



通用采购条款

GENERAL CONDITIONS OF PURCHASE

(Issue: October 2021 / 2021年10月版)

1. 订单/Order

订单只有经买方（即林德亚太工程有限公司，或者林德工程（大连）有限公司，或者林德加氢站设备（大连）有限公司）以书面形式或 SAP 电子订单形式签发后才生效。仅以下订单附件将作为订单的一部分，并按以下优先顺序执行：SAP 订单文件，此通用采购条款，买方的技术规格书和标准（如作为订单附件或在订单中有提及）。卖方的偏离条款只有经买方明确地书面同意后才有效。

Orders shall only be binding if placed by Buyer (means either Linde Engineering APAC Co., Ltd., or Linde Engineering (Dalian) Co.,Ltd., or Linde Hydrogen FuelTech (Dalian) Co.,Ltd) in form of a format, electronic SAP-document. Only the following shall be deemed 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. 订单标的/Ordered Items

订单标的是指卖方根据订单要求提供的订单标的，服务以及文件。

The Ordered Items are the suppliers and services including documentation to be provided by the Vendor according to the Order.

3. 检验和验收/Inspection and Acceptance

买方、业主（即买方的客户，订单标的的实际使用者）或他们的代表有权在任何时候到卖方和/或其分包商（卖方用来履行其订单项下义务的任何自然人或法人）的场所就工作进度和质量进行检验，检验所需的设备，能源及相关服务应由卖方免费提供。

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 fulfill its obligations under the Order). Equipment, utilities and services required for such inspections shall be provided by the Vendor at no cost to the Buyer.

卖方仅须承担与此等核查，测试和检验活动相关的自身费用。如果因为卖方原因导致验收测试失败则买方的成本将由卖方承担。若买方根据合理判断认为因卖方原因引起的订单标的的缺陷和/或延误需要进行再次的核查，测试和/或检验时，相关费用包括买方和第三方的费用将由卖方承担。

The Vendor shall bear its own costs incurred in connection with such reviews, tests and inspections with the following exception. 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 the costs including Buyer's cost and those of Third Parties.

买方对订单标的的技术或工厂验收测试或检验不视为买方的法定验收。买方对卖方技术文件的修改或批准也不排除卖方对订单标的的尺寸，设计，计算和功能等方面所应承担的责任。

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. 缺陷责任/Liability for Defects

卖方应保证订单标的不能有任何质量缺陷，即：尤其要符合订单中规定的相关要求，确保在满足其既定功能的前提下实现安全稳定的运行要求，并满足业内普遍接受的技术规定和相关技术文件的要求以及订单标的使用地适用的规范，建议及指导原则。

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 and that they will comply with the relevant technical documents and regulations, recommendations and guidelines that are valid in the location in which the Ordered Items will be used.

除非订单另有约定，若订单标的属于可移动的物体或属于可移动物体的组成部件，其质保期为买方验收后36个月。但是，若订单标的属于建筑物，或根据其通常用途属于典型的建筑材料或用于组装建筑物，则适用买方验收后5年的法定质保期。

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 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.

如果在保证期内订单标的出现质量缺陷，卖方应与买方进行协商并根据买方的选择立即以维修和/或替换（以下统称“整改”）的方式对这些缺陷进行整改并承担所有费用，包括但不限于：材料费、人工费，文件费，运至订单标的安装现场的运输费以及拆卸和重装等费用。

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 as well as cost of dismantling and reassembly.

如相关法律规定或如果：

- a) 卖方将无法在买方要求的合理期限内完成整改，或
- b) 卖方无法执行整改，或
- c) 买方已经对卖方的缺陷整改失去信心，或
- d) 卖方欺骗性隐瞒缺陷，或
- e) 卖方故意制造缺陷，或
- f) 等待卖方在截止期内完成整改将对买方或第三方带来重大损失风险，或
- g) 装置或其他不属于卖方的财产的安全，或人员或环境的安全存在风险。

If the applicable law provides it or if

- a) it is certain that the Vendor will not remedy the defect within the reasonable period of time specified by Buyer, or
- b) the remedy of the defect is impossible for the Vendor, or
- c) the Buyer has lost confidence in the Vendor's ability to perform, or
- d) the Vendor has concealed the defect with fraudulent intent, or
- e) the defect is due to wilful intent on the part of the Vendor, or
- f) 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



- g) the safety of the Plant or of property not owned by the Vendor, or the safety of individuals or the environment is at risk.

买方有权自行选择:

Buyer shall have the right, at his option:

- 4.1 由买方自己或委托第三方执行整改措施, 所有费用由卖方承担; 和
to perform or cause to be performed by third parties remedial work, and Vendor shall reimburse all costs incurred by the Buyer; and
- 4.2 按照因缺陷造成的订单标的价值的贬值比例对订单标的价格进行相应的调整: 和
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; and
- 4.3 要求由卖方赔偿因为订单标的缺陷给买方造成的损失包括订单标的界区范围以外的损失, 以及已经发生的无效的整改费用, 除非卖方对该缺陷无须承担责任。
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. 违约/Breach of Contract

如果卖方实质性违反其订单项下的任何责任和义务, 买方有权要求卖方赔偿由此造成的包括订单标的界区范围以外的所有损害或损失。卖方应赔偿并使买方免于遭受因卖方未能履行法定责任而导致的任何第三方或政府机关对买方做出的问责, 索赔或罚款, 无论该等处罚是否具备法律依据。但是, 买方将不会就生产损失或利润损失向卖方索赔, 除非此等损失的产生是出于卖方的重大过失或恶意行为, 或业主或第三方已就此等损失向买方提出索赔, 或卖方投保的保险已涵盖了此等损失。

In the event that the Vendor commits a culpable breach of any of its obligations resulting from, or in connection with the Order, the 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 liability, 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, 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 on the part of the 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. 第三方权利/Third-party rights

如果因卖方过错导致买方遭受来自第三方的包括侵犯所有权, 专利权, 商标权或著作权等的侵权索赔, 卖方应予以赔偿并使买方免于遭受此等索赔, 并向买方偿还由此产生的损失和费用和/或安排从权利持有者那里获得所需的相关权利。

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. 保密/Confidentiality

卖方从买方处收到的任何信息资料以及卖方在此等信息资料和订单条款基础上准备或创建的任何文



件，图纸，数据和物料，包括其中所包含或收录的技术，商务和个人信息，应作为机密处理且仅能用于执行订单之目的。未经买方书面或电子邮件许可或在订单中另有约定时，不得复制，发布或提供给第三方（如：分包商）。只有在双方（买方或卖方）签订保密协议或在订单中作相关约定后才能向分包商提供信息资料。获得批准的第三方（包括分包商）接受信息资料须承担同等的保密责任。

Any information that the Vendor receives from the 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. 暂停和终止/Suspension and Termination

买方有权随时以书面形式通知卖方立即或在一个特定的时间点或里程碑节点全部或部分地暂停或终止执行订单，无需遵守通知期限或提供其决定的理由。

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.

对卖方的付款将仅限于在买方提出暂停或买方/卖方提出终止时已经执行完毕的订单标的的相应价款，此外，卖方仅有权对其可证实的暂停或取消费用以及对尚未执行部分的订单标的的合理的且可证实的管理费用提出索赔。

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.

如果因买方原因暂停或取消订单，此等“原因”包括以下情形：

If the Order was suspended or cancelled for cause attributable to Buyer. The term “cause” refers to a scenario in which:

- 另一方已资不抵债或过度负债，或
the other Party is insolvent or overindebted, or
- 另一方停止向第三方支付款项，或
the other Party cease its payments towards third parties, or
- 另一方已申请破产清算或已启动针对另一方资产的类似法律程序，该程序已经启动或因资产不足程序启动被拒绝，或
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
- 因非买方原因业主终止买方与业主之间的装置合同。
the Owner terminates the contract between the Buyer and the Owner regarding the Plant for reasons for which the Buyer is not responsible.

9. 发票和付款/Invoicing and Payment



作为付款的先决条件，付款请求、发票或收据应提交给买方的财务部门。只有当买方在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。

As condition precedent for payment, demands for payment and invoices or receipts shall be submitted to Buyer's Finance dept.. 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. 税收/Taxes and Duties

任何一方都应各自履行因采购订单产生的纳税责任和义务。订单中所规定的所有价格均为净值，不包含增值税。卖方应出具正规的，内容真实的且符合法定要求的发票以确保增值税顺利抵扣。如因国家税务总局政策调整，导致一方增值税缴税额增加或一方的进项税额减少，双方应对相关发票作相应修正。

Each party shall be solely responsible to comply with its tax liabilities and obligations 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.

在买方所在国基于付款所征收的直接税费将由卖方承担。订单项下的全部应付金额需扣除一切必须在源头扣缴的税费或行政管理费并由买方代为支付给各有关税务部门。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，且如果卖方最迟在付款日前已将有效的免税证明提交给买方，买方将支付相应的减免款项。

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.

卖方应履行其他所有法定义务，若因卖方未能履行此等义务而引起的对买方的索赔或不利情形应由卖方负责。卖方应承担订单执行过程中对其征收的所有关税，费用以及各种税费，包括对其雇员和第三方雇员的工资、酬劳和其他报酬所征收的税费。

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. 转让/Assignment

卖方对买方的索赔权利的转让必须经买方书面同意，买方不能无理拒绝。

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. 合规/Compliance

卖方承诺将遵守“林德集团供应商行为准则”（以下称“供应商行为准则”）的各项要求，此文件可通过以下网站浏览和查阅

https://www.the-linde-group.com/en/corporate_responsibility/business_and_governance/supply_chain/code_of_conduct_for_suppliers/index.html，卖方应按照买方要求提供相关的数据资料，或组织自我评估并将评估结果发送给买方，以证实其遵守了“供应商行为准则”的相关要求。



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

如果买方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，则买方或其指定的第三方机构可到卖方场所进行审计以验证其是否遵守了供应商行为准则。买方应采取一切合理措施来确保该审计的执行将满足所有适用的数据保护法及其他规定的相关要求，且既不对卖方的商业活动造成不合理的干扰也不对卖方与第三方之间的任何保密协议造成侵犯。卖方承诺将配合所有的审计工作。与该审计有关的所有费用由各方自行承担。

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.

如果卖方实质性违反供应商行为准则，且(a).在买方发出书面通知后未能对其违反行为进行纠正，或(b).买方之前已经对其实质性违反供应商行为准则的行为发出过书面警告，则买方除享有其他权利外，还有权根据第 20.2 条之规定终止订单且无需遵从任何通知期限的要求。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的要求等。

In addition to its other rights, the Buyer shall also have the right to terminate the Order for cause pursuant to section 20.2 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 labor, corruption and bribery, and failure to comply with the Supplier Code of Conduct's environmental protection requirements.

13. 出口管控/Export control

卖方须确保订单标的将不会受到任何的出口或进口管制，如被禁止出口或进口到装置所在国以及对订单标的进行组装和/或其他处理工作的国家。如果订单标的，订单标的部件和/或为便于运输而拆卸下来的任何部件受到其他的出口或进口管制，卖方应立即将此等信息以通过电子邮件发送至 customs.pullach@linde-le.com 或买方提供的任何其他邮箱地址的方式对买方进行通知。

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.

如果卖方或其分包商属于或将成为“被制裁实体”，卖方应立即以书面形式通知买方。卖方不能使用任何“被制裁实体”来执行本订单，不能将与买方或订单相关的任何信息传递给任何被制裁实体，不能将任何的买方物资提供给被制裁实体。“被制裁实体”指：

(i) 买方被禁止直接或间接向其提供任何经济资源的实体，和/或



(ii) 买方被禁止直接或间接与之建立商业关系的实体。

如果卖方或其分包商属于“被制裁实体”，买方有权终止合同，不需遵守任何通知期限的要求。

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 an entity (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 its Subcontractor is a Denied Party.

14. 生效，部分失效/Effectiveness, partial ineffectiveness

第7条、第12条第2段、第16条和第17条的相关规定和第5条第2句、第10条第1句和第10条第3段项下的责任义务，以及本14条的规定将不应受到订单终止、主要义务期满或订单撤销的影响，但即使订单终止、主要义务期满或订单撤销，双方仍受其约束。此外，上述规定还适用于第6条以及卖方根据第13条在订单终止后通知买方接管订单标的的义务。即使订单终止，任何一方仍将保留在订单终止生效日之前已经产生的权利。

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 from the Order, 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.

如果本采购条款中的任何条款或其他的订单条款已经或将要失效和/或无法实行，其它条款的有效性应不受影响。

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. 履行地点/Place of Fulfilment

除非订单中另有约定，订单履行地应为买方办公场所的注册所在地。

Unless otherwise stated in the Order, the place of performance shall be the place where the Buyer has its registered office.

16. 适用法律/Applicable Law

订单应受中华人民共和国法律管辖。

The Order shall be governed by the law of the People's Republic of China.

17. 仲裁/Arbitration

若卖方主要营业地址在中国大陆地区：

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，当买方是林德亚太工程有限公司时，应提交杭州市仲裁委员会在杭州进行仲裁，当买方是林德工程（大连）有限公司或者林德加氢站设备（大连）有限公司时，应提交大连市仲裁委员会在大连进行仲裁。仲裁裁决是终局的，对双方都有约束力。仲裁费用由败诉方承担。

For Vendors with their main place of business in the mainland 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, if the buyer is Linde Engineering



APAC Co., Ltd., the case shall then be submitted for arbitration to Hangzhou arbitration commission with venue in Hangzhou, if the buyer is Linde Engineering (Dalian) Co.,Ltd. or Linde Hydrogen FuelTech (Dalian) Co.,Ltd., the case shall then be submitted for arbitration to Dalian arbitration commission with venue in Dalian. The arbitral award is final and binding upon both parties. Arbitration fee shall be borne by the losing party.

若卖方主要营业地址在中国大陆之外的地区：

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。当买方是林德亚太工程有限公司时，仲裁地为中国杭州，当买方是林德工程（大连）有限公司或者林德加氢站设备（大连）有限公司时，仲裁地为中国大连。仲裁语言为中文。诉讼裁决是终局的，对双方都有约束力。仲裁费用由败诉方承担。

For Vendors with their main place of business outside of the mainland 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, 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. if the buyer is Linde Engineering APAC Co., Ltd., venue of Arbitration shall be Hangzhou, China, if the buyer is Linde Engineering (Dalian) Co., Ltd. or Linde Hydrogen FuelTech (Dalian) Co.,Ltd., Venue of Arbitration shall be Dalian, China. Language shall be Chinese. The arbitral award is final and binding upon both parties. Arbitration fee shall be borne by the losing party.