

## GENERAL CONDITIONS OF PURCHASE

(Issue: April 2013)

- 1. Purchase Order.** Purchase Orders and other declarations shall only be binding if placed or confirmed by Buyer in writing. Only the following shall be deemed part of the Purchase Order, in the following order of precedence: the Purchase Order document, these "General Conditions of Purchase", and Buyer's technical specifications and standards, if attached to, or referred to in, the Purchase Order. Deviating conditions of the Vendor shall only apply to the extent that they have been expressly confirmed by Buyer in writing.
- 2. Subject of Order.** The Goods to be supplied pursuant to the Purchase Order shall be complete – other than for the agreed exclusions from the scope – so as to ensure that they are fully safe and operational for the purpose intended under the Purchase Order.
- 3. Inspection and Acceptance.** The Buyer and its or its Client's agents shall have the right at any time to effect inspections regarding work progress and quality at the premises of Vendor. Equipment, utilities and services required for such inspections shall be provided by the Vendor at no cost to the Buyer.

In the event an acceptance test is provided for the Goods, Buyer and Vendor shall each bear the cost for their personnel, and the Vendor shall bear any cost for material. Unless otherwise agreed, acceptance of the Goods by Buyer will, to the exclusion of § 640 1<sup>st</sup> sub-para, 3<sup>rd</sup> sentence and § 641a of the German Civil Code (BGB), require Buyer's express declaration of acceptance. A mere reference to Incoterms clauses – even if it is made in the Purchase Order – shall in no event be construed as being "otherwise agreed" in this sense. A technical or factory test or inspection of the Goods by Buyer shall not be deemed acceptance. Buyer's costs for each failed acceptance test shall be borne by the Vendor if such failure was due to his fault.

- 4. Suspension, Termination.** The Buyer shall have the right, even if there is no delay in work progress, to suspend or terminate the Purchase Order, for example, but not limited to, if Buyer's client cancels or changes its purchase order, is unable to take delivery of the Goods, suspends payments or if suspension of its payments is to be expected, or the Vendor defaults in his obligations under the Purchase Order. Payment shall be limited to such part of the Purchase Order price corresponding to the work performed until such suspension or termination. The Vendor may only claim reimbursement of its proven suspension or termination cost, if the Purchase Order was suspended or cancelled for reasons attributable to Buyer.
- 5. Liability for Defects.** The Vendor warrants that the Goods will be free from defects, i.e. in particular will conform to the descriptions contained in the Purchase Order, meet all properties and performances specified and be fully and safely operable for the purpose intended, conform to the latest accepted state of the art and economic efficiency and comply with the relevant technical documents, regulations, recommendations and guidelines.

Unless otherwise agreed in the Order the warranty period shall be 36 months from Buyer's acceptance of the services (in case of a contract for works and services – "Werkvertrag") or from supply of the Goods (in case of a sales agreement – "Kaufvertrag"). However, in case the Goods or services constitute a building or a thing that as per its usual kind of use is typically used for building ("Baustoff") or if the Goods relate to a building, the statutory Warranty Period of five (5) years from Buyer's acceptance of the services (in case of a contract for work and services – "Werkvertrag") or from supply of the Goods (in case of a sales agreement – "Kaufvertrag") shall remain applicable.

In case defects of the Goods appear during the warranty period, the Vendor shall, at Buyer's option promptly remedy such defects, by repairs and/or replacements ("supplemental fulfilment"), in consultation with the Buyer, at Vendor's cost, including but not limited to, cost of materials, labour, transport to the location of the Goods as well as cost of disassembly and re-assembly.

If Buyer has notified Vendor specifying a reasonable period for fulfilment or supplemental fulfilment of the Purchase Order and Vendor has failed to implement such fulfilment or supplemental fulfilment within such period, or if:

- Vendor has seriously and conclusively refused owed fulfilment or supplemental fulfilment of the Purchase Order, or
- supplemental fulfilment of the Purchase Order has failed, or
- supplemental fulfilment would not be reasonably acceptable to the Buyer,
- 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,

Buyer shall have the right, at its option,

- 5.1 to perform or cause to be performed by third parties remedial work, and Vendor shall reimburse all costs incurred by the Buyer; the Buyer shall have the same right in case major damages would otherwise occur, or in case the operational safety of the plant is at risk;
- 5.2 to a reduction of the agreed price for the Goods pro rata to the reduction in value of the Goods by reason of such defect;
- 5.3 to be compensated for damages suffered due to such defects of the Goods except where such defect is not due to Vendor's fault;
- 5.4 to cancel the Purchase Order. The Buyer shall have the same right if there are special circumstances justifying the immediate cancellation of the Purchase Order under consideration of the mutual interest of the parties.

Cancellation of the Purchase Order shall be without prejudice to Buyer's right to claim compensation of damages suffered.

6. **Breach of Contract.** If Vendor breaches any obligation resulting from or in connection with the Purchase Order, the Buyer shall be entitled to claim full compensation of his damages suffered due to such breach including but not limited to damages arising outside the Goods, except where such breach is not due to Vendor's fault. However, Buyer will not hold Vendor liable for loss of production or loss of profit except to the extent damages or losses are due to Vendor's gross negligence or wilful misconduct, or claims are made in turn against the Buyer by his client or third parties in this respect, or such damages or losses are covered by an insurance held by Vendor.
7. **Defect of Title.** If any third party asserts a claim against Buyer in connection with any defect of title (including infringement of patent, trademark or copyright) owing to Vendor with respect to Goods or services or any parts or components thereof, Vendor shall promptly indemnify and hold Buyer free and harmless from such claims and any resulting liabilities, obligations, costs, and damages.
8. **Invoicing, Payment.** As condition precedent for payment, demands for payment and invoices shall be submitted in 3-fold 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 Purchase Order.
9. **Taxes.**
  - 9.1 Each party shall be solely responsible to comply with its tax liabilities and obligations arising from the Purchase Order.
  - 9.2 The remunerations for the Goods agreed on and to be rendered according to the Purchase Order are net-amounts, i.e. exclusive of VAT.

- 9.3 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.
- 9.4 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.
- 9.5 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.
- 9.6 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.
- 9.7 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 Goods.
10. **Assignment.** Any assignment of the Purchase Order or of claims against the Buyer shall require Buyer's written consent which shall not be unreasonably withheld.
11. **Corporate Responsibility**
- 11.1 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').
- 11.2 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.
- 11.3 If Linde has reason to believe that Vendor may be in material breach of the requirements laid out in the Vendor 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.
- 11.4 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.
- 11.5 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.
12. **Voidness in Part.** Should any provisions in these Conditions of Purchase or of the Purchase Order prove to be or become invalid, ineffective or inoperable, the validity of the remaining provisions shall not be affected.
13. **Place of Fulfilment.** If not otherwise agreed in the Purchase Order, place of fulfilment shall be Buyer's place of business.

14. **Jurisdiction.** Place of jurisdiction for all disputes arising out of the Purchase Order shall be Munich, Germany. Alternatively and at its sole option, Buyer may sue Vendor at the venue of Vendor's head office.

The Purchase Order shall be governed by and construed in accordance with German law, excluding, however, its conflict of law provisions, the Hague Uniform Laws of Purchase as well as the Vienna UNCITRAL Convention for the International Sale of Goods (CISG).