

**STANDARD PURCHASE ORDER TERMS AND
CONDITIONS FOR ENGINEERING/CONSULTING
SERVICES**

Identifier: &AF-A-_____ (EN)

Issue: 1

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STANDARD PURCHASE ORDER TERMS AND CONDITIONS FOR FIELD ENGINEERING/CONSULTING SERVICES

Issue	Date	Issued for	Prepared by	Reviewed by	Approved by
1	Feb 2016	Certified (This document replaces &AJ-A-BX -105 (EN) Rev. 3)	Amit Shah	Thomas Deiting	Onno Schuessler

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1. Definitions.

"Work" shall mean, refer to, and include the engineering and /or consulting services covered by the Purchase Order of which these Terms and Conditions are a part.

"Buyer" shall mean Linde Engineering North America Inc.

"Owner/User" shall mean the owner and/or operator of the facilities in which the Work is provided.

"Client" shall mean the person or business entity with whom Buyer has contracted to supply the Work, which in certain cases could be the Owner/User.

"Seller" shall mean the person or business entity identified as the seller of Work in the Purchase Order.

"Purchase Order" shall mean and refer to the purchase order issued by Buyer to Seller in connection with the Work, together with all documents attached thereto or incorporated therein by reference.

"Equipment" shall mean all materials, components, and services which Buyer is required to provide to Client which is associated with the Work.

"Plant Facility" shall mean the Equipment and any adjoining plant, equipment, buildings, fixtures, owned and/or operated by Owner/User.

"Buyer Indemnified Parties" shall mean Buyer, Owner/User, Client, and all of their employees, officers, directors, shareholders, agents, and subcontractors, and Buyer's parent and affiliated companies which are members of the Linde Group.

"Law(s)" means the latest revision or enactment of all valid applicable laws, rules, regulations, standards, codes, charter, act, statute, ordinance, code, regulation, final judgment, decrees, order of court, or legislative or administrative action, issued by any national, supranational, federal, state, municipal, or local governments or any legislative or administrative action of any agency, department, authority, political subdivision or other instrumentality thereof having jurisdiction over Seller or the WORK including, but not limited to, all those pertaining to transportation, labor, safety, health, packaging, labeling, environmental, material, manufacturing, workmanship, design, engineering, fabrication, installation, or otherwise applicable to the performance of the WORK. LAW shall include specified standards or objective criteria contained in any applicable permit or approval (which standards or criteria must be met in order for the Work to be performed lawfully) and professional engineering standards applicable to the WORK.

2. Purchase Order. The Purchase Order operates as an offer and constitutes the entire terms of the contract and shall not be modified except by mutual written agreement. The order of precedence of Purchase Order documents shall be Purchase Order, Standard Purchase Order Terms and Conditions for Field Engineering/Consulting Services, Specifications, Instructions to Seller, general standards and applicable law. Seller's acceptance of the

Purchase Order may be made by Seller by (i) signing the acknowledgment copy in the attached Purchase Order set and returning same to Buyer, or (ii) Seller's commencement of performance of this Purchase Order, or (iii) any other conduct by Seller evidencing the existence of the Purchase Order. This Purchase Order is subject to, and expressly conditioned upon, Seller's unconditional acceptance thereof in its entirety. **UNLESS SPECIFICALLY AGREED TO IN WRITING BY BUYER, OR SPECIFICALLY REFERENCED IN THIS PURCHASE ORDER, BUYER'S TERMS AND CONDITIONS REPRESENT THE ONLY TERMS AND CONDITIONS APPLICABLE TO THIS ORDER NOTWITHSTANDING ANY STATEMENTS TO THE CONTRARY WHICH MAY BE CONTAINED IN SELLER'S WRITTEN PROPOSAL OR ACKNOWLEDGMENT OR ANY OTHER DOCUMENT PROVIDED BY SELLER, WHICH ARE HEREBY OBJECTED TO BY BUYER.**

3. Execution of the Work. Seller shall carry out the Work in a diligent and timely manner and in accordance with the requirements of internationally recognized quality management (ISO 9000 et seq. or equivalent). Seller shall comply with the statutory, official and workmen's compensation insurance regulations, recommendations and guidelines (on environmental protection, accident prevention and safety at work, etc.) that are valid at the location of the performance of the Work. **SELLER SHALL INDEMNIFY AND HOLD BUYER INDEMNIFIED PARTIES HARMLESS FROM ANY LIABILITIES, CLAIMS AND FINES OF THIRD PARTIES OR PUBLIC AUTHORITIES WHICH MAY ARISE AGAINST THE BUYER DUE TO THE NON-COMPLIANCE BY THE SELLER WITH ANY OF HIS STATUTORY OBLIGATIONS RELATING TO THE WORK OR STAFF.** Seller shall be exclusively responsible for briefing, directing and supervising his personnel, without prejudice to the Buyer's right to inspect the Work at any time for verification of its execution in accordance with the Purchase Order in respect of, but not limited to, quality and schedule. Seller shall nominate a contact person with respect to the Work. Seller shall only employ proven and qualified employees and subcontractors and shall pass on to such employees and subcontractors any technical and time schedule requirements set forth in the Purchase Order. Subcontracting of any part of the Work shall require the prior written consent of Buyer. Seller shall ensure that his personnel complies with all regulations pertaining to safety and prevention of accidents, as well as any regulations pertaining to order and conduct, and **SELLER SHALL INDEMNIFY AND HOLD BUYER INDEMNIFIED PARTIES FROM ANY CLAIMS OR CONSEQUENCES ARISING OUT OF NON-COMPLIANCE THEREWITH.** Seller shall promptly replace non-compliant staff at the request of Buyer.

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4. **Warranties.** Seller expressly warrants and represents to Buyer, Client, and Owner/User of the Work:

(a) that it and its employees and subcontractors have the requisite expertise, skill and technical and financial capacity to perform the WORK in a professional and careful manner based upon state-of-the-art and the highest professional engineering standards in full and strict accordance with the schedule and technical, administrative, and performance requirements of the Purchase Order;

(b) that the Work shall be fit for the purpose intended, shall comply with the highest and sound design/engineering practices, and shall conform in all respects to the specifications, drawings, and requirements of the Purchase Order, and be free from defects and of good and workmanlike quality;

(c) that it shall give priority to safety in order to protect life, health, property and environment in accordance with the Purchase Order and LAW;

(d) that it has the authority to enter into this Purchase Order which does not constitute a conflict of interest or default under any other contract entered into by Seller;

(e) that no suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or, threatened against Seller or affecting Seller, or its business or financial condition, which would have an adverse effect on the validity or enforceability of this Purchase Order or Seller's ability to perform this Purchase Order;

(f) all persons employed by Seller and its subcontractors are able to be employed and work in full compliance with applicable Law;

(g) that Seller has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any person or business entity with a view toward securing this Purchase Order or securing favorable treatment with respect to any determinations concerning the performance of this Purchase Order;

(h) that it is qualified to do business at the location of the performance of the Work and possesses all permits and is in good standing regarding all required contractor or professional licenses and registrations with any governmental or tax authorities as required by Law. All licenses, permits, tax identification numbers, registrations, or related information shall be provided to Buyer upon request;

(i) that it shall comply with all Law in connection with the performance of this Purchase Order, including, but not limited to, import and export control regulations, statutory, official and workmen's compensation insurance, and regulations, recommendations and guidelines on environmental protection and accident prevention and safety at work, which are applicable at the location of the performance of the Work. **SELLER SHALL PROTECT, INDEMNIFY AND DEFEND BUYER INDEMNIFIED PARTIES FROM ANY AND ALL LIABILITIES, COSTS, INCLUDING ATTORNEY'S FEES, EXPENSES, SUITS, CAUSES**

OF ACTION, FINES, PENALTIES, OR OTHER CLAIMS ARISING FROM VIOLATION OF LAW;

(j) that its and its subcontractors validly own, hold or are otherwise authorized to use or incorporate into the WORK any and all intellectual property, including patents, trade secrets, copyrights, and trademarks, in the possession of Seller or its subcontractors, and that no claims of infringement or other violations of intellectual property have been made and same are free from any lien, claim, or encumbrance, including a pledge of collateral.

(k) that the use and sale of the Work will not infringe any patent, design, trademark, name, copyright, trade secret or other intellectual property right, and **SELLER AGREES AND OBLIGATES ITSELF, AT ITS SOLE COST AND EXPENSE, TO PROTECT, INDEMNIFY, AND DEFEND BUYER INDEMNIFIED PARTIES AGAINST, AND HOLD THEM HARMLESS FROM, ANY AND ALL CLAIMS, DEMANDS, OBLIGATIONS, LIABILITIES, LOSSES, INJURIES, DAMAGES, COSTS, EXPENSES, ATTORNEYS' FEES, CAUSES OF ACTION, SUITS AND/OR JUDGMENTS ARISING THEREFROM.** In the event of patent infringement, in addition to other remedies of Buyer, Seller shall, upon the written consent of Buyer, either replace or modify the Work to the extent required to avoid infringement, or procure an irrevocable, royalty-free license to use the Work at the Plant Facilities.

(l) that in the event of defects or nonconformities in the Work, Seller will, at Buyer's direction and at Seller's sole cost and expense, promptly remedy defects in the Work and any resulting damages to Equipment and Plant Facilities proximately resulting from said defects or non-conformities. In the event that Seller fails to remedy defects or nonconformities within a reasonable period of time, Buyer, may at its sole option, remedy the defects or nonconformities and recover all costs from Seller. The foregoing remedies are cumulative and are in addition to any other remedies available to Buyer at law, in equity or under the Purchase Order.

5. **Seller's Indemnity.** **SELLER AGREES TO INDEMNIFY, DEFEND AND HOLD INDEMNIFIED PARTIES FREE AND HARMLESS FROM ANY AND ALL ACTUAL OR ALLEGED LIABILITY, EXPENSES, CLAIMS, LOSSES, LITIGATION COSTS (ATTORNEYS' FEES, EXPERT WITNESS FEES, ETC.) WHICH IN ANY MANNER ARISE OUT OF, RELATE TO, OR ARE CONNECTED WITH THE PERFORMANCE OF THE WORK BY SELLER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, AND SUPPLIERS, INCLUDING BUT NOT LIMITED TO, DAMAGES ARISING OUT OF PERSONAL INJURY OR DEATH TO ANY PERSON (INCLUDING BUT NOT LIMITED TO EMPLOYEES OF SELLER, ITS SUBCONTRACTORS OR SUPPLIERS), PROPERTY OR ENVIRONMENTAL DAMAGE, VIOLATION OF LAW, OR OTHERWISE, EXCEPT ONLY FOR CLAIMS PROXIMATELY RESULTING FROM THE SOLE NEGLIGENCE OF INDEMNIFIED PARTIES. TO THE EXTENT THAT ALL OR ANY PART OF THIS PARAGRAPH VIOLATES APPLICABLE LAW, THIS PARAGRAPH**

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SHALL NEVERTHELESS REMAIN OPERATIVE FOR THE EXPRESSED PURPOSES AND SHALL BE ENFORCED TO THE FULLEST EXTENT AS MAY BE ALLOWED BY LAW.

6. **Insurance.** Seller agrees to purchase and maintain, and to cause any approved subcontractors to purchase and maintain, at all times during the performance of the Purchase Order and, with respect to insurance set forth subparagraphs (c), (d),(e), and (f) below, for an additional period of two years after Seller's completion of the Work, the following insurance:

(a) Worker's Compensation insurance covering injury to or occupational disease or death of all employees engaged in the Work in accordance with the statutory requirements of the location in which the Work is to be performed, including Employer's Liability insurance, with limits of liability of \$1,000,000 per accident/employee/disease. Such insurance shall include the Alternate Employer Endorsement, naming Buyer as an alternate employer in connection with the work to be performed.

(b) Automobile Liability insurance covering owned, hired, and non-owned vehicles with a Combined Single Limit of at least \$1,000,000 per accident.

(c) Comprehensive General Liability Insurance including but not limited to coverage for premises and operations, broad form property damage, products/completed operations liability, personal and advertising injury, independent contractors, and blanket contractual liability insuring the indemnity obligations assumed by Seller under this Agreement, and including coverage for explosion, collapse and underground property damage hazards, and sudden and accidental pollution liability. Said policy shall where applicable contain a severability of interest clause or a standard cross liability endorsement which allows cross liability claims between insureds.

Such coverage shall provide a limit of \$1,000,000 combined single limit personal injury \$1,000,000 for each occurrence and \$2,000,000 general aggregate.

(d) Seller shall maintain professional liability/errors and omissions insurance with limits not less than \$2,000,000 for each claim and \$4,000,000 annual aggregate.

(e) Seller shall maintain or self-insure, and shall cause all of its subcontractors to maintain or self-insure, insurance covering all materials, tools, equipment, and items (whether owned, rented, or borrowed) of Seller, its subcontractors, or others, which will not become part of the Work, and Seller releases and discharges Buyer Indemnified Parties from all liability for losses or damages from any cause with respect thereto, regardless of fault.

(f) Umbrella Liability Insurance in excess of the coverages set forth above, except only for Worker's Compensation and subsection (e), with limits not less than \$10,000,000 U.S. Dollars in the aggregate.

ALL RIGHTS OF RECOVERY AGAINST INDEMNIFIED PARTIES, REGARDLESS OF THE CAUSE OF THE LOSS OR DAMAGE AND REGARDLESS OF FAULT. BUYER INDEMNIFIED PARTIES SHALL BE NAMED AS ADDITIONAL INSUREDS IN EACH OF SAID INSURANCE POLICIES, EXCEPT FOR WORKMEN'S COMPENSATION AND COVERAGES SET FORTH IN SECTION 6(A) ABOVE. THE COVERAGE AFFORDED SAID ADDITIONAL INSUREDS SHALL APPLY AS PRIMARY INSURANCE AND NOT REQUIRE CONTRIBUTION FROM SIMILAR INSURANCE COVERAGE MAINTAINED BY BUYER INDEMNIFIED PARTIES AND SHALL PROVIDE FOR A SIXTY (60) DAY NOTICE TO BUYER OF CANCELLATION. SELLER SHALL PROVIDE AN INSURANCE CERTIFICATE EVIDENCING SAID COVERAGE WHICH SHALL BE A CONDITION PRECEDENT TO PAYMENT UNDER PARAGRAPH 17.

7. **Performance Schedule.** Strict compliance with the performance dates set forth in this Purchase Order shall be considered a material obligation of Seller hereunder. A revised completion schedule referencing the Purchase Order number shall be submitted to Buyer by every two weeks or such longer periods as may be agreed between the parties. Buyer shall be notified immediately of any deviation from the stated schedule. Buyer reserves the right to expedite Seller's performance hereunder or any sub-contractor or vendor of Seller necessary to comply with the stated schedule, all at Seller's cost. The failure of Seller to comply with the schedule or to provide adequate assurance of compliance with the schedule shall be sufficient basis for Buyer to cancel this Purchase Order for cause per Section 15.

8. **Liquidated Damages for Late Performance.** This Section 8 shall be applicable only if the text of the Purchase Order provides for liquidated damages pursuant to this paragraph. In such event Buyer shall be entitled to demand, as liquidated damages from Seller for the period of the delay beyond the scheduled performance date, the liquidated damages set forth in the text of the Purchase Order. In the event that Seller continues to fail to perform after the expiration of the liquidated damages period, or if Seller fails to give adequate assurance of performance within said liquidated damages period, Buyer reserves the right to cancel this Purchase Order for cause per Section 15 and Buyer shall have the right to recover actual damages incurred by Buyer after the expiration of said liquidated damages period.

9. **Taxes and Duties.** Seller accepts exclusive liability for the payment of all payroll, social security, income, hospitalization, workmen's compensation, unemployment taxes, or other taxes and contributions required by Law to be paid by Seller, **and SELLER WILL INDEMNIFY AND SAVE BUYER INDEMNIFIED PARTIES HARMLESS FROM ALL LIABILITY ARISING FROM SELLER'S FAILURE TO MAKE SUCH PAYMENTS.** Unless otherwise exempt, all sales, value added, and/or use taxes or duties, if applicable,

SELLER AGREES TO A WAIVER OF SUBROGATION IN EACH OF THE INSURANCE POLICIES PROVIDED BY SELLER HEREIN OF

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normally the responsibility of Buyer, shall be separately itemized in the Purchase Order and, if not itemized, shall be deemed included in the invoice, and SELLER shall remit same directly to the appropriate taxing authorities and indemnify Buyer against any interest or penalties imposed by any taxing authority.

10. **Change Orders.** Unless otherwise set forth in the Purchase Order, the prices and rates are firm and not subject to any cost extras or escalation. No additional charges are authorized unless specifically set forth in the Purchase Order. Buyer reserves the right to make changes or modifications to the Purchase Order from time to time, including, but not limited to, scope and performance terms. If any such change has an effect upon the price or performance terms, Seller shall notify Buyer in writing within ten (10) business days after receipt thereof of its request for a change or the discovery of any condition which could impact the price or schedule. The request for cost extra shall be in writing and shall specify the total monetary amount claimed by Seller for said extra and shall include proof in a form satisfactory to Buyer of cost or schedule impact. Failure to comply with said procedure within the ten (10) day period shall operate as a waiver of Seller's right to request a cost extra or extension to schedule. No claim for damages or costs of any nature shall be made or asserted by Seller by reason of delays or interference from any cause whatsoever, and Seller's sole remedy for such delays shall be an application for an extension of time, provided however, that this clause shall not apply to delays or interference caused by Buyer's bad faith or willful or malicious conduct or Buyer's abandonment or material breach of the Purchase Order. Seller shall have no right to suspend or delay its performance hereunder while Buyer is reviewing Seller's request for cost extra to the purchase price and/or extension to the completion schedule, or if Buyer fails to approve any such requests. Seller agrees that suspension of performance or delay by Seller under such circumstances shall be considered a material breach of this Purchase Order by Seller. Any request for change order shall not include loss of efficiency, delay damages, or other indirect costs. **NO COST EXTRAS WILL BE PAID OR WORK AUTHORIZED EXCEPT PURSUANT TO A WRITTEN CHANGE ORDER ISSUED BY BUYER OR CONFIRMED BY A WRITTEN WORK ORDER AUTHORIZING SAID WORK SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER AND ISSUED FROM BUYER'S HOME OFFICE.** Buyer's representative at the project site has no authority to approve change orders or requests for cost extras, other than to acknowledge that the work was completed. In the event of failure to agree, Seller shall continue the work if requested by Buyer, and, if not resolved amicably, said dispute shall be submitted to arbitration at the conclusion of the work.

11. **Errors in Drawings, Specifications and Documents.** Any errors, discrepancies or conflicts in the technical documents and drawings discovered by Seller shall be brought to Buyer's attention for

written clarification. Any costs or expenses resulting from failure to follow this procedure shall be borne by Seller.

12. **Inspection, Acceptance, and Quality Control.** Seller represents that it has instituted a quality control/quality assurance program capable of providing the services to quality required and in compliance with contract specifications. If requested, Seller shall provide written documentation regarding Seller's quality control program. The Work is subject to inspection by Buyer, Client and Owner/User at any time. Review and/or approval of drawings, designs or technical information provided by Seller, or inspection, waiver of inspection, or failure to properly inspect the Work, by Buyer or Client and/or Owner/User, shall in no event operate as an acceptance of the Work or as a waiver of any rights of Buyer with respect to defects therein, or in any way release Seller from responsibility to conform to the Purchase Order requirements, specifications, warranties, and good workmanship. Seller shall not be released from its contractual or warranty obligations with respect to said Work by virtue of acceptance or review/approval, final payment, inspection, or waiver of inspection.

13. **Confidentiality and Work Product:** All work product, including all supporting calculations, drawings, and other technical information prepared by Seller in connection with site, supervision, consulting, design and/or engineering services provided to Buyer, shall become the exclusive property of Buyer, including all intellectual property rights, copyrights, trademarks, and/or patent rights associated therewith. Seller shall disclose fully and promptly to Buyer all work product, inventions, discoveries, developments, or improvements conceived by Seller solely or jointly with others as a result of providing services for Buyer, or at the expense of Buyer, on or off Buyer's premises, which shall become the exclusive property of Buyer whether or not patent applications are filed thereon, hereinafter referred to as "Work Product." Seller shall assign to Buyer during and subsequent to its engagement all right, title, and interest to Work Product and all patent applications which may be filed thereon by Buyer and all patents in any and all countries which may issue thereon and to assist Buyer in every proper way including the signing of required assignments and other required documents as may be deemed necessary or desirable during and subsequent to its work to obtain any patents for the benefit of Buyer. Buyer has a body of proprietary and confidential business and technical information, inventions, designs, methods, processes, know-how, systems, improvements, and trade secrets, including confidential business and technical information received from third parties, customers, or clients, or confidential business and technical information received from affiliated or parent companies, certain of which may be required to be disclosed to Seller in connection with services provided by Seller, hereinafter collectively referred to as "Buyer Information". Seller shall neither use for any purpose, except as necessary in the performance of its work for Buyer, nor to disclose, directly or

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indirectly, to any person, firm, association, corporation or institution without Buyer's prior written permission at any time during or subsequent to its engagement with Buyer, all knowledge or information which Seller develops for LENA, or which represents Seller's Work Product in connection with the services provided to Buyer, or represents Buyer Information provided to Seller or obtained at any time on or off Buyer's plants or premises. All Work Product and Buyer Information provided to Seller, including all copies thereof, shall be returned to Buyer upon request. Seller represents that it has agreements in place with its employees which binds employees to similar obligations as set forth herein, including, but not limited to, obligations of confidentiality and obligations to assign all patent rights of Work Product as herein set forth. Seller and its employees/subcontractors agree to execute such additional agreements with respect to confidentiality and assignment of Work Product as may be referenced and incorporated into the Purchase Order.

14. **Termination/Suspension for Convenience.** Buyer may terminate all or any part of this Purchase Order without cause at any time upon written notice to Seller. In such event the Purchase Order price shall be equitably adjusted. Payment shall be limited to the part of the Purchase Order price corresponding to the work performed until such termination or suspension. Seller shall not be entitled to anticipated or prospective profits on work unperformed or materials or equipment unfurnished, or indirect or consequential losses.

15. **Cancellation for Cause.** In the event of defects in the Work, failure to furnish the Work, or failure to comply with the schedule, Buyer is entitled to and authorized to complete the Purchase Order, carry out guarantee, warranty and/or replacement work, or have it executed by a third party, Client, or Owner/User, all at Seller's cost. Buyer reserves the right to cancel all or any part of this Purchase Order, without limiting any other remedy available to it in law or equity, (a) if not completed as and when specified, (b) if any proceeding under bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for or an assignment for the benefit of creditors is made by Seller or Seller commits an act of bankruptcy, or (c) if Seller has failed to comply with any material terms or conditions of the Purchase Order, or (d) if Seller has failed to provide adequate assurance of performance after demand by Buyer. In the event of cancellation, Buyer shall have all rights and remedies and claims for damages as recognized by Law, including the right to demand any work in progress and right to utilize any engineering materials and drawings provided by Seller to complete the Work. In the event that it is judicially determined that Buyer did not have a reasonable basis for cancellation for cause, it is agreed that such termination shall be considered a termination for convenience under Section 14 and, to the exclusion of all other claims, Seller shall be paid for costs incurred as provided in Section 14. In no event, regardless

of the fault or negligence of Seller, shall Seller's liability to Buyer exceed the Purchase Order price including change orders.

16. **Waiver of Liens.** Unless otherwise waived in the Purchase Order, as a condition of any progress or final payments to Seller, Seller, and its subcontractors, suppliers, and vendors, shall execute and provide waivers of lien in the form and in accordance with the procedures as approved in the state in which the Work will be provided, or in the form as attached to the Purchase Order. To the extent of receipt of payment with respect to any progress or final payment, **SELLER HEREBY WAIVES THE RIGHT TO FILE A MECHANICS OR MATERIALMAN'S LIEN, OR CLAIM OR RIGHT OF SUCH LIEN WHICH NOW EXISTS OR MIGHT OTHERWISE ARISE BECAUSE OF THE LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED UNDER THIS CONTRACT.** In the event that any such liens are filed by Seller, or its subcontractors, suppliers or vendors, Seller agrees to remove same by posting bond or otherwise, and shall indemnify and save harmless Indemnified Parties from all costs and expenses, including reasonable attorneys' fees, incurred by Indemnified Parties in connection therewith. Buyer reserves the right to pay any of said subcontractors, suppliers, or vendors directly and deduct said amount from any payments or retainage otherwise due Seller.

17. **Payment.** Unless otherwise stated in the Purchase Order, payment terms shall be 100 per cent net within sixty (60) days after final acceptance of the Work and receipt of acceptable invoices by Buyer. Buyer reserves the right to require additional security for the performance of Seller's obligations, including cash holdbacks, bank guarantees, or letters of credit. Buyer further reserves the right to an offset of any amounts owed to the Buyer or its affiliates, parents or subsidiaries. Invoices with identifying Purchase Order number shall be submitted to Buyer in three (3) copies, including such other information as required by Buyer or as requested in the Purchase Order. Discounts shall run from date of actual receipt of acceptable invoices from Seller.

If Purchase Order pricing ("Fees") is based on actual time and expenses of performed Work, the following shall apply. Buyer shall pay Seller for all Work which are acceptably performed, based on the number of hours worked, including Buyer approved travel required to fulfill the Buyer's requests, as detailed in schedule of Fees which shall be stated in or attached to the Purchase Order. Overtime requires Buyer's written approval in advance of the time to be worked. Buyer shall reimburse Seller for all actual and reasonable expenses of Buyer approved travel (including transportation, lodging, meals, and incidental costs) for the performance of the Work (the "Reimbursable Expenses") at actual cost. Receipts for each Reimbursable Expense shall be submitted with Seller's invoice. Reimbursable expenses submitted more than thirty (30) days after completion of the Work WILL BE DISALLOWED, unless Seller has made special arrangements with the Buyer in advance, or the delay is for reasons

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beyond Seller's reasonable control. Seller's invoice for actual time shall include timesheet signed daily or weekly as specified in the Purchase Order.

Invoices with identifying Purchase Order number shall be submitted to Buyer in three (3) copies, including such other information as required by Buyer or as requested in the Purchase Order. Seller shall submit its invoice once per month to Buyer as soon as practical after completion of the Work. Discounts shall run from date of actual receipt of acceptable invoices from Seller. The invoice shall include any applicable Fees and Reimbursable Expenses, shall be adequately detailed to preclude unnecessary inquiry, and shall be submitted to Buyer to the attention of:

Linde Engineering North America Inc.
Attn: Accounts Payable
6100 South Yale, Suite 1200
Tulsa, Oklahoma 74136

Within thirty (30) business days after receipt of Seller's acceptably detailed Invoice, Buyer shall pay Seller the amount thereof.

NO INVOICES WILL BE PAID UNTIL BUYER HAS RECEIVED A SIGNED ACKNOWLEDGMENT COPY OF THE PURCHASE ORDER.

18. **Assignment.** Seller shall not assign, sub-contract or transfer this Purchase Order in whole or in part without previous written approval of Buyer. Buyer may at any time assign this Purchase Order or any warranty obligation to any member of the Linde Group, Client, Owner/User, or any other third party upon written notice to Buyer. In the event of assignment to third parties other than the Linde Group, Client, or Owner/User, Buyer shall remain liable to Seller for payment obligations unless Seller has consented to a release in favor of Buyer in connection with said assignment, which consent by Seller shall not be unreasonably withheld.

19. **Voidness and Waiver.** In case any term or provision of the Purchase Order should prove to be invalid or ineffective, the validity of the other terms and provisions shall not be affected thereby. Buyer's waiver of any breach of, or failure to enforce, any of the terms, obligations, and/or conditions of the Purchase Order at any time shall not be deemed to be a continuing waiver of any subsequent or continuing breach of such terms, obligations, or conditions, or of any other terms, obligations, or conditions thereof; any such waiver or failure to enforce shall not in any way affect, limit, or waive, by reason of course of dealing, usage of the trade or otherwise, Buyer's right thereafter to compel strict compliance with every term, obligation, and condition thereof.

20. **Export Control.** Seller agrees to fully comply with all applicable United States export control laws, regulations, and orders as amended, and the export and/or import control laws and regulations of other countries. If applicable, Seller assumes responsibility for obtaining any export license or other approvals. Seller agrees to notify Buyer in advance if any deliverable or service under this Purchase Order or method of transportation is restricted or prohibited by any export control laws or regulations. **SELLER SHALL INDEMNIFY AND DEFEND BUYER FROM ALL COSTS, EXPENSES, PENALTIES, ACTIONS, CLAIMS, OR LIABILITIES, INCLUDING ATTORNEYS' FEES, ARISING FROM A VIOLATION OF THE PROVISIONS OF THIS CLAUSE.** To the extent that all or any part of this paragraph violates applicable or local law, this paragraph shall be enforced to the fullest extent as may be allowed by law.

21. **Independent Contractor.** It is the express intention of the parties hereto that at all times the status of Seller shall be that of an independent contractor, and the relationship of Buyer and Seller shall in no event be construed to be that of principal and agent or master and servant or be considered a joint venture for any purpose. Seller shall have responsibility for and control over the details and means of performing the Work. Seller shall not have the authority to make statements, representations or commitments of any kind or to take any other actions which would be binding upon Buyer. Each subcontract entered into by Seller shall be in such form and substance as will not create any relationship, contractual or otherwise, between subcontractor and Buyer and/or CLIENT and/or Owner/User.

22. **Advertising.** The taking of photographs on the Plant Facilities shall require Buyer's prior written approval. Seller shall not publish information or cause any information to be made public concerning the Work or the Purchase Order without Buyer's advance written approval.

23. **Governing Law and Dispute Resolution.** **ALL CLAIMS, DISPUTES AND OTHER MATTERS IN QUESTION ARISING OUT OF, OR RELATING TO, THIS PURCHASE ORDER OR THE BREACH THEREOF, SHALL BE DECIDED BY BINDING ARBITRATION IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, TO BE HELD IN TULSA, OKLAHOMA, U.S.A.** Notice of the demand for arbitration shall be filed in writing with the other party or parties to this Purchase Order and with the American Arbitration Association. In no event shall the arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Any decision or award rendered by at least a majority of the arbitrators shall be final and judgment may be entered upon it under the Federal Arbitration Act or laws of the State of Oklahoma, as may be applicable. The Purchase Order shall be governed by and

**STANDARD PURCHASE ORDER TERMS AND
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SERVICES**

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construed in accordance with the laws of the State of Oklahoma excluding the law of conflict. The UN Convention for the international sale of goods shall not apply. Seller consents to the venue and personal jurisdiction of Oklahoma federal or state courts exclusively to adjudicate disputes arising out of this contract or to enforce the provisions of this arbitration clause.

24. Corporate Responsibility

- (a) Seller shall comply with the requirements of the Code of Conduct for the Linde Group, a copy of which may be found at www.linde.com/supplier-CoC (hereinafter referred to as "Code of Conduct").
- (b) Seller shall demonstrate compliance with the requirements of the Code of Conduct at the request and to the satisfaction of Buyer by providing data or conducting self-assessments.
- (c) If Buyer has reason to believe that Seller may be in material breach of the requirements laid out in the Code of Conduct, Buyer or a third party appointed by Buyer may conduct inspections at Seller's premises in order to verify Seller's compliance with the requirements of the Code of Conduct. Buyer 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 Seller's business activities nor violate any of Seller's confidentiality agreements with third parties. Sellers shall reasonably cooperate with any inspections conducted. Each party shall bear its own expenses in connection with such inspection.
- (d) In addition to any other rights and remedies, if Seller is in material breach of the Code of Conduct or fails to remedy any breach, after written notification about the breach by Buyer, Buyer shall have the right to terminate the Purchase Order without any liability whatsoever.
- (e) Material breaches include, but are not limited to, incidents of forced or child labor, corruption and bribery, and failure to comply with the Code of Conduct's environmental protection requirements.