Articles 1 et seq.)
- these Conditions of Purchase
- the technical specifications
- the general specifications and Linde Standards

**4 Execution of the Ordered Items, subcontracts**

4.1 The Ordered Items shall be executed in such a complete manner that - together with the agreed delivery and performance exclusions - they are fully functional and safe to operate for the purpose provided for in the Order. The only deliveries and services that are deemed excluded from the Ordered Items are those which are explicitly designated as such in the Order.

4.2 The Vendor is obliged to execute the Ordered Items in a timely manner and in accordance with the requirements of an internationally recognised quality management system (ISO 9001 or equivalent).

4.3 The Vendor shall comply 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 is to be used.

4.4 If the Vendor has any reservations regarding the Buyer's specifications, it shall notify the Buyer of these reservations in writing or by e-mail immediately, if possible before starting work, and shall work with the Buyer to find a solution.

4.5 The Vendor undertakes to only use Subcontractors that it can prove have the requisite qualifications when awarding subcontracts, and to subject these Subcontractors to the technical provisions and scheduling requirements in full.

4.6 The Vendor shall indemnify the Buyer against all claims under public and private law that are asserted against the Buyer on account of the Vendor's failure to comply with statutory provisions, irrespective of the legal grounds.

4.7 The Vendor is responsible for ensuring that the employees deployed by it and by its Subcontractors are in possession of a valid work permit.

4.8 If the Order is executed on the Buyer's premises, the Buyer shall provide the Vendor with suitable rooms.

The Vendor shall ensure that its employees comply with the safety and accident prevention regulations that apply in any location in which the Vendor works, in particular on the Buyer's premises and at the site of the Plant. The Vendor shall indemnify the Buyer against all claims arising from the Vendor's failure to comply with such obligations.

4.9 The Vendor shall have sole responsibility for providing guidance and instructions to, as well as for supervising, its employees. This shall not affect the Buyer's right to check the Ordered Items at any time to ensure that they are being executed in accordance with the Order, in particular in a professional and timely manner.

4.10 If the Vendor requires access to the Buyer's IT infrastructure, the Vendor shall obtain the Buyer's prior consent in writing or by e-mail and shall comply with the Buyer'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](https://www.linde-engineering.com/en/images/LS-940-05-EN_tcm19-551315.pdf)".

4.11 Any revision or approval mark by the Buyer in the Vendor's documents does not release the Vendor from its responsibility for the information contained therein.

## 5 Changes to the Ordered Items

5.1 If the Buyer requests changes to the Ordered Items, the scope of the Order or the manner of execution, the Vendor shall immediately notify the Buyer in writing of any increased/reduced prices and the effects of any changes on deadlines, furnishing evidence thereof. The increased/reduced prices are to be determined using the basis of calculation used in the Order.

5.2 The Parties must negotiate with a view to reaching an agreement on the contractual amendments, taking into account the legitimate interests of both Parties and the contractual obligation of good faith. The Buyer shall be entitled to suspend the efforts to reach an agreement on the contractual amendments until immediately after the Vendor has fulfilled its obligations under the Order (excluding warranty) at the latest. Once an agreement has been reached on the contractual amendments, the Buyer shall issue a written supplementary order for the requested changes and contractual amendments.

5.3 Even if no agreement has been reached on the contractual amendments as yet, however, the Vendor shall immediately implement the requested changes based on terms and conditions of the Order that remain provisionally unchanged.

## 6 Claims of the Vendor

In order to enable the Buyer to take timely action in the complex technical and commercial environment of the international plant construction business (e.g. coordination of numerous other companies and disciplines and consultation with the Owner), the Vendor must notify the Buyer in writing of the occurrence of any event from which the Vendor believes it can derive an entitlement to a contractual price increase or a deadline adjustment, and assert its

alleged claims on the merits, within seven (7) working days of becoming aware of the event. Otherwise, the Vendor shall lose the entitlement in question.

## 7 Dates, deadlines, contractual penalties

7.1 The Vendor undertakes to monitor the deadlines itself. It is the sole responsibility of the Vendor to monitor and manage its Subcontractors in such a way that the agreed dates and deadlines are adhered to and that an up-to-date target/actual status is available at all times.

7.2 The Buyer must be informed of any possible delays or other difficulties that pose a risk to the agreed dates and/or deadlines being adhered to immediately in an e-mail with the following content: Causes of the delay/the delay risk, forecasted impact on the agreed delivery dates and/or deadlines, acceleration measures planned and already taken, including a description of the expected improvement in the deadline situation. This notification shall not, however, entitle the Vendor to exceed agreed dates and/or deadlines. In the event that the duty to notify is culpably breached, the Vendor shall be liable for all resulting damage.

7.3 In the event of delays with regard to agreed dates and/or deadlines for which the Vendor is responsible, or in the event of such impending delays, the Vendor shall, immediately after becoming aware of the delay/the risk of delay, take 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 at its own expense. Acceleration measures include, in particular, increased use of personnel and material resources, use of multiple shifts, overtime, work carried out on Fridays and public holidays and special shipment(s) which the Vendor shall carry out – insofar as is necessary and reasonable – at the Buyer's request. The Vendor shall also bear the costs for any necessary support provided by the Buyer, as well as appropriate monitoring and control measures taken by the Buyer in connection with the delay/the risk of delay, with remuneration in this regard being paid based on the standard market hourly rates. The provisions set out above shall apply accordingly in the event of justified 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, subject to the proviso that the acceleration measures are to be taken immediately after notification of the concerns by the Buyer.

7.4 If the Vendor refuses to take reasonable acceleration measures despite being issued a reminder, or if disproportionate damage is imminent, as a result of the delay, on the premises of the Buyer or third parties, or with regard to the environment, or if the operational safety of the Hardware is at risk, then the Buyer is entitled to complete the Ordered Items in full or in part itself, or have them completed by third parties, at the Vendor's expense.

7.5 Contractual penalties for missing deadlines and other agreed contractual penalties can be levied by the Buyer until the final invoice has been paid, even without any reservation having to be declared upon formal acceptance of the Ordered Items. Rescission or termination shall be without prejudice to any claims for payment of contractual penalties and compensation that have already arisen.

## 8 Force majeure

8.1 Force majeure is to be understood as an unforeseeable event beyond a Party's reasonable control preventing or hindering the Party from performing its obligation under the Order and

- which could not reasonably have been expected to have been taken into account at the time of the conclusion of the Order, and
- which could not reasonably have been avoided or overcome, and
- the consequences of which could not reasonably have been avoided or overcome.

Delays of Subcontractors of the Vendor or delays of the Owner, 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 As a prerequisite for any claim hereunder, if the Order is affected by force majeure, the Vendor shall give prompt notice of the start of force majeure, the expected delay and any other expected consequences on the Order caused by force majeure, and shall at any time take all reasonable precautions and measures to minimise the effects of force majeure, and shall prove force majeure and its consequences in reasonable time.

8.3 The affected Party shall not be liable to the other Party for the consequences of such force majeure and shall be entitled to a reasonable extension of the agreed and affected dates and/or deadlines. Both Parties shall bear their own costs related to force majeure and any of its consequences.

8.4 If force majeure affects the Order for more than six months, the Parties shall discuss the continued implementation of the Order in good faith. Should the Order be terminated due to force majeure, the Vendor is entitled to payment of the pro rata price for the Ordered Items performed in accordance with the terms and conditions of the Order prior to the force majeure event. The Buyer is entitled to demand the delivery of these parts of the Ordered Items.

## 9 Formal acceptance

9.1 Unless otherwise agreed, formal acceptance of the Ordered Items shall be effected only by way of an explicit declaration of formal acceptance by the Buyer.

9.2 If it becomes apparent before or during attempted formal acceptance that the Ordered Items do not comply with the Order, the Vendor shall, at its own expense, take all of the measures required to fulfil the requirements of the Order immediately. The costs of the unsuccessful formal acceptance attempt, e.g. personnel costs incurred by the Buyer, costs relating to approving authorities, shall be borne by the Vendor if the latter is at fault.

9.3 In cases involving insignificant defects, formal acceptance shall be subject to the proviso that these defects are eliminated within a reasonable period to be determined by the Buyer.

9.4 Formal acceptance of the Ordered Items shall not constitute a waiver by the Buyer of any rights to which it is entitled, in particular warranty claims, claims for damages due to delays, contractual penalties, etc.

9.5 Unless otherwise stipulated in the Order, the versions of the specifications, standards and guidelines valid at the time of formal acceptance shall apply.



**10 Provision of materials and equipment**

- 10.1 The provision of documents, materials or equipment by the Buyer or the Owner shall not release the Vendor from its responsibility or liability for the quality of the Ordered Items or from its warranty obligation.
- 10.2 Any materials and equipment provided which are not used for installation or whose installation has not been proven by the Vendor shall be returned by the Vendor to the Buyer. If the Vendor is unable to return the materials and/or equipment because they have been lost, it shall replace the lost materials and/or equipment at its own expense.

**11 Warranty for defects**

- 11.1 The Vendor 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, comply with the generally accepted rules of technology, the relevant technical documents and the regulations, recommendations and guidelines referred to in section 4.3.
- 11.2 Due to the special features of the plant construction business, inspections can only be performed, and any necessary complaints raised, after the Hardware has been installed and commissioned. A notice of defect shall therefore be deemed to have been made in a timely manner if it is made immediately after installation/commissioning of the Hardware.
- 11.3 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 formal acceptance of the Ordered Items by the Buyer. If, on the other hand, the Ordered Items consist of services for a building, the statutory warranty period shall continue to apply.
- 11.4 If any defects affecting the Ordered Items occur during the warranty period, the Buyer is entitled, at its discretion, to have the Vendor, in consultation with the Buyer, remedy such defects immediately and free of charge by performing repair work or replacing the Ordered Items (collectively referred to as "Remedial Measures") and bear all additional costs for changes to the Hardware caused by such defects affecting the Ordered Items, in particular material

and labour 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 Hardware shall be transported at the Buyer's discretion.

The Remedial Measures shall, if necessary, be carried out with increased personnel and/or material resources, working in multiple shifts and/or performing overtime. Insofar as is permissible in the country in which the work is to be carried out, the Remedial Measures must, if necessary, also be carried out on Fridays or public holidays.

- 11.5 If the Vendor does not carry out the Remedial Measures in a due and proper manner within a reasonable period of time despite having been set a reasonable deadline, the Buyer is entitled, at its discretion:

- 11.5.1 to also carry out the Remedial Measures itself or have them carried out by third parties ("Self-Performance"). All costs in connection with the Self-Performance shall be borne by the Vendor.

Insofar as a defect is not (completely) remedied by Self-Performance carried out, the Vendor shall remain liable for this defect in accordance with the provisions of the Order.

and

- 11.5.2 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). If the Buyer has already paid more than the reduced remuneration, the Vendor shall reimburse the excess amount.

or

- 11.5.3 to rescind the Order.

and

- 11.5.4 to claim full compensation for any damage caused by defects affecting the Ordered Items, including damage occurring outside of the Ordered Items, or compensation for expenses incurred in vain. This shall not apply if the Vendor is not responsible for the defect.

- 11.5.5 The Buyer shall be entitled to the rights according to



section 11.5 above without the need to set a deadline for the Remedial Measures in advance, provided that

- a) the Vendor has seriously and definitively refused subsequent performance, or
- b) subsequent performance 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) subsequent performance is impossible for the Vendor or
- e) there are special circumstances that justify the immediate exercise of some or all of the rights set out in section 11.5, 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 Hardware is imminent as a result of defects affecting the Ordered Items, meaning that it would be unreasonable to expect the Buyer to wait for a period set for Remedial Measures taken by the Vendor to expire, or
  - there is a risk of disproportionate damage to the Buyer or to third parties as a result of waiting due to a period having been set for Remedial Measures to be performed by the Vendor, or
  - the safety of the Hardware or of property not owned by the Vendor, or the safety of individuals or the environment is at risk.

11.7 The statutory provisions on suspension and interruption shall apply to the warranty and limitation period.

11.8 The claims under section 11 can also be asserted prior to formal acceptance.

## 12 Product liability, breach of duty

12.1 The Vendor shall indemnify the Buyer against claims arising from manufacturer's liability and from applicable product liability laws if the risk or damage is caused by a defect affecting the Ordered Items. In

this respect, the Vendor shall bear all costs and expenses, including the costs of legal defence and a recall campaign, unless the cause of the defect was not within its sphere of responsibility. The Vendor must be informed of the content and scope of the recall measures to be carried out.

12.2 If the Vendor culpably breaches any obligation arising from, or in connection with, the Order, the Buyer is entitled to claim compensation for any damage incurred as a result, including damage occurring outside of the Ordered Items. Notwithstanding the foregoing, however, the Buyer shall only assert claims for loss of production or loss of profit if the Vendor acted with wilful intent or gross negligence, or if the Buyer, 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 Vendor.

## 13 Third-party rights

If claims are asserted against the Buyer by a third party on account of a defect in title for which the Vendor is responsible, the Vendor shall be obliged to indemnify the Buyer against such claims, to reimburse it for any damage and expenses incurred and/or to obtain the necessary rights from the eligible party.

## 14 Ownership, confidentiality, data protection

14.1 Documents, drawings, data and objects which the Vendor receives from the Buyer in order to execute the Order remain the Buyer's property.

14.2 All information that the Vendor receives from the Buyer, the documents, drawings, data and objects produced, or otherwise created, by the Vendor 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. Subcontractors) without the written consent, or consent granted by e-mail or in the Order, of the Buyer. With regard to Subcontractors, permission to disclose the information is hereby granted, unless a confidentiality agreement between the Parties or the Order provides otherwise. Dissemination to authorised third parties (including



Subcontractors) is permitted insofar as these third parties are subject to an equivalent confidentiality obligation.

- 14.3 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 without delay 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.
- 14.4 All drawings, data media and other documents and objects produced by the Vendor in the context of the Order shall become the intellectual and physical property of the Buyer upon delivery.

## 15 Publications, advertising

The Vendor is not authorised to make or arrange for publications in connection with the Order or the Plant without the written consent, or consent granted by e-mail, of the Buyer. This also applies to use as a reference.

## 16 Suspension, termination

- 16.1 The Buyer 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 Vendor. In such cases, the Vendor is entitled to payment of the pro rata price for the services performed in accordance with the Order, plus a reasonable, substantiated share of overheads for the part of the Ordered Items that was not executed, as well as the substantiated, reasonable costs of stopping the execution of the Order. The Buyer is entitled to demand delivery of the drawings, data media and other documents and objects that have already been completed and/or have not yet been completed and are part of the terminated Ordered Items.
- 16.2 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 Party entitled to do so can only terminate the Order within a reasonable period of time after becoming aware of the reason for

termination.

Cause for termination includes, but is not limited to, scenarios 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 Buyer and the Owner regarding the Plant for reasons for which the other Party is responsible.

If the "cause for termination" relates to a breach of a contractual duty, termination is only permissible after the expiry of a reasonable deadline set to remedy the scenario to no avail or after an unsuccessful warning including the threat of termination. The setting of a deadline and the warning 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 due to a related contractual penalty or (c) there are special circumstances which justify immediate termination after weighing up the interests of both Parties.

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

- demand delivery, either in full or in part, of the drawings, data media and other documents and objects already completed which form part of the Ordered Items and, in addition, choose to complete and deliver the Ordered Items itself, or have them completed and delivered by third parties, at the Vendor's expense. For those parts of the Ordered Items which the Buyer has received in accordance with its requirements, the Vendor shall receive the pro rata price of the Order, less any additional costs and expenses incurred by the Buyer to have the Ordered Items completed elsewhere; or
- waive the right to demand the performance of the Ordered Items and claim damages in lieu of



performance. The costs of any dismantling and removal of the Hardware and other costs incurred in connection with the termination shall be borne by the Vendor. Furthermore, the Vendor shall reimburse the Buyer for all payments made simultaneously with the return of the Ordered Items/the parts concerned.

- 16.3 In the event of termination or suspension, the Vendor shall, either immediately or at the point in time or milestone specified by the Buyer
- a) stop working on the terminated Ordered Items,
  - b) not place any further orders with third parties with regard to the terminated Ordered Items,
  - c) endeavour to obtain the immediate termination of orders which it has placed with third parties in respect of the terminated Ordered Items or, if so requested by the Buyer, the immediate suspension of orders which it has placed with third parties in respect of the terminated Ordered Items, and
  - d) secure all work in progress or work completed and affected by the termination, either on its own premises or on the premises of its Subcontractors, until further instructions have been received from the Buyer, and follow the Buyer's instructions in this respect.
- 16.4 In the event of termination, the Vendor shall, at the Buyer's request, hand over/erase all or the requested part of the documentation, drawings, plans, data media and other documents and objects made available to the Vendor, either immediately or at the time specified by the Buyer. With regard to the surrender of the above-mentioned material that has been made available, the Vendor shall have no rights of retention or rights to refuse performance.
- 16.5 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 immediately reported to the other Party.
- 16.6 In the event that the execution of the Order (in whole or in part) is suspended and resumed, the

Vendor is entitled to demand compensation for the reasonable additional costs incurred as a result, which must be substantiated, as well as a reasonable postponement of agreed dates and deadlines.

- 17 Payment, invoicing, security, offsetting, default in payment, assignment, taxes, levies**
- 17.1 Payment requests, invoices and credit and debit notes must be submitted in a verifiable form, as a single copy and indicating the order number, to the Buyer's accounting control department. VAT, if applicable, must be shown separately. The Vendor's VAT number also has to be stated in the invoice.
- 17.2 Payment is also subject to the prerequisite that all events triggering payment of the instalments concerned and the previous instalments have been fulfilled. If a payment is linked to delivery, then the complete delivery of all order items for which the same delivery deadline was agreed in the Order shall be a prerequisite for payment.
- 17.3 If it has been agreed that a warranty retention can be replaced by a security, the Buyer is entitled to refuse to replace the retention as long as the Owner withholds payments from it in respect of the Ordered Items.
- 17.4 The Vendor can only offset claims that are not disputed by the Buyer or that have been established in a final and unappealable judgment against claims of the Buyer.
- The Buyer is entitled to offset not only its own counterclaims, but also, on the basis of the authorisations granted to it, all claims of other Affiliates of Buyer against claims of the Vendor. If the claims are due at different times, the claims of the Buyer shall be due at the latest when the Buyer's liabilities fall due and shall be settled on the value date.
- 17.5 The Buyer 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 in accordance with sections 17.1 and 17.2 following a reminder issued by the Vendor, or if it fails to pay by a payment deadline specified as a calendar day in the Order.
- 17.6 The default interest rate in the event of default in





payment by the Buyer shall be 5% per annum, unless the Vendor can prove that the default resulted in more substantial damage.

- 17.7 The assignment of claims against the Buyer shall in order to be effective require the Buyer's written consent, which will not be unreasonably withheld.
- 17.8 Each Party is responsible for its own taxes and tax obligations of all kinds arising from the Order.
- 17.9 All remuneration stated in the Order refers to net amounts, i.e. in each case without statutory value added tax.
- 17.10 The Vendor 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.
- 17.11 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.
- 17.12 Direct taxes which are levied on the basis of the payments in the Buyer's country shall be borne by the Vendor. All amounts to be paid on the basis of the Order shall be paid out following the deduction of all taxes, levies or administrative fees which are withheld at source and which the Buyer 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 Buyer shall only pay the relevant amount if the Vendor has submitted a valid tax-exemption certificate to the Buyer, and no later than on the date of payment.
- 17.13 The Vendor is responsible for all other obligations imposed on it by law. The Vendor shall be liable vis-à-vis the Buyer for all claims or disadvantages suffered by the Buyer due to the Vendor's breach of these obligations.
- 17.14 The Vendor shall be liable for all customs duties, fees and taxes of any kind, including taxes and levies 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.
- 17.15 The Vendor must submit a report on services which

are invoiced on the basis of hourly or daily rates. This report is to be drawn up per working day and submitted to a technical contact person/the site management of the Buyer for confirmation. The report 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 Fridays, Saturdays 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, devices, tools and auxiliary equipment provided by the Vendor shall only be paid if this is provided for in the Order.

- 17.16 Final invoices are to be marked as such and shall be issued within 4 weeks of formal acceptance of the Ordered Items, broken down by the order items listed in the Order and all invoices previously submitted individually, showing the invoice number, date, amount, amount withheld and the total amount withheld, payments due and VAT. The payment of the final invoice shall not release the Vendor from its contractual obligations and warranties.

## 18 Insurance

- 18.1 The Vendor shall take out and maintain sufficient insurance, but at least a general liability insurance policy and the insurance policies agreed in the Order in sufficient amounts at its expense for the entire period of the Order (including warranty). Statutory liability resulting from loss events abroad also has to be included in the scope of cover.
- 18.2 The Vendor must send the Buyer a confirmation of cover as proof of the above-mentioned insurance immediately upon request.

## 19 Copyrights

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

## 20 Compliance



- 20.1 The Vendor 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 ["http://resources.linde.com/wcms/coc/Linde\\_supplier\\_Code\\_of\\_Conduct.pdf"](http://resources.linde.com/wcms/coc/Linde_supplier_Code_of_Conduct.pdf).
- 20.2 The Vendor shall, at the Buyer'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 Buyer.
- 20.3 If the Buyer has grounds to suspect that the Vendor is severely breaching the provisions set out in the "Code of Conduct for Suppliers of the Linde Group", the Buyer, or a third party commissioned by the latter, can perform audits on the Vendor's premises in order to check compliance with the provisions set out in the "Code of Conduct for Suppliers of the Linde Group". The Buyer shall take all reasonable efforts to ensure that the audits are conducted, in accordance with the applicable data protection and other provisions, in a manner that does not result in any serious disruption of operations or breach of confidentiality agreements entered into by the Vendor with third parties. The Vendor undertakes to cooperate in the audits to the extent that it can be reasonably expected to do so. The costs incurred in connection with the audits shall be borne by each Party itself.
- 20.4 If the Vendor commits a severe 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 Buyer, or (b) was previously given a written warning by the Buyer related to this breach, the Buyer is entitled, over and above its other rights, to terminate the Order for cause pursuant to section 16.2 without notice.
- 20.5 A severe breach shall, in particular but not exclusively, constitute instances of forced or child labour, corruption and bribery or breaches of the environmental provisions set out in the "Code of Conduct for Suppliers of the Linde Group".
- 21. **Export control**
  - 21.1 The Vendor 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 Buyer. If the Ordered Items and/or their individual parts are subject to other applicable export or import restrictions, the Vendor shall notify the Buyer immediately by sending an e-mail to [customs.pullach@linde-le.com](mailto:customs.pullach@linde-le.com) or to any other e-mail address provided by the Buyer.

- 21.2 The Vendor shall not use a Denied Party for the performance of the Order, shall not transmit any information from or about the Buyer or the Order to a Denied Party and shall not deliver any objects of the Buyer to a Denied Party. The Vendor shall inform the Buyer immediately in writing if it or one of its Subcontractors is or becomes a Denied Party. Any natural person or legal entity that the Buyer (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 Buyer has the right to termination for cause without notice pursuant to section 16.2 if the Vendor or its Subcontractors are a Denied Party.

## 22 Effectiveness, partial ineffectiveness

- 22.1 The provisions set out in section 14, section 15, section 20.3, section 23 and section 24, as well as the responsibilities set out in sections 4.6, 17.8 and 17.13 and the provisions set out in this section 22.1 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 Buyer in the event of termination, this shall also apply additionally to the provisions set out in section 13, as well as to the information obligations referred to in section 21. In addition, in spite of termination, each Party retains the rights that arose before the termination took effect.
- 22.2 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.

## 23 Applicable law



The Order shall be governed exclusively by the laws of the federal laws of the Kingdom of Saudi Arabia, but excluding the conflict of laws provisions, the Hague Uniform Sales Laws and the Vienna UNCITRAL Convention on the International Sale of Goods (CISG).

## 24 Place of jurisdiction, arbitration

- 24.1 All disputes arising from, or in connection with, the Order shall be settled with definitive effect under the Arbitration Rules of the International Chamber of Commerce (ICC), by one or more arbitrators appointed in accordance with these Rules and excluding any recourse to the general courts of law. The arbitration panel shall meet in Riyadh in the English language. The Buyer is also entitled to bring action at any place of jurisdiction that is justified for the Vendor.