



# 供应合同采购条款

## CONDITIONS OF PURCHASE For Supply Contracts

(Issue: June 2021 / 2021 年 6 月版)

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## 1 定义/Definitions

- 1.1 “买方”指林德亚太工程有限公司，中国杭州市莲花街333号莲花商务中心北楼八到十一层，邮编310012  
"Buyer" shall refer to the Linde Engineering APAC Co. Ltd., having its business address at 8-11F, North Building, Lotus Business Centre, No. 333 Lianhua Street, Hangzhou, 310012, P.R.China.
- 1.2 “订单”指买方和卖方关于订单标的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 Ordered Items.
- 1.3 “订单标的”指根据订单卖方应提供的货物及服务。  
"Ordered Items" shall mean the supplies and services to be provided by the Vendor according to the Order.
- 1.4 “业主”指买方的客户，装置的所有者。  
"Owner" shall refer to the client of the Buyer for the Plant for which the Ordered Items is intended.
- 1.5 “装置”指买方提供给业主的且订单标的为之配套的整套装置。  
"Plant" shall mean the overall plant to be supplied to the Owner by the Buyer and for which the Ordered Items is intended.
- 1.6 “立即”指不得无故拖延。  
"promptly" shall mean without undue delay.
- 1.7 “分包商”指被卖方分包的用于履行其订单义务一个第三方实体。  
"Subcontractor" shall mean an entity, whom the Vendor uses to fulfil its obligations of the Order. The Subcontractor is a third party in relation to the Order.
- 1.8 “卖方”指被买方授予订单的契约伙伴，也称“合作方”。  
"Vendor" shall refer to the contractual partner to which the Order has been awarded by the Buyer and shall also be referred to herein as "Party".
- 1.9 “书面”或“以书面形式”指通过信函（包括邮寄），传真或电子邮件的形式发送的手签文件。  
"Written" or "in writing" shall refer to a document signed by hand which is transferred by letter (including courier), telefax or e-mail attachment.

## 2 装置的设计、建造和运行要求/Requirements for Design, Construction and Operation of the Plant

卖方在接受订单时，应确保其所生产和提供的订单标的须满足装置设计、建造和运行相关的所有要求，且确认知晓装置所处的地点和组装订单标的地点，和/或与订单标的有关的其他工作的执行地点。



By accepting the Order, the Vendor acknowledges its obligation to take into account all relevant requirements for design, construction and operation of the Plant when manufacturing and supplying the Ordered Items, and also confirms that the location in which the Plant is situated and the place(s) where the Ordered Items are to be assembled and/or other works on the Ordered Items are to be carried out are known to Vendor.

### 3 订单内容/Contents of the Order

3.1 任何与本采购条款存在偏离或冲突的卖方条款，须经买方书面同意或在订单中予以确认后方才有效。尤其是在沟通过程中和/或卖方文件中提及的卖方的通用条款文件，将不予采纳并将视为无效条款。  
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 or by Order. In particular any references to any other general terms and conditions in the communications sent and/or in documents produced by the Vendor shall be disregarded and shall be deemed to be obsolete.

3.2 订单和其他声明只有在经买方签发书面确认后或发布正式订单后才生效。  
Orders and other declarations shall only be binding if they are issued or confirmed in writing by the Buyer or in the form of an Order.

3.3 本订单所附或者所列的所有条款、技术规格书、标准和其他附件均应作为订单的一部分，按以下优先顺序执行：

All terms and conditions, specifications, standards and other appendices that are attached to the Order or are listed therein are part of the Order. They shall apply in the following order of precedence:

- 本订单  
the Order
- 本采购条款  
these Conditions of Purchase
- 买方的包装，唛头和运输指令  
the Buyer's Packing, Marking and Shipping Instructions
- 技术规格书  
the Technical Specifications
- 通用规格书及林德标准  
the General Specifications and the Linde Standards.

### 4 订单标的的执行，订单分包，工作启动，批准及执行/ Execution of the Ordered Items, subcontracts, start of work, approvals, execution of the Order

4.1 卖方须完全确保订单标的的功能齐全及运行安全，使其符合订单要求。仅有那些在订单中明确标明不包含的供货和服务内容才能被排除在订单标的之外。

The Ordered Items shall be executed in full in a manner that ensures that they are fully functioning and safe for operation – taking into account the agreed supply and service exclusions – making it fit for the purpose specified in the Order. Only those supplies and services that are expressly mentioned as such in the Order shall be considered excluded from the Ordered Items.



- 4.2 卖方应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）及时开展工作。  
The Vendor shall carry out the work in a timely manner and in accordance with the requirements of internationally recognized quality management (ISO 9000 et seq. or equivalent).
- 4.3 卖方需提供直至并包括订单标的的调试，运行及维护等所有现场活动相关的技术资料。  
The Vendor shall supply the technical documentation for all site activities to be performed up to and including the time of commissioning, including the operation and maintenance of the Ordered Items.
- 4.4 卖方应遵守装置所在地的法定，官方及专业机构关于环境保护、事故防范和职业安全等方面的规定、建议和指导方针。  
The Vendor shall comply with the statutory, official and professional organization's regulations, recommendations and guidelines (on environmental protection, accident prevention and occupational safety, etc.) that are valid in the location in which the Plant is situated.
- 4.5 如卖方对买方提出的执行方式或给出的指示（如：关于材料，工艺流程或买方指定的分包商，或买方提供的材料或设备的质量，或其他承包方提供的服务等）存有疑问，卖方应立即（如可能，应在工作开始前）以书面或电子邮件形式通知买方并与买方共同商议一个解决方案。  
If the Vendor has concerns regarding the proposed type of execution, other instructions given by the Buyer, e.g. concerning materials, processing or subcontractors nominated by the Buyer, the quality of materials or equipment provided by the Buyer or the services provided by other contractors, it shall promptly notify the Buyer thereof in writing or by e-mail, if possible before the work begins, and shall develop a solution together with the Buyer.
- 4.6 卖方应仅雇用具备资质且资质可验证的分包商，并向其分包商传递订单中约定的有关技术和交期方面的所有要求。卖方应补偿买方并使买方免于遭受由于卖方违反法定责任而导致的第三方或政府机构对买方提出的任何责任、索赔及罚款，无论该等处罚是基于何等法律依据。尤其，例如但不限于，当卖方使用雇工，应完全遵从有关临时雇佣的所适用的法律法规，并确保卖方和其分包商的员工具备有效的工作许可。  
The Vendor shall only employ Subcontractors with qualifications that can be verified and shall pass on to such Subcontractors any technical and deadline requirements set out in the Order in full. The Vendor shall indemnify and hold the Buyer harmless from any liabilities, claims and fines of third parties or public authorities asserted against the Buyer due to non-compliance with statutory obligations on the part of the Vendor, irrespective of the legal grounds for such claims. In particular, but not limited to this example the Vendor shall, in the event that it uses hired labour, be solely responsible for complying with the applicable laws and regulations regarding temporary employment and for ensuring that the employees used by it and its Sub- contractors are in possession of valid work permits.
- 4.7 卖方应尽可能在其车间完成订单标的的预组装。  
The Vendor shall pre-assemble the Ordered Items in its workshop as far as is possible and appropriate.
- 4.8 业主及现场条件的相关要求可能会导致卖方对订单标的的执行做出相应变更，如买方希望卖方在不产生额外成本的前提下执行此等变更，则买方应在卖方规定的合理的最迟日期前将此变更通知到卖方。  
Modifications to the execution of work on the Ordered Items may arise from requirements on the part of the Owner and from the conditions on Site. If the Buyer wishes to have these modifications taken into account by the Vendor without incurring any additional charge, it must have informed the Vendor of these modifications by a reasonable latest date to be specified by the Vendor for this purpose.
- 4.9 若卖方意识到其不得不采用新的技术、性能参数或技术工艺时，卖方应立即将此等情况通知买方。



The Vendor shall inform the Buyer promptly if it realizes that it would have to use a technology, performance value or technical characteristic that is new to it.

- 4.10 若卖方要求进入买方的 IT 系统，应提前获得买方的书面或电子邮件许可，且应遵守买方的 IT 安全规定（林德标准 LS940-05(EN)）。现行的 IT 安全规定可通过以下网站查询：  
“[https://www.linde-engineering.com/en/services/procurement/supplier\\_portal/linde\\_standards\\_for\\_suppliers/index.html](https://www.linde-engineering.com/en/services/procurement/supplier_portal/linde_standards_for_suppliers/index.html)”。

If the Vendor requires access to Buyer's IT infrastructure, the Vendor shall obtain Buyer's prior consent in writing or by e-mail and shall comply with Buyer's IT security regulations (Linde Standard LS 940-05 (EN)). The current IT security regulations shall be accessed and consulted on the Internet at “[https://www.linde-engineering.com/en/services/procurement/supplier\\_portal/linde\\_standards\\_for\\_suppliers/index.html](https://www.linde-engineering.com/en/services/procurement/supplier_portal/linde_standards_for_suppliers/index.html)”.

## 5 订单标的的变更/Modifications to the Ordered Items

- 5.1 若买方要求变更订单标的，卖方应立即将相应的价格增减以及对已约定的日期和最终期限的影响书面通知买方，并提供充足的证据作为支持。价格应根据原订单价格的核算方法作相应调整。若已约定有单价，则承包商只能在采购数量减少的情况下要求提高单价，且承包商须能提供证据证明其将确实承担额外的财务成本。

If the Buyer requests modifications to the Ordered Items, the Vendor shall inform the Buyer promptly in writing of any increase or decrease in price and any effects on the agreed dates and agreed deadlines, backed-up by sufficient proof. The price increase or decrease shall be determined on the basis of the calculation used for the Order. If unit prices have been agreed, the Contractor can only demand an increase in the unit prices in cases in which quantities are reduced if it can furnish evidence of an unreasonable financial burden.

- 5.2 为使买方能够在其国际装置的设计和建造所处的复杂的技术和商务环境下（如：众多公司之间的多方协调以及与业主之间的反复沟通等）及时做出响应，若卖方意识到任何其认为将导致订单价格上涨或影响约定的日期和/或最终期限的情形，卖方应在 7 个工作日内将此等情形及可能的索赔请求以书面形式通知买方，否则任何此类索赔将被视为已被卖方放弃。

In order to enable the Buyer to react in time within the complex technical and commercial environment of the international business of plant engineering and construction (e.g. coordination of the numerous companies and crafts and reconciliation with Owner), Within seven (7) working days of gaining knowledge of any circumstances which the Vendor believes entitles it to increase the Order price or change the agreed dates and/or agreed deadlines, the Vendor shall inform the Buyer in writing about it and lodge such (supposed) claim on the merits at Buyer. Otherwise, any such claim shall be deemed waived by it.

- 5.3 订单的变更协议应充分考虑到双方共同利益并在友好协商的基础上达成。买方有权要求最晚于卖方履行完合同义务(不包含质保)后再进行相关谈判。一旦达成变更协议，买方将签发一份增补订单以确认已同意的变更及订单修改。

Changes to the Order shall be negotiated by the Parties aiming at a contractual agreement giving due consideration to mutual interests and the duty of good faith. The Buyer is entitled to postpone the negotiations at the latest until immediately after the fulfilment of the contractual obligations of the Vendor (not including warranty). Once an agreement has been reached on the changes, the Buyer will issue a supplement to the Order setting out the agreed changes and contractual modifications.

- 5.4 然而，即便订单变更尚未达成一致，卖方仍应在原订单条款和条件暂且维持不变的基础上立即执行买方所提出的变更要求。



The Vendor shall, however, even if changes to the Order have not yet been agreed, promptly proceed to carry out the requested modification based on the terms and conditions of the Order remaining unchanged for the time being.

## 6 技术文件/Technical Documentation

6.1 买方对卖方技术文件的任何变更通知或批准并不免除卖方对其所供技术文件的相关信息（例如订单标的的尺寸、设计、计算和功能等信息）所承担的责任。

Any change notification or approval by the Buyer in the Vendor's technical documentation shall not release the Vendor from its responsibility for the information contained therein, such as dimensions, design, calculation and function of the Ordered Items.

6.2 卖方对其图纸和其他技术文件所做的任何修改都应通知买方，并清晰标注所有修改内容。

The Vendor shall advise the Buyer of any changes that it makes to drawings and other documents and shall clearly mark every single change.

6.3 若卖方提供的技术文件不正确，而买方或业主已依照卖方的这些技术文件在他处生产或采购设备，卖方应自费纠正这些技术文件，并补偿买方由于此等错误而导致的对上述设备的任何更正、维修和/或更换的费用。

In the event that technical documents supplied by the Vendor are incorrect and equipment was manufactured and/or procured elsewhere by the Buyer or the Owner on the basis of such documentation, the Vendor shall correct these technical documents at its expense and reimburse the Buyer for the costs associated with any changes, repairs and/or replacement of such equipment resulting from such errors.

6.4 订单标的交付后，卖方应立即将所生成、收集或测量的有关技术数据及处理结果发送给买方。

Technical data relating to the Ordered Items which the Vendor generates, collects or measures after delivery, as well as the results of its processing, shall be transmitted to the Buyer promptly.

## 7 日期，截止日期，违约责任/Dates, deadlines, liquidated damages

7.1 卖方应自行监控其工作进度，还应负责监控及指导其分包商的进度以确保满足约定的日期和截止日期，并能随时提供标明有目标计划和实际进度的最新的进度报告。

The Vendor shall carry out its own monitoring of the time schedule. The Vendor shall bear sole responsibility for monitoring and directing its Subcontractors to ensure that the agreed dates and agreed deadlines are met and that an up-to-date schedule showing target status and actual status is available at all times.

7.2 一旦有迟交迹象或可能会影响约定的日期和/或截止日期的情形，买方应立即通过电子邮件通知买方，内容包含：导致迟交及迟交风险的原因，对约定日期和/或截止日期的预计影响，将要采取或已经采取的提速措施及预期效果。但此通知并不免除卖方遵守约定日期和截止日期的责任。如卖方未能提交此通知，则由此导致的全部损失将由卖方承担。

The Buyer shall be informed promptly of any potential delays or other problems likely to affect the agreed dates and/or agreed deadlines by e-mail containing the following details: the causes of the delay/causes of the delay risk and forecasted impact on the agreed dates and/or agreed deadlines and acceleration measures planned and already taken including a description of the expected improvement in the scheduling situation. Such notification shall not, however, release the Vendor from its obligation to adhere to the agreed dates and agreed deadlines. If the Vendor culpably fails to submit such a notification, it shall be liable for all damages resulting therefrom.



- 7.3 如因卖方原因导致将无法满足约定的日期和/或截止日期，或存在延误风险，卖方应在意识到此等延误或风险后立即自负费用采取必要合理的加速补救措施以避免延误，如果延误无法避免，则应最大可能地缩短延误。加速补救措施特别包括：增加人力及物料资源、安排多班、加班、周末和公共假日加班及采用特殊运输方式等。只要相关加速补救措施是必要且合理的，应买方要求，卖方必须执行此等加速补救措施。卖方还应按照市场上普遍适用的工时费率，对买方就此等延误及延误风险向卖方提供的任何必要的支持及采取的适当的监控措施进行补偿。如果买方有理由认为卖方因为其自身原因将无法按时履行其订单项下的全部或部分义务，则前述规定同样适用，卖方也应在收到买方表达相关顾虑的通知后立即采取相应的加速补救措施。

In the event of delays with regard to agreed dates and/or agreed deadlines for which the Vendor is responsible, or in the event of such impending delays, the Vendor shall, promptly after becoming aware of the delay or the risk of delay, take at its own expense the acceleration measures reasonably required to avoid the delay or, if the delay can not be avoided, to shorten the delay to the greatest extent possible. The acceleration measures include, in particular, increased use of personnel and material resources, multi-shift operations, over-time, work performed on Sundays and public holidays and special shipment(s), which have to be carried out by Vendor upon request of Buyer as far as necessary and reasonable. The Vendor shall also bear the costs for any necessary support taken by the Buyer, as well as appropriate monitoring and control measures taken by the Buyer in connection with the delay and the risk of delay, with remuneration in this regard being paid based on the usual market hourly rates. The provisions set out above shall apply accordingly in the event of reasonable 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, with the proviso that the acceleration measures are to be taken immediately after notification of the concerns by the Buyer.

- 7.4 如果卖方无视买方警告未能采取合理措施来加快工作进度，或延误或延误迹象将对买方或第三方对环境造成重大伤害，或危及到装置的运行安全，则买方有权自行或委托第三方来完成全部或部分的订单标的工作，由此产生的费用将由卖方承担。

在此情形下，如买方要求，卖方还应立即或及时或按照买方规定的时间节点，向买方提交由卖方和/或其分包商准备的相关文件、图纸、方案、数据和其他技术文件（统称为“工作成果”）或返还买方为执行订单而提供给卖方的相关信息资料（统称为“提供的信息”）。卖方不能就提交“工作成果”和返还“提供的信息”提出任何扣留或拒绝履行的权利。

If, in spite of receiving a warning, the Vendor fails to take reasonable measures to accelerate the work, or if major damage would occur to the Buyer or to third parties or to the environment caused by the delay or the impending delay, or if the operational safety of the Plant is at risk due to the delay or the impending delay, then the Buyer may complete himself or have a third party complete the Ordered Items in whole or in part at the expense of the Vendor.

In such event, the Vendor shall also return to the Buyer, at the latter's request, the requested part of the documentation, drawings, plans, data media and other technical documents which were prepared by it and/or its Subcontractors (collectively referred to as the "Work Results") or provided to it (collectively referred to as the "Information Provided") in connection with the Order promptly or at the point in time or milestone specified by the Buyer. With regard to the surrender of the Work Results and Information Provided, the Vendor cannot assert any rights of retention or rights to refuse performance.

- 7.5 即使在接收订单标的时候没有提出，买方可在直至支付最后一笔款项前要求卖方承担因误期和其他契约责任引起的违约金和罚款，包括因误期引起的其他任何的进一步的损失。订单的废除或终止并不免除已产生的违约金，罚款及补偿款的支付。

Liquidated damages and penalties for delays and other contractual obligations can be asserted by the Buyer until the payment of the final invoice, even if no reservation is expressed on acceptance of the Ordered Items. The assertion of any further-reaching claims for damages due to delays is not excluded. Rescission or termination shall not affect any claims to payment of liquidated damages, penalties and compensation that have already arisen.



## 8 不可抗力/Force Majeure

- 8.1 不可抗力是指超出一方合理控制的，阻止或妨碍一方履行订单义务的无法预知的事件，且
- 在缔结订单时无法对其进行合理预计并予以考虑，以及
  - 无法合理的对其进行避免或克服，以及
  - 无法合理的对其相应后果进行避免或克服

非不可抗力原因引起的卖方分包商或当事人的延误，以及未经工会批准的罢工等情形将不构成不可抗力事件。

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.

Scenarios in which (i) delays of Sub-Vendor or the Owner, except if caused by Force Majeure, and (ii) any strikes not authorised by the trade union in question shall not constitute cases of Force Majeure.

- 8.2 如果不可抗力事件对订单执行造成局部或全面的影响，作为卖方后续提出任何主张的一个前提条件，卖方应将不可抗力事件的起始时间以及导致的预计的延期和其他后续影响及时通知买方，卖方还应随时采取一切合理的预防措施和方法来减小不可抗力造成的影响，并在合理期限内提供证据证明不可抗力及其影响。

As a prerequisite for any claim hereunder, if the execution of the Order is affected in part or as a whole 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 受影响的一方将无须就不可抗力引起的后果对另一方承担责任，并有权对原先同意的且受到影响的时间和/或截止日期进行合理的延期。双方将各自承担不可抗力及其后果对各自造成的成本和费用。

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 times and/or deadlines. Both Parties shall bear their own cost related to Force Majeure and any of its consequences.

- 8.4 若不可抗力事件影响订单执行超过六个月，双方应就订单的继续履行进行友好协商，如因不可抗力需终止订单。卖方有权要求按比例支付在不可抗力事件发生前根据订单条件已经执行完毕的订单标的的相应价款，买方有权要求交付已经完成的订单标的及相关文件资料。

If Force Majeure affects the Order for more than six months, 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 conditions of the Order prior to the Force Majeure event. The Buyer is entitled to demand delivery of the performed parts of the Ordered Items including the related documents.

## 9 进度核查，质检及测试/Schedule reviews, quality inspections and tests

- 9.1 买方、业主及业主代表有权在卖方或其分包商的经营场所进行进度核查，质量检验及测试活动。为此他们有权在正常工作时间内进入车间、查阅图纸和其他必要文件。卖方也应依此要求其分包商予以配合。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。

The Buyer, the Owner and their representatives shall be entitled on the Vendor's premises and/or those of its Subcontractors to carry out schedule reviews and quality inspections as well as tests. They shall





have access during normal business hours to the workshops and to all drawings and all other documents as necessary for this purpose. The Vendor shall subject its Subcontractors to a corresponding obligation. The Vendor shall only bear its own costs incurred in connection with such reviews, tests and inspections

9.2 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。  
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.

9.3 买方、业主及业主代表随时有权进行抽检（例如 X 光和超声波测试）。如理由充分，与此测试相关的全部费用将由卖方承担。  
The Buyer, the Owner and their representatives shall be entitled to carry out tests (e.g. X-ray and ultra-sound tests) on a random basis. In the event of justified complaints, the Vendor shall bear all costs related to these tests.

若买方、业主及业主代表根据合理判断认为订单标的可能存在对生命，健康，第三方财产或环境等其他资产带来直接或间接的风险时，买方、业主及业主代表有权自行决定，要求卖方或由其自己对全部或部分订单标的做进一步测试，若发现缺陷，则此等测试的相关费用将由卖方承担。

A distinctive feature affecting the Ordered Items which, in the reasonable estimation of the Buyer, could pose a direct or indirect risk to other assets, such as life, health, third-party property or the environment, shall entitle the Buyer, the Owner and their representatives to demand that further tests at its sole discretion be performed on the Ordered Items or on parts thereof by the Vendor, or to carry such tests out themselves. The costs of these further tests shall be borne by the Vendor, if a defect is discovered.

9.4 若买方根据合理判断认为因卖方原因引起的产品缺陷和/或延误需要进行再次的核查，测试和/或检验时，相关费用将由卖方承担。  
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.

9.5 买方、业主或业主代表所执行的测试、检验，放行或批准并不免除卖方对订单标的的质量所应承担的责任或义务或质保责任。  
Testings, inspections, releases or approvals by the Buyer, the Owner or their representatives shall not release the Vendor from its responsibility or liability for the quality of the Ordered Items, or from its warranty obligation.

9.6 在订单生效日（若有约定）后一个月内，否则在订单发布日后一个月内，卖方应向买方提交一份包含自收到订单至订单义务履行完毕整个期间与订单标的执行有关的全部主要活动内容的进度报告，该进度报告应以条形图形式并按照买方要求准备。无需买方提醒，卖方应每月更新时间计划表并用电子邮件发送给买方。此条形图应包括基准线、计划日期和实际日期。此外，卖方还应根据买方要求提供相关的额外信息（如不含价格的分包商订单、制成品的最新照片等），以便买方核实订单的实际进度。  
The Vendor shall submit electronically to the Buyer, within one (1) month upon the effective date of the Order if such is agreed, otherwise upon the date of the Order, a time schedule for all of the work on the Ordered Items showing all the main activities in the work from the receipt of the Order to the completion of the contractual obligations in the form of a Gantt chart. This time schedule shall be prepared according to the Buyer's requirements. Updated time schedules shall be submitted electronically by the Vendor, without any corresponding request by Buyer having to be made, to the Buyer monthly. This Gantt chart shall be prepared including a baseline, planned dates as well as actual dates. Furthermore, the Vendor is obliged to submit additional information to the Buyer upon his request to enable Buyer to verify the actual progress of the Order (e.g. unpriced purchase orders of Subcontractors, current photos of manufactured goods etc.)

9.7 如果卖方希望将产品的预组装工作转移至其它生产基地，须征得买方事先批准。



If the Vendor wishes to deviate from the Order by moving pre-assembly to other manufacturing facilities, the prior approval of the Buyer will be required.

**10 买方提供的材料和设备/Provision of materials or equipment by the Buyer**

10.1 买方或业主提供的材料或设备（如有）将仅能用于本订单的执行。这些材料和设备仍属买方或业主财产，卖方应自费将这些材料和设备作为第三方财产进行单独存储、标记、管理，保护并投保。卖方应检查并核实这些材料和设备完好无损并对其丢失或损坏承担全部责任。使用或安装买方或业主提供的材料和设备将不免除卖方对订单标的的质量所应承担的责任或义务或质保责任。

If the Buyer or the Owner provide materials or equipment, the Vendor may only use these for the execution of the Order. They shall remain the property of the Buyer or the Owner and as such must be stored separately, labelled, managed, safeguarded and insured by the Vendor as third-party property at its expense. The Vendor shall examine and verify that such materials and equipment are free from defects. Vendor shall be fully responsible for loss of, or damage to, such materials and equipment. The use or installation of materials and equipment provided by the Buyer or the Owner does not release the Vendor from its responsibility or liability for the quality of the Ordered Items or from its warranty obligation.

10.2 除非卖方能够凭例如可核实的图纸和材料清单等方式证明买方或业主提供的材料和设备已用于安装用途，否则卖方应将其退还给买方。如果材料和/或设备已经丢失而无法退还，则卖方须自费采购替换材料和/或设备予以补齐。如果材料管理属卖方工作范围，卖方须准备一份材料管理一览表，包含已接收的材料清单及转移（接收、安装、储存、归还）日期和状态信息，即：已安装、已存储、已退还。

Unless the Vendor can prove, for example using recognized drawings and material lists, that material and equipment provided by the Buyer or the Owner has been installed, such material and/or equipment shall be returned to the Buyer. If the Vendor cannot return such material and/or equipment because it has been lost, substitute materials and/or equipment shall be procured at Vendor's expense. If the materials management is part of Vendor's scope of work, it shall prepare a material administration sheet, showing the description of materials received and, at the very least, information on the date of the material movement (receipt, installation, storage, return) and status, i.e. installed, stored, returned.

**11 备件/Spare Parts**

卖方应根据买方要求在订单标的的正常寿命期限内按照订单的条款条件以合理的价格向买方提供备件。

The Vendor shall remain in a position to offer the Buyer spare parts at the latter's request at reasonable prices and according to the conditions of the Order until the end of the normal lifetime of the Ordered Items.

**12 运输、储存/Shipping, Storage**

12.1 分批运输须经买方事先同意并在运输文件中予以明确标注。未经买方批准的分批运输的全部费用应由卖方承担。

Partial shipments shall require the express permission of the Buyer and shall be clearly designated as such in the shipping documents. The Vendor shall assume all costs for partial shipments not approved by the Buyer.

12.2 所有运输文件应清晰标明买方规定的信息，特别是订单号，订单科目，项目号，以及每件货物的尺寸，数量和重量。



All shipping documents shall duly show the information specified by the Buyer, especially the order no., order item, job no., as well as dimensions, quantity and weight per item.

卖方必须遵守买方的包装、唛头及运输指令。如果卖方不能提供正确的运输文件及测试、检验或验收证书，买方有权拒绝收货。

Buyer's Packing, Marking and Shipping Instructions must be adhered to. The Buyer is entitled to reject deliveries without proper shipping documents, test, inspection or acceptance certificates

12.3 卖方应对所有货物进行妥善包装以符合既定的运输方式的相关要求。且遵守订单中约定的一切有关包装的其他特殊规定。应买方要求，卖方还应确保通过与其使用的承运人签署补充协议的方式（如有必要），在买方接收货物后将包装移除并运回至卖方或制造厂进行回收利用，买方为此不承担任何费用。All supplies shall be suitably packed for shipment, taking into account the intended mode of transport. Any other special packaging regulations agreed in the Order shall also be adhered to. At Buyer's request, the Vendor shall ensure, if necessary by way of a supplementary agreement with the carriers used by it, that the packaging is removed at the time of takeover by the Buyer, transported back to the Vendor or manufacturer and recycled there, all at no cost to the Buyer.

12.4 即使在卖方的备妥待运通知发出后，若买方暂时不能接收货物，卖方应根据买方要求推迟对订单标的的发货，并自负费用和 risk 对货物进行最长三个月的妥善存储。如果发货与付款挂钩，则卖方可以在存储期开始后向买方申请付款，但卖方必须根据订单中买方提供的模板出具一份提前将订单标的的所有权转移给买方的声明文件，买方在此情形下方可支付到期付款。

At the request of the Buyer - even after notification of readiness for shipment - the Vendor shall postpone shipment of the Ordered Items if take-over by the Buyer is temporarily impossible, and shall store the Ordered Items appropriately for up to three months at the expense and risk of the Vendor, if shipment is the event triggering payment, this event shall be deemed to have occurred at the start of the storage period. Any due instalment shall, however, only be paid in return for the premature transfer of title in the Ordered Items to the Buyer based on a contract form provided by Buyer.

### 13 交接，测试，风险转移/Taking Over, tests, passing of risk

13.1 在业主对装置进行验收，对订单标的的进行缺陷测试时，卖方有权参加该测试。如果该测试显示订单标的的与订单要求不符，卖方应立即自负费用采取一切必要措施进行整改以满足订单要求。由此引起的测试费用，如买方的人工费，将由卖方承担。

On occasion of the acceptance of the Plant by the Owner, the Ordered Items will be tested for defects. The Vendor shall be entitled to participate in such tests. If such a test shows that the Ordered Items are not in accordance with the Order, the Vendor shall, at its own expense, promptly carry out all measures necessary to fulfil the Order. The costs associated with the test, such as Buyer's personnel costs, shall be borne by the Vendor if the latter is at fault.

13.2 即使在上述测试之前，买方或业主也有权使用全部或部分的订单标的的。但这并不应视为对订单标的的全部或部分的（正式）验收。

The Buyer or the Owner shall be entitled to use the Ordered Items in full or in part even before the above mentioned tests. This shall not be deemed to constitute the full or partial (formal) acceptance or the Ordered Items.

### 14 质量保证/Warranty for defects



- 14.1 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 4.4 条中提及的规范，建议及指导方针。  
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 pursuant to section 4.4.
- 14.2 由于装置施工的特殊性，通常对订单标的的测试和缺陷通知（若有）只有在其安装和调试后方能进行。因此，如买方根据实际情况在开箱，安装或投用后立即向卖方发出了关于缺陷，错发或数量不符等相关通知，应视为及时通知。  
Due to the special nature of plant construction, testing of the Ordered Items and, if applicable, notification of defects, can generally only be carried out after the Ordered Items have been installed and commissioned. As a result, any notification of defects, incorrect delivery or incorrect quantities shall be deemed to have been made on time if it is issued promptly after unpacking, installation or use, as the case may be.
- 14.3 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，则其质保期为买方验收后 5 年。  
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 warranty period shall be five (5) years from acceptance of the Ordered Items by the Buyer.
- 14.4 如果订单标的在质保期内出现缺陷，买方有权要求卖方经与买方商议后按照买方的选择立即对缺陷产品进行免费维修或更换（以下统称“整改”），由此产生的所有额外成本，特别是材料和人工费、文件费、运费、前往订单标的使用地的差旅费以及拆解和重新组装订单标的的费用，将均由卖方承担。买方还有权选择运输方式。  
If defects of the Ordered Items arise within the warranty period, the Buyer shall be entitled, as it chooses, to instruct the Vendor to remedy these defects promptly and in consultation with the Buyer by way of repair or replacement (hereinafter together “remedy”) free of charge for Buyer. The Vendor shall bear all additional costs incurred in this regard, in particular the material and labour costs, documentation costs, transportation and travel costs to the respective place(s) where the Ordered Items are being used and, the costs of dismantling and reassembly. The Buyer shall be entitled to choose the mode of transport.
- 14.4.1 如有必要，卖方应增加人员及物料，并在满足所在国法律法规的前提下安排多班和/或加班（包括周日和公共假日加班）来进行缺陷的整改工作。  
If necessary, the remedy of the defects shall be carried out with increased use of staff and/or material resources, working in multi-shift operations and/or overtime or, to the extent permitted under the laws and regulations that apply in the country in which the work is to be carried out, also on Sundays and public holidays.
- 14.4.2 如果在质保期内发生零部件的改造或替换，卖方还应对改造或者替换零部件的备件进行相应的免费改造或替换并免费修改技术文件。



If, under the warranty, parts are modified or replaced by other parts, any spare parts corresponding to the replaced or modified parts that have been already supplied must also be modified or replaced by Vendor free of charge and the technical documentation amended accordingly free of charge.

- 14.4.3 如果订单标的因缺陷不能全部或部分投入使用，其质保期应自停用之日起做相应延长。为了避免或减少停工损失，如有必要，卖方还应自费用立即安排并维护相应的临时替换设施直至缺陷修复。

If, due to the defects, the Ordered Items cannot be used either in full or in part, the warranty period shall be extended by the period during which the Ordered Items could not be used. In such cases and where it makes sense to do so, the Vendor shall promptly make provisional arrangements at its own expense and maintain these until the defect has been remedied with definitive effect in order to prevent or minimize any interruption in use.

- 14.4.4 如果经过多次整改还是反复出现相同类型的缺陷，或订单标的的其他部件也将很可能受到此等缺陷的影响，则卖方应根据买方要求，自费用对存在缺陷的部件采取诸如变更设计和/或使用其它替代材料，或合理延长质保期等相应的措施进行补救。

If, in spite of repeated remedial action, the same type of defect keeps occurring or if other parts of the Ordered Items are likely to be also affected by the defect, the Vendor shall in addition remedy the underlying cause of the defect at its own expense by using suitable means, e.g. by changing the design and/or using other materials, or shall agree to a reasonable extension of the Warranty Period, as requested by the Buyer, for the parts in question.

- 14.5 如果卖方未能在买方给予的合理期限内通过维修和/或替换的方式完成缺陷整改，则买方有权自行决定：

If the Vendor has failed to duly remedy the defect by repair and/or replacement despite being granted a reasonable period in which to do so, the Buyer shall have the right, as it chooses:

- 14.5.1 由买方自己或委托第三方对缺陷进行整改和/或更换缺陷部件，由此产生的所有费用（如：材料，工资，运输费，文件费，安装和拆卸费以及基于市场上普遍适用的工时费率核算的买方工时费等）将由卖方承担。如果此等整改未能（完全）纠正缺陷，卖方仍应根据订单约定对该缺陷承担责任。

和：

to perform such remedial work and/or arrange for a replacement to be supplied by itself or via third parties. All costs relating to the substitute performance (e.g. material, wage, transportation costs, cost for documentation, installation and dismantling costs, as well as Buyer's own expense based on the usual market hourly rates) shall be borne by the Vendor. Insofar as a defect is not (completely) remedied by substitute performance that has been carried out, the Vendor shall remain liable for this defect in accordance with the provisions of the Order.

and:

- 14.5.2 要求按照订单签订时订单标的在无缺陷状态下的价值与目前的实际价值按比例做折价处理，如果买方已支付的金额超出了折价后的价格，卖方应将差额部分退还买方。

或：

to demand a reduction of the price by reducing the payment of Buyer in the proportion which, at the date of the Order, the value of the Ordered Items in a state free of defects would have had to its actual value. If the Buyer has already paid more than the reduced remuneration, the Vendor shall reimburse the excess amount.

or:



- 14.5.3 撤销订单。若订单被撤销，卖方应立即按照买方要求，自费用对已经由卖方，买方或第三方安装到装置上的订单标的进行专业拆卸并将其移出现场。如有必要，卖方在拆卸时应采取必要的安全措施（如：正确关闭因拆卸而打开的管道，封闭危险区域等等），以避免对装置造成损害或对生命，附着物及财产带来风险。

和

to rescind the Order. In the event of rescission, the Vendor shall, at the Buyer's request, promptly and at its own expense, professionally dismantle the parts of the Ordered Items installed in the Plant (by it, the Buyer or third parties) and remove the dismantled parts from the Site. Insofar as this becomes necessary as a result of the dismantling, the Vendor shall take the necessary safety measures in order to avoid damage to the Plant and risks to life, limb and property (e.g. proper closure of pipelines which are open as a result of the dismantling, sealing off of hazardous areas, etc.)

and:

- 14.5.4 由卖方赔偿因订单标的缺陷而给买方造成的全部损害和损失，包括订单标的界区范围以外的损失，或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 indemnified by the Vendor for its full damages and losses caused by the defect of the Ordered Items, including damages caused outside of the Ordered Items, or to claim reimbursement for expenses incurred in vain, unless the Vendor is not responsible for the defect.

- 14.6 在下述情形下，买方有权根据本采购条款第 14.5 条之规定自行对缺陷进行整改，无需设定截止日期。

- a) 卖方已经严肃且明确地拒绝对缺陷进行整改，或
- b) 整改已经失败，或整改措施对买方不合理，或
- c) 卖方将无法在合理期限内完成整改，或
- d) 卖方无法执行整改，或
- e) 考虑到双方利益，其他的有理由认为应立即全部或部分执行第 14.5 条相关规定的特殊情形，尤其指：
  - 买方已经对卖方的缺陷整改失去信心，或
  - 卖方欺骗性隐瞒缺陷，或
  - 卖方故意制造缺陷，或
  - 因为订单标的缺陷，订单标的或装置的运营许可将即刻被吊销，即：无法等到卖方在截止期内将缺陷整改完毕，或
  - 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
  - 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。

The Buyer shall be entitled to the rights according to section 14.5 of this Conditions of Purchase without the need to set a deadline in advance for remedying the defect, provided that

- a) the Vendor has seriously and definitively refused performance or the remedy of the defect, or
- b) the remedy of the defect 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) the remedy of the defect is impossible for the Vendor, or
- e) there are special circumstances that justify the immediate exercise of some, or all of the rights listed in section 14.5, 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 Ordered Items or the Plant is imminent as a result of defect(s) of the Ordered Items, meaning that it would be unreasonable to wait for the expiration of the deadline for Vendor to remedy the defect, or



- there is a risk of disproportionate damage to the Buyer or to third parties as a result of waiting due to a deadline for Vendor to remedy the defect, or
- the safety of the Plant or of property not owned by the Vendor, or the safety of individuals or the environment is at risk.

**15 产品责任、违约/Product liability, breach of duty**

15.1 卖方应赔偿并使买方免于遭受针对制造商产品责任的任何索赔，并补偿买方因订单标的缺陷所造成的损失。除非产品缺陷并不属于卖方责任范围，卖方应承担所有相关的成本和费用，包括但不限于法律辩护和任何产品召回的费用。召回的内容和范围应通知卖方。

The Vendor shall indemnify and hold the Buyer harmless from claims arising in the context of manufacturer's liability, insofar as the damage has been caused by a defect of the Ordered Items. The Vendor shall bear all costs and expenses in this respect, including, but not limited to, cost of legal defence and of any recall, unless the cause behind the defect did not lie in its sphere of responsibility. The Vendor shall be informed of the content and scope of any recall.

15.2 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。但是，作为对卖方的一种止损，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. By way of derogation from the above, 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.

**16 功能保证/ Guarantee for Function**

除质量保证外，卖方还应保证订单标的在订单附件中所规定的流程和运行条件下以及装置所处的当地条件下12个月运行期内的正常功能，并保证订单标的在设计，材料和工艺的零缺陷。

In addition to the warranty the Vendor also provides a guarantee for the proper functioning of the Ordered Items for an operation period of 12 months, subject to the specific process and operating conditions of the Plant as specified in the attachments to the Order and under local conditions in the location in which the Plant is situated, as well as guarantees that the Ordered Items will be free from defects in design, material and workmanship.

**17 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.



**18 所有权，保密，数据保护/Ownership, Confidentiality, Data protection**

18.1 卖方为执行订单而从买方处收到的文件、图纸、数据和物料仍应归属于买方财产。  
Documents, drawings, data and objects which the Vendor receives from the Buyer for the execution of the Order shall remain the property of the Buyer.

18.2 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）。仅有在双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 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.

18.3 应买方要求，卖方应将买方提供的文件、图纸、数据和物料以及由卖方据此准备或创建的资料立即移交给买方和/或从卖方的数据媒介中删除，除非卖方在法律上有义务须对此等资料进行存档。卖方应将此要求传达给其雇员和分包商并使他们履行相应的义务。  
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 promptly 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.

**19 发布，广告/Publications, Advertising**

未经买方书面或电子邮件许可，卖方不得对外披露有关订单或装置的任何信息或促成类似信息被披露。也不得将此类信息作为业绩进行使用。

Without the Buyer's written or by e-mail given permission, the Vendor must 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 to the use of such information as a reference.

**20 暂停，终止/Suspension, Termination**

20.1 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。在此情形下，卖方有权要求买方按比例支付那些已经依照订单条款执行完毕的订单标的的相应价款，及未执行部分的合理的且可证实的管理费用。买方有权要求全部或部分交付已完工和/或尚未完工的已取消的订单标的。

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. In such case, the Vendor shall be entitled to payment of the pro rata price for the Ordered Items performed in accordance with the conditions of the Order, plus a reasonable, proven share of overhead costs for the part of the Ordered Items that was not executed. The Buyer is entitled to demand delivery of all or parts of the cancelled Ordered Items which have already been completed and/or those which have not yet been completed.

20.2 买方和卖方有权因特定原因全部或部分终止订单，不必遵从任何通知期限的要求。  
The Buyer and the Vendor are entitled to terminate the Order in full or in part for cause without observing a period of notice.

“特定原因”适用于以下情形：

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.

如果“特定原因”涉及到违反订单责任，则仅有在一方存在重大违约且在设定的合理的截止日期内整改无效，或投诉无效（包括再次违约）等情形时，另一方才有权终止订单。如有以下情形，可直接终止订单而无需投诉或设定整改截止日期：

- (a) 债务人（方）明确拒绝履行订单，或
- (b) 即使债权人在订单规定的时间内已经向债务人（方）发出通知表明按时履行订单对债权人（方）将是至关重要的，或订单中规定的日期或截止日期是受罚款约定的，但债务人（方）依然未能在订单约定的日期或截止日期前履行订单义务，或
- (c) 在权衡双方利益后认为必须立即终止订单的特殊情形。

If the “cause” relates to a breach of a duty arising from the Order, termination is only permissible if this breach is a major one and then only after the expiry of a reasonable deadline set to remedy the scenario to no avail or after an unsuccessful reproof, which included the declaration to terminate in case of a second breach. The setting of a deadline or the reproof can be dispensed with if

- (a) the debtor (Party) seriously and definitively refuses performance, or
- (b) the debtor does not affect 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 even though the date or deadline is penalized, or
- (c) there are special circumstances which justify immediate termination after weighing up the interests of both Parties.

如果一方因“特定原因”终止订单，买方可自行决定：



- 要求卖方自负费用交付被取消的已经完工的全部或部分订单标的,或由买方自行完成订单标的的供货(包含文件、图纸、计划及其他技术文件),或委托第三方完成供货。卖方应买方要求所交付的订单标的,买方在扣除其在前述选项方案中所产生的额外成本和费用后,根据原订单价格按比例支付给卖方。

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

- demand delivery of all or parts of the cancelled Ordered Items that have already been completed and, at the Vendor's expense, either complete and supply these Ordered Items including documentation, drawings, plans and other technical documents by itself, or have them completed and supplied by third parties. For the Ordered Items which the Buyer has received according to its request, the Vendor shall receive the pro rata price of the Order, less any additional costs and expenses incurred by the Buyer as a result of the alternative completion.

或/Or:

- 放弃所有订单标的的交付并要求赔偿其他替代方案所造成的损失。因订单终止而产生的任何拆卸、移除及其他相关费用将均由卖方承担。在替代方案可供使用之前买方有权免费使用订单标的,但使用期限不得超过12个月。此外,在买方归还相关的订单标的后,卖方应将相应的货款全部退还给买方。
- waive the delivery of all Ordered Items and claim damages in lieu of performance. The costs of any dismantling, removal and other costs incurred in connection with the termination shall be borne by the Vendor. The Buyer is entitled to use the Ordered Items free of charge until a replacement solution is ready for operation, but for a period of no more than 12 months. Furthermore, the Vendor shall reimburse the Buyer for all payments made concurrently against the return of (the concerned parts of) the Ordered Items.

20.3 如果订单终止或暂停,卖方应立即或在买方规定的一个特定时间或里程碑节点:

In the event of termination or suspension, the Vendor shall, either promptly or at a certain point in time or milestone specified by the Buyer:

- (a) 停止对已取消的订单标的的相关工作;  
stop work on the cancelled Ordered Items;
- (b) 不得就已取消的订单标的继续向第三方下订单;  
not issue any further orders to third parties in respect of the cancelled Ordered Items;
- (c) 尽一切努力,立即取消或暂停与已取消的订单标的的已经下给第三方的订单;如若暂停,则暂停期限须根据买方要求。  
make every effort to immediately cancel or suspend orders concerning the cancelled Ordered Items that it has awarded to third parties; in cases of suspension, however, it shall only do so to the extent requested by the Buyer, and
- (d) 保护好所有卖方和其分包商的用于执行已取消(部分取消)订单的原材料以及所有正在加工的已取消的订单标的或已经完工的订单标的,直至买方发布进一步指令,且卖方应遵从买方的有关指令。  
safeguard all material intended for execution of the cancelled (part of the) Order and all cancelled Ordered Items currently being worked on or which have already been completed, whether these are with the Vendor or its Subcontractors, until further instructions are issued by the Buyer, and shall follow the Buyer's instructions in this regard.

20.4 如果订单终止,卖方应根据买方要求立即或在买方指定的时间点或里程碑节点向买方返还全部或所要求的由卖方和/或其分包商准备的相关文件、图纸、方案、数据和其他技术文件(统称为“工作成果”)或买方提供给卖方用于执行已取消(部分取消)订单的相关信息资料(统称为“提供的信息”)。卖方不能就返还“工作成果”和“提供的信息”主张任何扣留或拒绝履行的权利。



In the event of termination, the Vendor shall return to the Buyer, at the latter's request, all or the requested part of the documentation, drawings, plans, data media and other technical documents which were prepared by it and/or its Subcontractors (collectively referred to as the "Work Results") or provided to it (collectively referred to as the "Information Provided") in connection with the cancelled (part of the) Order promptly or at the point in time or milestone specified by the Buyer. With regard to the surrender of the Work Results and Information Provided, the Vendor cannot assert any rights of retention or rights to refuse performance.

- 20.5 订单终止后，任何一方均有权要求另一方提供合作以共同确定订单的执行程度，若一方拒绝合作或未能在已同意的期限内或另一方要求的合理期限内完成订单执行情况的鉴定，则其应承担订单终止时订单执行现状的举证责任。如一方因非自身原因无法履行其义务且已立即通知另一方时，此规定不适用。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 promptly reported to the other Party.
- 20.6 如果订单被（全部或部分）暂停后又重新启动，卖方有权就因此而产生的合理且可证实的额外成本要求补偿，也有权要求合理延长约定日期和/或最终期限。In the event that the execution of the Order (in full or in part) is suspended and recommenced, the Vendor can claim compensation for the resulting appropriate and proven additional costs, and is also entitled to request an appropriate extension of the agreed dates and/or agreed deadlines.
- 21 **付款、发票、保证、账务抵销、付款违约、转让、税收、关税/Payment, invoicing, guarantees, offsetting, default in payment, assignment, taxes, duties**
- 21.1 付款申请、发票和借贷票据上应标明订单号，并以单独装订及方便查核的形式提交给买方财务部门。增值税应单列（若有）并在发票上标明卖方的增值税税号。Requests for payment, invoices and credit and debit notes shall be submitted as a single copy and in an auditable form, stating the Order number, to Buyer's Cost Accounts Department. Value added tax, if applicable, shall be shown separately. In addition, the Vendor must state its value added tax number in the invoice.
- 21.2 付款将仅在本期付款及前期分期付款的所有前提条件均已满足的情况下才能支付。如果付款与交货相关联，则订单中约定的同一交货日期项下的全部订单标的均已交货完毕将作为该期付款的前提条件。Payments will also only be made if all precondition for payment of the instalment in question and of the previous instalments have been fulfilled. If payment is related to delivery, then the precondition for this payment is the delivery of all order items for which one and the same delivery date has been agreed in the Order.
- 21.3 如果双方已约定以保证金方式作为担保方式，当业主因订单标的的原因扣留对买方的付款时，买方有权拒绝返还此保证金。If it has been agreed that the warranty retention can be redeemed by way of a guarantee, the Buyer is entitled to refuse the redemption of the retention for such time as the Owner withholds payments from the Buyer for any reason attributable to the Ordered Items.
- 21.4 卖方有权用其自己的索赔（如果此等索赔权是无争议的或已被最终法院或仲裁机构裁定）来冲抵买方的索赔。



买方不仅有权使用其自己的，如获得授权还可使用林德集团其他公司的索赔权来冲抵卖方的索赔。如果这些索赔权在不同的日期到期，则买方的索赔将最迟在买方的所有债务到期时进行结算，从起息日开始计算。

The Vendor is only entitled to offset the Buyer's claims for payments against its own claims if these are undisputed or have been determined by final court or arbitration award.

The Buyer is entitled to offset claims for payment by the Vendor against not only its own counter-claims but also, on the basis of the powers granted to it, against all claims of other companies in the LINDE Group. 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 and shall be accounted on the value date.

- 21.5 只有在收到卖方在付款逾期满 30 天后出具的书面提醒且收到卖方依照第 20.1 和 20.2 条出具的发票后，买方仍未付款，或买方未按订单中规定的日历日支付时，才视为买方付款违约。  
The Buyer will only be deemed in default in payment if it fails to pay on receipt of a written reminder by the Vendor after the expiry of thirty (30) days from the due date and receipt of invoice pursuant to sections 21.1 and 21.2, or if it fails to pay on the calendar date stated in the Order.
- 21.6 如果买方付款违约，违约金按年息 5% 结算，除非卖方能够证明因为此等违约遭受了更大的实质性损失。  
In the event of Buyer's default in payment, it shall owe interest of 5% p.a., unless the Vendor can prove that it has suffered more substantial damages due to such default.
- 21.7 卖方对买方索赔权的转让须经买方书面同意，买方不得无理由拒绝。  
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 withheld unreasonably.
- 21.8 任何一方都应各自承担因履行订单而产生的各项税费和纳税义务。  
Each Party shall be solely responsible for taxes and tax obligations of any nature arising from the Order.
- 21.9 订单中所规定的所有价格均为净值，不包含增值税和其他直接税费。  
All of the remuneration specified in the Order is specified as net amounts, i.e. exclusive of VAT and other direct taxes.
- 21.10 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。  
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.
- 21.11 如果因国家税务部门政策调整，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。  
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
- 21.12 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.

21.13 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。

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.

21.14 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 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.

21.15 基于单价的订单项下的发票应根据可核对的材料数量（下称为“数量统计”）来开具。如果订单中规定可以分批开具发票，则数量统计应标明该发票项下截止到订单约定的截止日期为止已经完工的数量，以及已经提供的各项服务的总数量。

Invoices for unit price orders shall be based on the auditable calculation of material quantities (known as "calculation of quantities"). If it was agreed in the Order that several invoices may be issued, the calculation of quantities shall state the quantities completed by the end of the contractually agreed period covered by the invoice, as well as the total quantities of the individual services.

21.16 最终发票应在其上做相关标注并在订单标的最终验收后四（4）周内提交，包含订单中载明的所有条目明细及所有前期付款明细（包括发票号码、发票日期、发票金额、扣留金额以及扣留总金额、逾期的付款和增值税等信息）。此外，还须附上买卖双方为付款审批目的而签署的机械竣工证明（若有）。最终发票的支付将并不免除卖方在合同项下的任何义务或责任。

Final invoices shall be marked as such and shall be submitted within four (4) weeks after acceptance of the Ordered Items, including a breakdown by the account code no. specified in the Order and all prior requests for payment, including the invoice number, invoice date, invoice amount, retention amount, as well as the aggregate amount of retention, due payments and value added tax. In addition, and if applicable, the certificate on mechanical completion, as signed by the Buyer and the Vendor for the purposes of payment approval, shall be attached.

Payment of the final invoice shall not release the Vendor from any of its contractual obligations or warranties.

## 22 合规/Compliance

22.1 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](https://www.the-linde-group.com/en/corporate_responsibility/business_and_governance/supply_chain/code_of_conduct_for_suppliers/index.html)

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](https://www.the-linde-group.com/en/corporate_responsibility/business_and_governance/supply_chain/code_of_conduct_for_suppliers/index.html)

- 22.2 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 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

- 22.3 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.

- 22.4 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。

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

- 22.5 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的要求等。

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.

## 23 出口管控/Export control

- 23.1 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](mailto: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](mailto:customs.pullach@linde-le.com) or any other e-mail address provided by the Buyer.



- 23.2 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”，买方有权根据本采购条款第 20.2 条之规定终止合同，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 for cause pursuant to section 20.2 of this Conditions of Purchase without observing a period of notice if the Vendor or its Subcontractor is a Denied Party.

## 24 生效，部分失效/Effectiveness, partial ineffectiveness

- 24.1 第 18、19、22.3、26 和 27 条的相关规定和第 4.6、21.8 和 21.13 条项下的责任义务，以及本 24.1 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 17 条以及卖方根据第 23 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 18, section 19, section 22.3, section 26 and section 27 as well as the responsibilities according to sections 4.6, 21.8 and 21.13, and the provisions according to this section 24.1 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 17 and to the obligations to inform according to section 23 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.

- 24.2 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

## 25 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.

## 26 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.



**27 司法管辖及仲裁地点/Place of Jurisdiction/Arbitration**

**27.1 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，应提交杭州市仲裁委员会在杭州进行仲裁。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, 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.

**27.2 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。仲裁地为中国杭州，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. Venue of Arbitration shall be Hangzhou, China. Language shall be Chinese. The arbitral award is final and binding upon both parties. Arbitration fee shall be borne by the losing party.