

**STANDARD PURCHASE ORDER TERMS AND  
CONDITIONS FOR VENDORS AND SITE SERVICES**

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# STANDARD PURCHASE ORDER TERMS AND CONDITIONS FOR VENDORS AND SITE SERVICES

Issue	Date	Issued for	Prepared by	Reviewed by	Approved by
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**1. Definitions.**

**"Affiliated Company(s)"** means a company that owns or controls, or is owned or controlled by a party to the Purchase Order, or two or more companies under common control or ownership of a parent company, through owning or controlling 50% (fifty per cent) or more of the voting stock of such company or party respectively, either directly or indirectly through a chain of ownership or control of 50% (fifty per cent) or more of the voting stock in each tier of such chain

**"Buyer"** shall mean Linde Engineering North America Inc.

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

**"Company Group"** means the Buyer and its Affiliated Company(s), their employees, agents, officers, directors, stockholders, representatives, and insurers. Company Group does not include Seller and its subcontractors, vendors, and suppliers.

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

**"Indemnified Parties"** means Company Group and the Client and/or Owner/User, their subcontractors, vendors, and suppliers participating in the Project, and all of their employees, agents, officers, directors, stockholders, and insurers.

**"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(s) 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 or operated lawfully) and professional engineering standards applicable to the Work. Law(s) also includes, but is not limited to, FAR 52.219-8 "Utilization of small business concerns"; FAR 52.222-26 "Equal opportunity"; FAR 52.222-35 "Equal opportunity for disabled veterans and veterans of the Vietnam era"; FAR 52.222-36 "Affirmative action for workers with disabilities"; FAR 52.222-39 "Notification of employee rights concerning payment of union dues and fees"; and FAR 52.247-64 "Preference for privately owned U.S.-flag commercial vessels."

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

**"Project"** means the engineering and procurement project, and/or construction project at a plant site, in which the Work is a part thereof.

**"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.

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

**"Work"** shall mean, refer to, and include the materials, supplies, equipment and/or services covered by the Purchase Order of which these Standard Purchase Order Terms and Conditions for Vendors and Site Services are a part.

**2. Integration and Acceptance.** The Purchase Order, including all attachments referenced and incorporated therein, operates as an offer and constitutes the entire terms of the contract. There are no other agreements, understandings, terms, conditions, or attachments except as set forth in the Purchase Order. The Purchase Order shall not be modified except by mutual written agreement signed by both Buyer and Seller. The order of precedence of Purchase Order documents shall be the Purchase Order, Standard Purchase Order Terms and Conditions for Vendors and Site Services, and referenced attachments to the Purchase Order in the order as listed. 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, (ii) making shipment, or (iii) Seller's commencement of work on or purchase of material for performance of this Purchase Order, or (iv) 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 THE PURCHASE ORDER, BUYER'S TERMS AND CONDITIONS REPRESENT THE ONLY TERMS AND CONDITIONS APPLICABLE TO THE 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. Interpretation.** The Purchase Order and attachments are intended to be read as a whole, and any requirement set forth in one part and not mentioned in another shall be executed to the same extent and purpose as though required by all. Should a question or doubt arise as to the intent and meaning of any part of the Purchase Order, Seller shall immediately notify Buyer in writing before the part of the Work affected is performed. Where specific governing standards are not specified in connection with the Work, the highest applicable industry codes and standards shall govern. Seller acknowledges and agrees that it shall provide all labor, services, equipment, materials, supplies, documentation and other such items necessary or appropriate to perform and complete the Work in conformity with and as reasonably inferred from the Purchase Order, notwithstanding the fact that each such necessary or appropriate item may not be expressly specified herein. 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. Any such waiver or failure to enforce shall not in any way affect, limit, or waive, by reason of course of dealing, usage of

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the trade or otherwise Buyer's right thereafter to compel strict compliance with every term, obligation, and condition thereof. All shipping and transportation terms shall be construed in accordance with the rules and regulations of Incoterms 2010 which shall be incorporated into this Purchase Order, except insofar as they conflict with any other express provisions of the Purchase Order.

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

- (a) The Work shall be new and of merchantable quality, free of defects in design, engineering, materials, and workmanship, free of rights of third parties, free of all liens and encumbrances, and fit for the purpose intended as shown or implied from the specifications which are part of the Purchase Order. The Work shall comply with good and sound design/engineering practices and shall comply in all respects to the Law, shall be of good workmanship and quality, and shall conform in all respects to the specifications, drawings, performance guarantees, and requirements of the Purchase Order. Unless otherwise stated in the Purchase Order, the warranty period for patent defects shall expire twelve (12) months after the date of first placing the Work into commercial operation or twenty-four (24) months after the date of completion of delivery of all components of the Work, including documentation, whichever is sooner, or in the event of latent defects or non-conformities, within the time periods established by applicable Law. All repairs or replacements shall carry an additional warranty of not less than (12) months after the date of the repair or replacement. This warranty shall not prevent or otherwise limit Buyer from enforcing any legal guarantees or warranty rights or remedies under applicable Law.
- (b) Professional services provided shall comply with the highest engineering standards and practices and shall conform in all respects to the specifications, drawings, and requirements of the Purchase Order.
- (c) The use and sale of the Work will not infringe any patent, design, trademark, name, copyright, trade secret or other intellectual property right. **SELLER AGREES, AT SELLER'S EXPENSE, TO PROTECT, INDEMNIFY, AND DEFEND INDEMNIFIED PARTIES FROM ANY AND ALL CLAIMS, DEMANDS, OBLIGATIONS, LIABILITIES, LOSSES, INJURIES, DAMAGES, COSTS, EXPENSES, ATTORNEYS' FEES, CAUSES OF ACTION, SUITS AND/OR JUDGMENTS ARISING OUT OF THE INFRINGEMENT OF ANY PATENT, DESIGN, TRADEMARK, NAME, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT.** 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, modify, repair and maintain the Work at the plant site of the Project. The foregoing indemnity shall not apply to the extent of any designs and engineering provided by Buyer in connection with the Work.
- (d) The Work will be adequately contained, packaged, marked and labeled in compliance with all applicable laws and regulations, and that instructions and information, including but not limited to,

Material Safety Data Sheets, required by Law or necessary for the safe and proper use of the Work, will be provided to Buyer.

5. **Breach of Warranty.** In the event of defects and nonconformities in the Work, Seller will, at Buyer's option and at Seller's expense, either repair or replace same without delay. In the event that the making of such repairs or replacements requires the field removal of materials and equipment and/or the uncovering, reinstallation, and/or recovering of any Work in place, same shall be done at Seller's expense. Seller shall also be responsible for all indirect costs (including, but not limited to, transportation costs) associated with repair or replacing of defective equipment, materials or supplies. In the event that the Seller requests Buyer to return the materials and equipment (or any parts or components thereof) to Seller, Buyer will do so in conformance with Seller's instructions and at Seller's expense. In the event that Seller fails to repair or replace defects or nonconformities within a reasonable period of time, Buyer, may at its sole option, repair or replace 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.

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

7. **Insurance.** Seller agrees to purchase and maintain, and to cause any approved subcontractors and vendors/suppliers to purchase and maintain, at all times during the performance of the Purchase Order and, with respect to insurance set forth subparagraphs (c), (e), and (f) below, for an additional period of the latter of two years after delivery of the Equipment or commencement of commercial operation of the Project, the following insurance:

- (a) Transit Insurance on an all risk basis with limits to the full replacement costs of the Work.
- (b) Workers Compensation in compliance with the laws of all states where any part of the Purchase Order is performed, including liability for occupational diseases, plus employer's liability with minimum limits of \$1 Million U.S. Dollars.
- (c) General Comprehensive Liability Insurance with limits not less than \$1 Million U.S. Dollars per occurrence and \$2 Million U.S.

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Dollars in the aggregate. This policy shall provide coverage for explosions, collapses, subsurface damage, sudden and accidental pollution liability, independent contractors, products and completed operations, contractual liability, bodily injury and personal and advertising injury, and broad form property damage. Said policy shall where applicable contain a severability of interest clause or a standard cross liability endorsement which allows cross liability claims between insureds.

- (d) Comprehensive Automobile Liability Insurance with limits of \$1 Million U.S. Dollar per occurrence, and including not only owned but also hired and other non-owned vehicles.
- (e) In the event that the Work includes engineering, design, inspection, or other professional services, Seller shall maintain professional liability/errors and omissions insurance with limits not less than \$2 Million U. S. Dollars for each claim and \$4 Million U.S. Dollars annual aggregate.
- (f) Umbrella Liability Insurance with limits of \$10 Million U.S. Dollars in the aggregate in excess of (c), (d), and (e) above or as otherwise stated in the Purchase Order.

TO THE FULLEST EXTENT POSSIBLE, SELLER AGREES TO A WAIVER OF SUBROGATION IN EACH OF THE INSURANCE POLICIES PROVIDED BY SELLER HEREIN OF ALL RIGHTS OF RECOVERY AGAINST INDEMNIFIED PARTIES, REGARDLESS OF THE CAUSE OF THE LOSS OR DAMAGE AND REGARDLESS OF FAULT. INDEMNIFIED PARTIES SHALL BE NAMED AS ADDITIONAL INSURED IN EACH OF SAID INSURANCE POLICIES. THE COVERAGE AFFORDED SAID ADDITIONAL INSURED SHALL APPLY AS PRIMARY INSURANCE AND NOT REQUIRE CONTRIBUTION FROM SIMILAR INSURANCE COVERAGE MAINTAINED BY 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 21.

8. **Delivery Schedule.** Strict compliance with the delivery dates set forth in this Purchase Order shall be considered a material obligation of Seller hereunder. A monthly production schedule referencing the Purchase Order number shall be submitted to Buyer by the 10th of each month unless otherwise provided in the Purchase Order. Buyer shall be notified immediately of any deviation from the stated schedule. If delays are due to Seller, Seller shall take necessary acceleration measures, including, but not limited to, working multiple shifts, overtime, using special transportation as required by the Buyer, all at Seller's cost. Seller shall also pay any additional supervision, monitoring or support costs incurred by Buyer as a result of the delay. The failure of Seller to comply with the delivery schedule, accelerate its performance if requested, or to provide adequate assurance of compliance with the delivery schedule shall be sufficient basis for Buyer to cancel this Purchase Order for cause per paragraph 17.

9. **Liquidated Damages for Late Delivery.** This paragraph shall be applicable only if the text of the Purchase Order provides for liquidated damages for late delivery. In such event Buyer shall be entitled to demand, as liquidated damages from Seller for the period of the delay beyond the scheduled delivery date, the liquidated damages set forth in

the text of the Purchase Order. In the event that Seller continues to fail to deliver after the expiration of the period when liquidated damages are assessed or if Seller fails to give adequate assurance of delivery within said period, Buyer reserves the right to claim such additional damages or losses as may be allowed by Law.

10. **Taxes, Duties, and Permits.** Seller shall pay all applicable income and other taxes imposed generally on Seller's business operations, and foreign and/or United States federal, state or local income, franchise, payroll (including Medicare, FICA, unemployment taxes, and other employee mandated withholding taxes for employees of Seller or its subcontractors, vendors, or suppliers), import duties, custom fees, value added taxes, and sales/use taxes on equipment, machinery, tools, consumables, supplies and systems, purchased, owned, rented, or leased by Seller or its subcontractors, vendors, and suppliers for use in accomplishing the Work. The aforementioned taxes are included in the prices set forth in the Purchase Order and Seller shall remit same directly to the appropriate taxing authorities. **SELLER WILL INDEMNIFY AND SAVE INDEMNIFIED PARTIES HARMLESS FROM ALL LIABILITY ARISING FROM SELLER'S FAILURE TO MAKE SUCH PAYMENTS.** Buyer shall pay state and local sales or use taxes in the U.S.A. (unless otherwise exempt) normally imposed on Buyer to the extent applicable to Buyer's purchase of materials or services from Seller associated with the Work, and said taxes shall separately itemized in all invoices presented to Buyer and are included in the prices set forth in the Purchase Order. Seller shall obtain all permits, authorizations, registrations, or approvals from any governmental authority as may be required to execute the Work at the expense of Seller which costs are included in the Purchase Order price.

11. **Variation Orders.** The Purchase Order price is firm and not subject to any cost extras or escalation. No additional charges of any kind by Seller are authorized other than as provided in a variation order issued in writing by Buyer. Buyer reserves the right to make changes or modifications to the Work from time to time, including, but not limited to, scope and delivery schedule. If any such change initiated by Buyer has an effect upon the Purchase Order price or delivery schedule, or if Seller encounters an event or condition which Seller believes may entitle Seller to a change in price or delivery schedule, Seller must submit to Buyer a request for variation order in writing within ten (10) Days thereafter on a prescribed variation order request form which shall be provided by Buyer. The request for variation order shall specify the total monetary amount claimed by Seller and, if Seller claims an extension to the delivery schedule, said request shall specify the number of days extension requested supported by a critical path analysis. Failure to utilize said prescribed variation order form and submission within said ten (10) Day period shall operate as a waiver of Seller's right to request a variation order for cost extra or extension to the delivery schedule. The parties may agree under appropriate circumstances to provide additional time to submit supporting documentation and analysis provided Buyer has submitted the initial notice on the prescribed form within said ten (10) Day period. Buyer's representative at the project site has no authority to approve variation order requests other than to acknowledge that the Work was completed. Seller shall have no right to suspend or delay its performance hereunder while Buyer is reviewing Seller's request for a variation order or if Buyer fails to approve any such request. Seller agrees that suspension of

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performance or delay by Seller under such circumstances shall be considered a material breach of this Purchase Order by Seller. In the event of failure to agree, Seller shall continue performance of the Work if requested by Buyer, and, if not resolved amicably, said dispute shall be submitted to arbitration at the conclusion of the Work. 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. Upon the issuance and acceptance by Buyer and Seller of a variation order, Seller hereby fully and completely waives, releases and discharges Company Group, and Client and/or Owner/User from (1) all further claims for extension to the delivery schedule or further equitable adjustments, direct or indirect costs, inefficiencies, disruptions, or expenses related to, or arising out of the facts and circumstances associated with any given issued variation order and (2) for any and all cumulative impact or ripple effect in combination with other variation order requests, or issued variation orders, whether past, present, or future. **NO COST EXTRAS WILL BE PAID OR WORK AUTHORIZED EXCEPT PURSUANT TO A WRITTEN VARIATION ORDER SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER AND ISSUED FROM BUYER'S HOME OFFICE.**

**12. Errors in Drawings, Specifications and Documents.** Any errors, discrepancies or conflicts in the Purchase Order, attachments, or any other technical documents and drawings which are discovered by Seller shall be immediately brought to Buyer's attention for written clarification. Any costs or expenses resulting from failure to follow this procedure shall be borne by Seller.

**13. Inspection, Acceptance, and Quality Control.** Seller represents that it has instituted a quality control/quality assurance program capable of providing the finished goods to quality required and in compliance with contract specifications. If requested, Seller shall provide written documentation regarding Seller's quality control program. Buyer shall be entitled at any time to inspect and examine the Work at Seller's or its subcontractor's facilities. If any tests are to be performed, Buyer shall be given at least 10 days advance written notice so that Buyer may exercise its option to witness said tests. Seller shall advise Buyer or his nominated inspection representative ten (10) days in advance of the date of shipment of the Work to allow for final inspection or for performance tests, if required. The Work is also subject to inspection by 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.

**14. Confidentiality.** All specifications, data, drawings, and information which are supplied by Buyer to Seller in connection with this Purchase Order shall remain the property of Buyer, and shall not be disclosed to third parties or used for any purpose other than the performance of the Work under the Purchase Order. All of said information, including all copies thereof, shall be returned to Buyer upon request.

**15. Seller Drawings/Work Product.** All equipment, parts, drawings, technical data, engineering, or designs comprising the Work under this Purchase Order prepared or provided by Seller shall be considered work for hire ("Work Product"). Title to, and full and unrestricted ownership of all of said Work Product shall at all times be and remain vested exclusively in Buyer, including all intellectual property rights, copyrights, and/or patent rights associated therewith, notwithstanding any proprietary legends or confidentiality or other notices provided by Seller to the contrary. All such information comprising the Work Product shall be delivered by Seller promptly upon completion of performance of the Purchase Order. Seller shall assign to Buyer during and subsequent to its engagement all right, title, and interest to the Work Product and Seller shall sign and/or obtain the signatures of its agents or employees including agents or employees of subcontractors, vendors, and suppliers on all documents necessary to assign to Buyer all patent and intellectual property rights and to obtain for the benefit of Buyer all patents, copyrights, or other intellectual property rights in the name of Buyer.

**16. 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 compensation for anticipated or prospective profits on work unperformed or materials or equipment unfurnished, or indirect or consequential losses. In no event shall Buyer be liable for anticipated or prospective profits on work unperformed or materials and equipment unfurnished, or indirect or consequential losses. In no event shall Buyer's liability exceed the Purchase Order price. In the event Buyer requests that delivery of materials be delayed, Seller agrees to withhold delivery for a period of 90 days after scheduled delivery date or the date when the Work is ready for shipment, whichever is later, without assessment of storage charges or other costs or expenses against Buyer.

**17. Cancellation for Cause.** In the event of defects in the Work, failure to furnish the Work, or failure to comply with the delivery 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

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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 paragraph 16 and, to the exclusion of all other claims, Seller shall be paid for costs incurred as provided in paragraph 16.

18. **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 installed, 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.

19. **Packing and Shipping.** **DO NOT SHIP WITHOUT WRITTEN AUTHORIZATION AND SHIPPING INSTRUCTIONS FROM BUYER.** No partial shipments allowed unless authorized in advance by Buyer in writing. Seller is responsible for adequate crating, blocking, packaging and/or other proper preparation for shipment to prevent damage and deterioration at no additional cost to Buyer. If this Purchase Order involves export shipment, the Work shall be suitably packaged to have the capability of being off-loaded and loaded onto the ship and otherwise handled for ocean shipment, and to be protected during ocean shipment against physical and environmental damage or loss, including, but not limited to, damage caused by humidity, moisture, rain, dust, sand, mud, salt air, salt spray and seawater. Any bare steel materials shall be coated with a preservative as part of export packaging. Seller shall be liable for any expense, loss or damage arising from failure to follow these instructions, including any costs of repairs/replacements of damaged Work and/or costs of repackaging the Work. **UNLESS OTHERWISE SPECIFIED IN THE SHIPPING TERMS SET FORTH IN THE BODY OF THE PURCHASE ORDER, SELLER SHALL BEAR ALL RISK OF LOSS OR DAMAGE UNTIL RECEIPT AT THE NAMED DESTINATION WITH ALL FREIGHT COSTS, INSURANCE, PACKAGING AND OTHER EXPENSES TO THE NAMED DESTINATION TO BE BORNE BY SELLER AND INCLUDED IN THE PURCHASE ORDER PRICE.**

20. **Weather Protection of Equipment.** Seller must take all appropriate measures to protect Work or components thereof against weather damage during all phases of fabrication, storage, and delivery, and, if applicable, field installation. Seller shall indemnify Buyer from all costs and expenses and damages to the Work resulting from the failure to take such measures.

21. **Invoices, Payment, Security, and Retainage.** Unless otherwise stated in the Purchase Order, payment terms shall be 100 per cent net within sixty (60) days after final shipment and acceptance of the Work and receipt of acceptable invoices by Buyer. In the event of progress payments if stated in the Purchase Order, Buyer shall withhold 10% of each payment as retainage which retainage shall be released at time of final payment. Buyer reserves the right to require additional security for the performance of Seller's obligations, including cash holdbacks, bank guarantees, letters of credit, or performance bonds. Buyer further reserves the right to an offset of any amounts owed to the Company Group. Invoices with identifying Purchase Order number shall be submitted to Buyer in three (3) copies, including bills of lading or proof of shipment, a complete itemized packing list, and such other information as required by Buyer or as requested in the Purchase Order. For off-shore purchases involving ocean shipments, (5) copies of invoices, (2) copies of the clean on-board bill of lading as well as (2) non-negotiable copies of the bill of lading, and a complete itemized packing list for each package of each shipment is required. Invoices shall bear date of actual shipment. Discounts shall run from date of actual receipt of acceptable invoices from Seller. When freight is prepaid by Seller and chargeable to Buyer, freight bills must accompany invoices. Unless otherwise stated in the Purchase Order, Seller shall prepare all invoices for submission to Buyer with a separately stated breakdown of cost as follows: (1) Services (examples include basic and detail engineering, design services, project management services, transportation costs, etc.), (2) materials/equipment provided by Buyer, and (3) labor associated with manufacture, fabrication, or processing of materials/equipment provided by Buyer. Invoices not conforming to this paragraph shall not be accepted and shall be returned to Seller. The time period for payment shall commence upon receipt of the corrected invoice. **NO INVOICES WILL BE PAID UNTIL BUYER HAS RECEIVED A SIGNED ACKNOWLEDGMENT COPY OF THE PURCHASE ORDER.**

22. **Material Provided by Buyer.** Upon receipt of Buyer's property, Seller shall provide a written "Receiving Record" within (3) working days of receipt. This record shall indicate the date of receipt, quantity received, a description of items and indication of any apparent damage at time of delivery to Seller. Seller shall bear all risk of loss of Buyer's property while in Seller's possession and shall supply evidence of adequate property insurance coverage upon request.

23. **Security Interest.** As security for any and all advance payments made by Buyer, and/or equipment/materials of Buyer received by Seller to be incorporated into said Work, if any, Seller agrees that Buyer shall retain and maintain a security interest in the Work upon identification to the Purchase Order. Seller shall segregate and identify said items purchased, equipment/materials advanced, or work in progress, as being the property of Buyer and Seller shall not assign, sell, transfer, lease, pledge, discount, encumber, or otherwise hypothecate same without the prior written consent of Buyer. Seller consents to the execution of financing statements by Buyer necessary to perfect the security interest herein granted. Said security interest shall include all proceeds arising from the sale, lease, or transfer of said Work.

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24. **Assignment.** Seller shall not assign, sub-contract or transfer this Purchase Order in whole or in part without previous written approval of Buyer.

25. **Force Majeure.** Any delay in or failure of performance by either party hereto shall be excused if and to the extent caused by a "Force Majeure Event". A Force Majeure Event is an occurrence beyond the reasonable control and without the fault or negligence of the party affected and for which the affected party is unable to prevent or provide against by the exercise of reasonable diligence or foresight which shall include acts of God or the public enemy, terrorist attacks, landslides, expropriation or confiscation of facilities, law, (civil) war, rebellion, sabotage or riots, earthquakes, floods, hurricanes, fires, explosions, or other catastrophes. As follows are examples of occurrences which would not be deemed a Force Majeure Event and would not operate to extend the delivery schedule: (1) breakdown in machinery or equipment used to perform the Work; or (2) difficult weather conditions, such as extended rain events or wind storms, snow, and ice, which could be reasonably expected to be encountered, or (3) strike or labor conflict, or (4) insolvency or failure or inability to pay its debts by Seller or its subcontractors, vendors, and suppliers, or (5) shortages, delays, or inability to obtain labor, services, materials, or equipment, unless caused by conditions that constitute a Force Majeure Event. In the event Seller by reason of a Force Majeure Event is rendered unable to perform any of its obligations or comply with any conditions under the Purchase Order, Seller shall give written notice to Buyer not later than three (3) Days after the occurrence of such Force Majeure Event, with a description of the particulars of the Force Majeure Event, including the estimated duration and the effect thereof and the probable impact on the delivery schedule. Seller shall use reasonable and diligent efforts to remedy, eliminate, and/or mitigate the effects and consequences thereof with all reasonable dispatch. The time for Seller's performance may be extended, but such relief shall be conditioned upon Seller's initial and continued satisfaction of the notice, reporting, remedy and mitigation, and other requirements of this paragraph in relation to said Force Majeure Event. Under no circumstances shall Seller be entitled to any compensation or damages of any kind or character by virtue of a Force Majeure Event, other than an extension of time for performance submitted under paragraph 10 which shall be Seller's sole remedy. Buyer shall be entitled at its option to cancel this Purchase Order at any time if the duration of the Force Majeure Event is expected to extend more than thirty (30) days.

26. **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. Buyer shall not have authority to control the means and details of the Work or supervise and instruct Seller's employees, representatives, or subcontractor, vendors, or suppliers. Seller acknowledges that it has the duty to provide continuous adequate supervision of its personnel and subcontractors, suppliers, and vendors in connection with the performance of the Work.

27. **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 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.

28. **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 state law as may be applicable. The Purchase Order shall be governed by and 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.

29. **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](http://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

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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.