

## CONDITIONS OF PURCHASE for Subcontracts (Issue: December 2015)

### *Table of Contents*

1	<i>Definitions</i>
2	<i>Tender</i>
3	<i>Contents of the Order</i>
4	<i>Execution of the Work, Subcontracts</i>
5	<i>Changes to the Work</i>
6	<i>Start of Work, Approvals</i>
7	<i>Execution of the Order</i>
8	<i>Claims of the Vendor</i>
9	<i>Technical Documentation</i>
10	<i>Time for Completion, Liquidated Damages for Delay</i>
11	<i>Force Majeure</i>
12	<i>Monitoring Progress, Inspections, Tests</i>
13	<i>Provision of Parts or Materials by the Buyer</i>
14	<i>Spare Parts</i>
15	<i>Shipping, Storage</i>
16	<i>Acceptance</i>
17	<i>Warranty for Defects</i>
18	<i>Product Liability, Default</i>
19	<i>Intellectual Property Warranty</i>
20	<i>Secrecy, Ownership, Models</i>
21	<i>Publications, Advertising</i>
22	<i>Suspension, Termination</i>
23	<i>Payment, Invoicing, Bonds, Offsetting Accounts, Delay in Payment, Assignment, Taxes</i>
24	<i>Compliance</i>
25	<i>Voidness in Part</i>
26	<i>Place of Fulfilment</i>
27	<i>Applicable Law</i>
28	<i>Place of Jurisdiction/Arbitration</i>

### **1. Definitions**

- 1.1 "Buyer" shall mean Linde AG, Engineering Division, Dr.-Carl-von-Linde-Strasse 6-14, D-82049 Pullach.
- 1.2 "Owner" shall mean the client of the Buyer for the Plant for which the Work is intended.
- 1.3 "Order" shall mean the documents comprising the agreements between the Buyer and the Vendor concerning the Work.

- 1.4 "Work" shall mean the work, supplies and services to be executed by the Vendor according to the Order.
- 1.5 "Plant" shall mean the total plant to be supplied to the Owner by the Buyer and for which the Work are intended.
- 1.6 "Site" shall mean the area or ground on which the Plant is to be erected.
- 1.7 "Buyer's Site Management" shall mean the person or persons assigned to represent the Buyer on the Site.
- 1.8 "Vendor" shall mean the subcontractor to whom the Buyer has awarded the Order.
- 1.9 "Vendor's Site Manager" shall mean the person assigned to represent the Vendor on the Site who shall be authorised to act and to give and receive binding declarations on behalf of the Vendor.
- 1.10 "Vendor's Site Management" shall mean the team assigned by the Vendor to manage his work on the Site (including Vendor's Site Manager).
- 1.11 "Measurement" shall mean the measuring of completed sections of the Work as basis for invoicing for parts of the Work
- 1.12 "Measurement Sheet" shall mean the document containing the results of Measurement.

### **2. Tender**

- 2.1 By submitting his tender, the Vendor confirms having acquainted himself with the specifics and location of, the soil conditions at, and the means of transportation to the Site, as well as the availability of accommodation in the area of the Site, and being familiar with, having understood and accepting the invitation to bid, including but not limited to, the specifications, safety conditions and the basis of remuneration. Objections raised later will not be accepted.

2.2 Requests concerning the formation of a consortium/joint venture shall be presented in writing to the Buyer and shall be subject to Buyer's express written approval.

### 3. Contents of the Order

3.1 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.

3.2 Orders and other declarations shall only be binding if they are confirmed or given in writing by the Buyer.

3.3 All conditions, specifications, standards and other appendices that are attached to the Order or are listed therein shall form a part of the Order. In case of conflicting provisions, they shall apply in the following order of precedence:

- the Purchase Order
- these Conditions of Purchase
- the Buyer's Packing, Marking and Shipping Instructions
- the Technical Specifications and Standards of the Buyer

If not stipulated otherwise in the Technical Specifications, the standards and technical principles as valid at the time of Order shall be valid.

### 4. Execution of the Work, Subcontracts

4.1 The Work shall, except for any agreed exclusions from the scope of work and supply, be fully functioning and safe for operation, regardless of whether or not all parts and processing pertaining to the Work are listed separately in the Order. Only those supplies and services shall be considered excluded from the Work that are expressly mentioned as such in the Order.

4.2 The Vendor shall carry out the Work in a timely manner and in accordance with the requirements of internationally recognised quality management (ISO 9000 et seq. or equivalent).

4.3 The Vendor shall supply the technical documentation for all site activities up to and

including start-up, as well as operation and maintenance of the Work.

4.4 The Vendor 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 Site.

4.5 If the Vendor has doubts about the proposed design, other instructions given by the Buyer e.g. concerning materials, treatment, processing, or sub-vendors nominated by the Buyer, the quality of materials or components ordered and/or provided by the Buyer or the services provided by other contractors, he shall promptly notify the Buyer thereof in writing, if possible before the start of Work.

4.6 The Vendor shall only employ proven and qualified sub-vendors (which term, for the purposes of these conditions, shall include subcontractors of the Vendor), and shall pass on to such sub-vendors any technical and time schedule requirements given in the Order.

4.7 The Vendor shall not transfer a complete order to only one subcontractor.

4.8 The Vendor shall indemnify and hold the Buyer 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 Vendor with any of his statutory obligations relating to his work or to his staff. In particular, but not by way of limitation, the Vendor shall, in the event of him using hired labour, be obliged to comply with the applicable laws and regulations, and shall ensure that all personnel employed by him and his sub-vendors have valid work permits.

4.9 The Vendor shall pre-fabricate the Work in his workshop as far as is possible and feasible.

4.10 The Contractor shall ensure that his deliveries and/or services are not subject to applicable export or import restrictions, which export would be prohibited in the country of the customer.

### 5. Changes to the Work

5.1 If the Buyer requires changes to the Work, the Vendor shall inform the Buyer promptly in writing of any increase or decrease in price and any effects on the completion date, backed-up by sufficient proof. The price increase or decrease shall be determined on the basis of the calculation used for the Order. In case of unit prices, these shall be applied to the increased or decreased quantities, unless the increase or decrease is excessive and has a substantial effect on the basis of calculation, in which case Buyer or Vendor may demand that an adequate reduction or increase, respectively, of the unit price in question be negotiated and agreed.

5.2 Modifications to the Order shall be negotiated in good faith by the parties, taking into due account their mutual interests and obligation of good faith. The Buyer will issue a written change order stating the agreed changes to the Work and modifications to the Order.

5.3 The Vendor shall, however, even if modifications to the Order have not yet been agreed, if so instructed by Buyer, promptly proceed to carry out the required changes with the terms and conditions of the Order remaining unchanged for the time being.

## 6. Start of Work, Approvals

6.1 The Buyer's Site Management shall be responsible for dealing and authorised to deal with all matters and decisions and to give all instructions regarding commencement of Work, scope of Work and execution of the Work, the technical execution of the Work and behaviour on the Site.

6.2 Modifications to the execution of the Work may arise from requirements on the part of the Owner and from the conditions on Site. The Vendor shall state to the Buyer a reasonable latest date by which the Buyer must inform him of such modifications in order that the Vendor can carry out these modifications without any additional charge or schedule impact.

6.3 Before commencing the Work, the Vendor shall examine and verify the status of any prior work that is relevant to the Work and shall notify the Buyer promptly and in writing of any concern or complaint that he may have in this respect. Failing such

notification, any claims against the Buyer based on the status of any such prior work shall be excluded.

## 7. Execution of the Order

### 7.1 Vendor's Services and Supplies

The Vendor shall be responsible for the timely and orderly provision of all materials, substances, components, instruments, tools and equipment (including arranging for the transport thereof) which he needs for the execution of the Work. In consultation with the Buyer's Site Management, he shall also be responsible for their proper storage on Site so that they do not obstruct or impede other Site activities, e.g. the transport of other goods or site traffic. Vendor's activities must be in compliance with all relevant laws, decrees and regulations (e.g. the site regulations and any official regulations regarding prevention of accidents), also concerning storage and, if necessary, disposal, and to ensure that they are in a first class, safe condition ready for use and that they are suitable for safe, economical work.

In the event the Vendor fails to comply with any of the foregoing obligations, the relevant items shall be replaced without undue delay, at no cost to the Buyer, with items approved by the Buyer's Site Management and without entitling the Vendor to any adjustment of the schedule.

### 7.2 Job Safety, Behaviour on Site

7.2.1 The Vendor shall take all necessary safety precautions and comply with all safety and other precautions to prevent personal injury or damage to property occurring in the performance of his services, and he shall co-ordinate his services with other contractors on the Site to avoid any hazards for each other's property or personnel.

7.2.2 When the Order has been placed, the Vendor shall submit to the Buyer a written organisation chart containing the names, business addresses, telephone and fax numbers as well as e-mail addresses of all members of Vendor's Site Management (including the person responsible for job safety on the Site).

- 7.2.3 By transmitting a copy of the prescribed accident notification, the Vendor shall inform the Buyer's Site Management of all accidents involving Vendor's personnel which have to be reported under the statutory and local authority regulations with a description of the sequence and causes of the accident.
- 7.2.4 The taking of photographs on the Site shall require the Buyer's prior approval.
- 7.3 Vendor's Staff
- 7.3.1 Prior to commencement of the Work, the Vendor shall nominate a suitable Vendor's Site Manager who shall be responsible for the execution of the Work.
- 7.3.2 The absence of the Vendor's Site Manager from the Site shall be notified in advance to the Buyer's Site Management. In such event a qualified deputy with equal authority shall be nominated by the Vendor, and notified to the Buyer.
- 7.3.3 At least 50% of the staff used by the Vendor for the execution of the Work shall be staff directly employed by him, unless the Order specifies a higher quota of own staff. The Vendor's Site Management shall consist only of staff employed directly by him.
- 7.3.4 The Vendor shall ensure, at his own cost, that his staff has sufficient language skills, or that qualified interpreters are available, so as to enable at all times sufficiently effective and efficient communication between his staff and the Buyer's staff.
- 7.3.5 If any of Vendor's staff is not available on Site or unable to work for longer than four consecutive weeks, or in the event that any staff member should die, the Vendor shall be entitled and obliged to promptly provide an appropriate substitute at his own expense. The same applies accordingly to sick or injured staff members who have not yet been unavailable for four consecutive weeks but where this is likely to happen, e.g. due to the nature of an illness or injury.
- 7.3.6 For all building work in the sense of the 3<sup>rd</sup> Book of the Social Act ("Sozialgesetzbuch") to be carried out in Germany, the Vendor shall, in accordance with § 1 of the German Employee Dispatch Act ("Arbeitnehmerentsendegesetz"), grant his staff the minimum working conditions (e.g. wages, holidays, holiday pay) set out in a Building Industry Tariff Agreement declared as being generally binding. This shall also apply to Vendors based outside Germany, even if these use non-German staff only. The Vendor shall ensure, and be held responsible by the Buyer, that his sub-vendors observe such minimum working conditions for their staff.
- 7.4 Working Time, Standby and Lost Time, Daily Reports
- 7.4.1 The Vendor shall organise his working time in accordance with the Site regulations of the Owner and Buyer in such a way so as to ensure the timely completion of the Work, whilst complying with the statutory regulations on working time.
- 7.4.2 The Vendor shall minimise standby time and lost time as far as possible. In order to ensure this, the Vendor shall, if necessary, re-allocate his staff to other sections of his scope of work, or provide his staff for other work outside the agreed scope of the Order. He shall take into account in his staff planning that additional work and work paid at hourly rates that is not part of the Vendor's original contractual scope of work may occur and must be carried out by him.
- 7.4.3 Buyer shall only pay for standby time and lost time for which he is responsible if the Vendor has informed the Buyer's Site Management in writing promptly after it has commenced. Payment for accepted standby times shall only be made for the staff waiting on the Site, at the hourly or daily rates agreed to in the Order, as the case may be.
- 7.4.4 In the case of disruptions in erection for which the Buyer is responsible
- a) the Buyer may demand that the Vendor withdraws the staff in question; or
  - b) the Vendor may withdraw the staff if the disruption lasts for more than three weeks.
- In these cases, the Buyer shall pay the costs of demobilisation of staff and their subsequent re-mobilisation to the Site.
- 7.4.5 The Vendor is aware that the Work is part of a complex overall Plant. He is aware that normally several contractors will be working on the Site at the same time, and that mutual dependencies will be created concerning the various contractors'

work that co-ordination of the progress of the Work with other contractors working on Site will be required to avoid, or at least to minimise, mutual obstructions as far as possible. The Vendor accepts that, particularly because of these mutual dependencies, the plans, the scheduled activities, and/or the proposed sequence of work on the Site may – even at short notice - frequently change as a matter of course. The Vendor may therefore not claim the reimbursement of additional costs caused by a non-systematic sequence of operations, changes in the proposed sequence of operations or other changes in plan.

7.4.6 The Vendor shall report numbers and names of his personnel employed on the Site to the Buyer's Site Management every day by 10 a.m.

7.4.7 In the event that the duration specified for Vendor's work on Site is exceeded for reasons attributable to the Vendor, the Vendor shall bear all resulting cost, such as, but not limited to

- a) his personnel,
- b) auxiliary personnel provided to him,
- c) equipment, cranes and tools provided to him.

#### 7.5 Insurance

7.5.1 For the duration of the Work, the Vendor shall take out and maintain the following insurance at a sufficient level and at his own expense:

7.5.1.1 A third party liability and product liability insurance, whereby also statutory liability for damages from the environmental effect on soil, air or water, including oceans, lakes, rivers and canals (environmental damage) and all resultant further damage must be covered. Statutory liability for cases of loss occurring abroad shall also be covered.

7.5.1.2 A vehicle liability insurance for the vehicles operated on the Site on behalf of the Vendor.

7.5.2 The Vendor shall submit to the Buyer suitable insurance certificates as proof of the above mentioned insurance.

#### 8. **Claims of the Vendor**

The Vendor shall inform the Buyer within seven (7) days in writing of gaining knowledge of any event

pursuant to which he believes to have a claim to an increase in the Order price or a change to the time of completion. Otherwise any such claim based on such event shall be deemed waived.

#### 9. **Technical Documentation**

9.1 Any change requested or approval given by the Buyer in the Vendor's technical documentation shall not release the Vendor from his responsibility for the information contained therein, such as dimensions, design, calculation and function of the Work.

9.2 The Vendor shall advise the Buyer in writing of any changes made by him to drawings and other documents and clearly mark each single item.

9.3 Vendor shall make good at his own expense any errors in technical documents supplied by the Vendor. If on the basis of such technical documents equipment was procured elsewhere by the Buyer or the Owner, the Vendor shall reimburse to the Buyer the costs for any changes, repairs and/or replacement of such equipment resulting from such errors.

#### 10. **Time for Completion, Liquidated Damages for Delay**

10.1 The Vendor shall carry out his own monitoring of time schedule. The Vendor shall be responsible for monitoring and directing his sub-vendors to ensure that the agreed delivery dates are met and that an up-to-date schedule showing target status and actual status is available at all times. The Buyer shall be informed promptly of expected delays or other problems likely to affect the agreed delivery dates. Such notification shall not relieve the Vendor of his obligation of timely delivery. If the Vendor due to his fault fails to submit such notification, the Vendor shall be liable for all damages resulting therefrom. The Vendor shall also inform the Buyer of any measures taken or planned to speed up work in order to meet the agreed completion dates.

10.2 If delays occur through the fault of the Vendor, he shall take the necessary measures to accelerate the work at his own expense. These include, but are not limited to increased use of staff and material resources, working multiple shifts, overtime and on Sundays and public holidays, special transport as

required by the Buyer and the costs of monitoring or support by the Buyer. If, in spite of receiving a written warning, the Vendor fails to take reasonable measures to accelerate the work, or if major damage would otherwise occur for the Buyer or to third parties, or if the operational safety of the Plant is at risk, the Buyer may complete himself or have a third party complete the Work in whole or in part at the risk and expense of the Vendor.

- 10.3 Liquidated Damages or Penalties for delay, other agreed penalties and penalties or liquidated damages for performance guarantees may be claimed by the Buyer until the payment of the final invoice, even if no reservation is expressed on acceptance of the Work. Cancellation or termination of the Order shall not affect any claims to payment of penalties or liquidated damages and other damages that have already accrued.
- 10.4 If, as part of the overall Plant assembly, work has to be carried out by a number of contractors, the Vendor shall be obliged to work with and coordinate with the Buyer and the other contractors on the Site so that the contractual deadlines for the Plant are met.

## 11. Force Majeure

- 11.1 The Vendor shall not be liable for Force Majeure. Parts becoming rejects, delays caused by sub-vendors except if caused by Force Majeure, and any strikes not authorised by the union in question shall not be considered Force Majeure.
- 11.2 The Vendor shall give prompt notice and provide evidence of the start and end of such events, the expected delay and any other consequences. Without such notification with accompanying proof, the postponement of agreed delivery dates will not be accepted.
- 11.3 The Vendor shall take all reasonable precautions and measures to minimise the effects of Force Majeure.
- 11.4 If the Force Majeure goes on for more than three months, either party may terminate the Order by written notice. On Buyer's request, parts of the Work that are wholly or partially completed shall be delivered to Buyer and the Vendor shall be entitled to issue invoices for the completed portion of the Work (less any amounts previously paid).

## 12. Monitoring Progress, Inspections, Tests

- 12.1 When supplies are ordered including erection, the Vendor shall submit to the Buyer, within one month of the effective date of the Order, a time schedule for all the Work showing all the main stages in the Work from the receipt of the Order to the completion of the contractual obligations in the form of a bar chart. This time schedule shall be prepared according to the Buyer's requirements and shall be submitted by the Vendor to the Buyer on the third working day of every month, in four copies, showing the actual status.
- 12.2 The Buyer, the Owner and their representatives shall be entitled to check the progress of Work at the Vendor's premises or those of his sub-vendors, and in particular to carry out schedule and quality inspections. They shall have access during normal working hours to the workshops and to drawings and other documents as necessary for this purpose. The Vendor shall oblige his sub-vendors accordingly. Vendor shall bear his own cost only for such inspections.
- 12.3 The Buyer, the Owner and their representatives shall be entitled to carry out non-destructive testing (e.g. X-ray and ultra-sound tests) on a random basis. If defects are found, the Vendor shall bear the costs of these inspections.
- 12.4 If repeated inspections are necessary because of defects and/or delays in production/delivery due to Vendor's fault, the Vendor shall bear the costs.
- 12.5 If the Vendor desires to deviate from the Order by moving pre-fabrication to manufacturing facilities outside the Site or outside his workshop, the prior approval of the Buyer will be required.
- 12.6 Testing, inspections or approvals by the Buyer or the Owner shall not release the Vendor from his responsibility or liability for the quality of the Work, or from any warranty under the Order or at law.

## 13. Provision of Parts or Materials by the Buyer

If the Buyer provides parts or materials for the Work, the Vendor may use these for execution of the Order only. They shall remain the property of

the Buyer and as such must be stored separately, labelled, recorded, safeguarded and insured by the Vendor as third party property at his expense. The Vendor shall examine and verify that such parts or materials are free from defects. He shall be fully responsible for loss of or damage to such parts and materials.

Unless Vendor can prove that the material has been installed, any materials or goods given to the Vendor shall be returned to Buyer. If the Vendor cannot return such material because it has been lost, Buyer shall be entitled to procure or make substitute materials or goods at Vendor's expense. The Vendor shall prepare a material administration sheet, showing at least the description of materials received, date of material movement (receipt, instalment, storage, return), material status, i.e. installed, stored, returned to Buyer, etc.

#### 14. Spare Parts

The Vendor shall remain in a position to offer the Buyer spare parts at reasonable prices until the end of the normal lifetime of the Work, up to 10 years from the delivery date of the Work, based on the conditions of the Order and on request by the Buyer.

#### 15. Shipping, Storage

15.1 Partial shipments shall require the express permission of the Buyer and shall be clearly designated as such in the shipping documents.

15.2 The shipping documents shall show the information specified by the Buyer, especially the order no., order item no., job no., account code no. as well as dimensions, quantity and weight per item.

The Buyer's Packing, Marking and Shipping Instructions must be adhered to.

The Buyer may reject deliveries without proper shipping documents, test, inspection or acceptance certificates.

15.3 The Work shall be suitably packed for shipment, taking into account the intended means of transport, and according to applicable regulations of the rail agencies or carrier. On Buyer's request,

the Vendor shall ensure, if necessary by supplementary agreement with the carrier used by him, that the packaging is removed on arrival, transported back to the Vendor or manufacturer and recycled, all at no cost to the Buyer.

15.4 On request of the Buyer - even after notification of readiness for shipment - the Vendor shall postpone shipment of the Work if take-over thereof is temporarily impossible, and store the Work for up to three months at the cost and risk of the Vendor.

Such storage shall trigger any payments due on shipment subject to anticipated transfer of title in the Work to the Buyer.

#### 16. Acceptance

16.1 Unless otherwise agreed, Acceptance of the Work by the Buyer will take place - to the exclusion of §§ 640, 1<sup>st</sup> subpara, 3<sup>rd</sup> sentence, German Civil Code (BGB) - only by an express declaration of Acceptance by the Buyer. A mere reference to Incoterms clauses - event if made in the Order - shall not by any means be considered as being "otherwise agreed" in this sense. A technical or factory test or inspection of the Work by the Buyer shall not be deemed Acceptance.

16.2 Acceptance shall be subject to the submission of all official test and inspection certificates from the authorities that the Vendor is required provide.

16.3 The Vendor shall provide all test appliances and other equipment required for the Acceptance and the related tests without charge and bear the costs for material incurred for the Acceptance. The Vendor and the Buyer shall each bear their own personnel costs.

16.4 The Acceptance shall be recorded in a Report.

16.5 If the Acceptance test shows that the Work is not in accordance with the Order, the Vendor shall, at his own expense, immediately carry out all measures necessary to rectify or complete the Work in accordance with the Order. The costs of the failed Acceptance test, such as Buyer's personnel costs, cost of test and inspection agencies, shall be borne by the Vendor if the reason for the failed acceptance test lies within his scope or responsibility.

- 16.6 In the event of defects that are not substantial, provisional Acceptance may be granted at the sole discretion of the Buyer, subject to the provision that such defects are remedied within a reasonable period as determined by the Buyer, and subject to retention of a reasonable part of the Order price at Buyer's option.
- 16.7 Acceptance of the Work shall not be deemed a waiver of any of Buyer's rights, including, but not limited to, warranty claims, claims for damages for delays, contractual penalties, liquidated damages etc.
- 16.8 The Buyer or the Owner shall be entitled to use the Work in whole or in part for trial purposes prior to Acceptance provided that the Vendor has been informed thereof and has not objected for cause. This shall not be deemed full or partial Acceptance nor modify the duration or extent of the Vendor's Warranty.
- 17. Warranty for Defects**
- 17.1 The Vendor warrants that the Work will be free from defects, including, but not by way of limitation, that it will at least meet all properties and performances specified in the Order and be fully and safely operable for the purpose intended, that it conforms to the latest accepted state of the art and economic efficiency, and comply with the relevant technical documents and regulations, recommendations and guidelines as listed in Art. 3.3 and 4.4 of these Conditions of Purchase.
- 17.2 Due to the special nature of plant construction, testing of the Work and, if applicable, notification of defects, can only be carried out after the Work has been installed and taken into use. Therefore, Buyer's notice to Vendor claiming defects, incorrect delivery or incorrect quantities shall be deemed to be in time if issued without undue delay after unpacking, installation, or taking into use, as the case may be.
- 17.3 Unless otherwise agreed in the Order, the Warranty Period for the Work shall be thirty-six (36) months from acceptance of the Work. However, in case the Work constitutes a building or a thing that as per its usual kind of use is typically used for building ("Baustoff") or if the Work relates to a building, the statutory Warranty Period of five (5) years from acceptance of the Work shall remain applicable.
- 17.4 The Vendor shall be obliged to promptly remedy any defects that arise within the Warranty Period by repair or replacements at Buyer's choice and at Vendor's expense. Vendor shall consult with the Buyer before any changes are made. All cost shall be for Vendor' account, including, but not limited to, disassembly, shipping, re-assembly and documentation; Buyer shall be entitled to choose the mode of transport.
- 17.4.1 If deemed necessary by Buyer, repair and/or replacement shall be carried out by Vendor with increased use of staff and material resources, working multiple shifts and/or overtime or, to the extent permitted under the laws and regulations applicable at the Site, on Sundays and public holidays.
- 17.4.2 If, under the Warranty, parts are modified or replaced by other parts, any spare parts corresponding to the replaced or modified parts that have already been ordered or supplied must also be modified or replaced at no cost to Buyer or Owner.
- 17.4.3 If, due to the defects, the Work cannot be used either in whole or in part, the Warranty Period shall be extended by the period during which the Work could not be used. If requested to do so by the Buyer and in order to avoid or limit such loss of use, the Vendor shall promptly install provisional facilities at his own cost and maintain these until the defect has been remedied.
- 17.4.4 If, in spite of repeated remedial action, the same type of defect keeps appearing or if other parts of the Work are likely to be also affected by the defect, the Vendor shall remedy the underlying cause of the defect at his own cost, and using suitable means, e.g. by changing the design or using other materials or to agree to a reasonable extension of the Warranty Period, as requested by the Buyer, for the parts in question, including any defects in the other parts that are likely to be affected.
- 17.4.5 If



- the Vendor has failed to remedy a defect within a reasonable period notified to him by the Buyer to that effect, or
- the Vendor has conclusively refused to carry out measures to remedy the defect, or
- measures by the Vendor have failed to remedy the defect, or
- the proposed measures to remedy the defect are not reasonably acceptable to the Buyer, or
- it is not possible any more to inform the Vendor about the defect and the damage threatening due to particular urgency and to set an adequate time limit to Vendor for Vendor's rectification of defects,

the Buyer shall have the right, at his option,

17.4.5.1 to perform such remedial work or cause it to be performed by third parties. All costs arising for such remedial work shall be paid for or reimbursed by the Vendor. The Vendor's Warranty shall not be affected by such action except to the extent that such remedial work is proven to be faulty.

The Buyer shall also have the aforesaid right, if the operational safety of the Plant is at risk, or if substantial damages would otherwise occur;

or

17.4.5.2 to a reduction of the price of the Work agreed to in the Order, pro-rata to the reduced value of the Work by reason of such defect. If the part of the Order price already paid exceeds the reduced price, the Vendor shall reimburse the balance;

or

17.4.5.3 to be indemnified by the Vendor for his damages and losses, including, but not limited to, damages caused to property other than the Work, and frustrated expenses, except to the extent the defect is not due to Vendor's negligence;

or

17.4.5.4 to cancel the Order, which cancellation shall be without prejudice to Buyer's right to claim damages as provided in 17.4.5.3. Buyer shall also have the right to cancel the Order in the event of special circumstances warranting the immediate

cancellation, in consideration of the reasonable interest of both parties.

17.5 The Buyer shall be entitled to avail himself of the rights under this Article 17 also prior to Acceptance.

## 18. Product Liability, Default

18.1 The Vendor shall indemnify and hold the Buyer harmless from claims arising under the Product Liability Act ("Produkthaftungsgesetz") or otherwise from statutory product liability to the extent damages are caused by a defect in the Work. The Vendor shall bear all costs and expenditures including, but not limited to, costs of legal defence and of any recall action except where the defect did not occur within his domain of responsibility. The Vendor shall be informed of the manner and extent of any recall action.

18.2 In the event of the Vendor defaulting against any of his obligations pursuant to the Order, the Buyer shall have the right to be indemnified by the Vendor for any damages or losses suffered by reason of such default, including, but not limited to, damages caused to property other than the Work. 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 of the Vendor, or claims are made in turn against the Buyer by the Owner or third parties in this respect, or such damages are covered by an insurance held by the Vendor.

## 19. Intellectual Property Warranty

The Vendor shall indemnify and hold the Buyer harmless from and against any and all claims and losses, damage, liabilities, cost and expense resulting from or arising in connection with any defect of title (including infringement of patent, trademark or copyright) owing to Vendor with respect to the Work or any parts or components thereof. This includes the obtaining for Buyer of the right to buy, use and sell the Work or such parts or components which may be found infringing, or replacing the same with equivalent, non-infringing Work, parts or components. Buyer may, at his option, assign the benefits of any warranties hereunder to the Owner.

## 20. Secrecy, Ownership, Models

- 20.1 Documents, data and objects which the Vendor receives from the Buyer for the execution of the Order shall remain the property of the Buyer. They and the conditions of the Order shall be treated as confidential, including the technical and commercial information contained or embodied therein. They may not be used other than for the Order or copied, published or made available to third parties or used other than for the Order without the written permission of the Buyer, and they shall, on request of the Buyer, promptly be returned to the Buyer and/or be deleted from computers or other data files of the Vendor. The Vendor shall instruct and oblige his personnel accordingly.
- 20.2 Title in all drawings, models and other documents that the Vendor prepares for the Order shall be vested in the Buyer.

## 21. Publications, Advertising

Without the Buyer's written permission, the Vendor may 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 for use of the same as reference, e.g. for sales purposes.

## 22. Suspension, Termination

- 22.1 The Buyer may at any time suspend or terminate the execution of the Order by written notice to the Vendor. On receipt of such notification, the Vendor shall:
- a) stop the Work;
  - b) not issue any further orders to third parties in respect of the Work;
  - c) make every effort to cancel or suspend orders concerning the Work that he has awarded to sub-vendors if requested to do so by the Buyer;
  - d) safeguard all material procured or reserved for execution of the Order and all goods and services currently being worked on or which have already been completed, whether these

- are with the Vendor or his sub-vendors, until further instructions are issued by the Buyer;
- e) follow the Buyer's instructions concerning these goods and services.

- 22.2 If the Buyer terminates the Order for reasons attributable to the Owner (e.g. cessation of payment or cancellation of the contract), the Vendor shall be entitled to payment of the pro rata price for the Work completed according to the Order. In addition, the Vendor shall be entitled to claim for reimbursement of the reasonable and proven cost of cancellation, and, to the extent Buyer succeeding in enforcing a corresponding claim against Owner, a reasonable share of the overhead costs for the part of the Work that has not been completed.

- 22.3 Vendor may, if the Order is suspended and later restarted, demand reimbursement of the reasonable cost incurred and/or a reasonable adjustment of the completion deadlines, provided Vendor can provide sufficient proof of such cost and delay.

- 22.4 If the Buyer terminates the order for reasons due to the Vendor, the Buyer may

- demand delivery such part of the Work already completed. At Vendor's expense and risk Buyer may decide whether to complete and deliver himself the portion of the Work not yet completed or arrange for said portion to be completed and delivered by third parties. Art. 17.4.5.1 of these Conditions of Purchase shall apply accordingly. The Vendor shall be entitled to the pro rata Order price for the Work taken over by the Buyer. Any costs and expenses in excess of the remaining incurred by the Buyer for completion and delivery shall be deducted from the payment of Vendor;

or

- waive completion of the Work and claim damages for non-fulfilment of contract. The costs for dismantling and removal of the Work and other costs incurred in connection with the termination shall be borne by the Vendor. The Buyer may use the Work for up to 12 months without charge until a replacement is ready for operation. In addition, the Vendor

shall refund to the Buyer all payments made, in exchange for the return of the Work or of the parts in question.

Reasons for termination due to the Vendor shall include, but not by way of limitation:

- cessation of payment by the Vendor;
- application for opening of settlement or bankruptcy proceedings for the Vendor's assets.

22.5 In the event of termination of the Order, the Vendor shall return to the Buyer all drawings, plans and other documents which were prepared by him or given to him in connection with the Order.

### **23. Payment, Invoicing, Bonds, Offsetting Accounts, Delay in Payment, Assignment, Taxes**

23.1

23.1.1 Each party shall be solely responsible to comply with its tax liabilities and obligations arising from the Order.

23.1.2 The remunerations for the Goods agreed on and to be rendered according to the Order are net-amounts, i.e. exclusive of VAT.

23.1.3 The Vendor shall fulfill all formal and legal requirements in connection with the issuance of invoices in order to ensure a correct VAT refund procedure, if any.

23.1.4 If as a result of regulatory action taken by the authorities (increased VAT is claimed) or the input tax of one of the contracting parties is reduced, both parties shall be obliged to correct the affected invoice correspondingly.

23.1.5 Direct taxes, which will be levied due to the payments in the country of the Buyer, are borne by the Vendor. All amounts payable in respect of the contract will be paid after deduction of any taxes, levies, duties or administrative fees that must be withheld at source and paid to the respective tax authorities by the Buyer due to legal requirements. If the relevant Double Tax Treaty provides for a reduction or exemption of withholding tax, the Buyer will pay the corresponding amount only if and when the Vendor has presented a valid

exemption certificate to the Buyer on the date of payment at the latest.

23.1.6 The Vendor is responsible to meet all further obligations imposed on the Vendor by law. Claims or disadvantages arising to the Buyer due to disregarding of aforementioned obligations by the Vendor will be borne by the Vendor.

23.1.7 The Vendor shall be responsible for any cost for customs, duties, taxes of any description, including but not limited to taxes and duties on salaries, wages and other remuneration of this employees and of third parties' employees, incurred in the execution of the Goods.

23.2 Invoices for unit price orders shall be based on proper determination of material quantities. If it was agreed in the Order that several invoices may be issued, the determination of quantities shall state the quantities completed by the end of the period covered by the invoice as well as the total quantities of each item as shown in the Order. The Buyer's Site Management will attest by its signature on the Measurement Sheets only that the quantities are correct in relation to the specified services. Verification of the stated items of the Order and of any prices in relation to the Measurement will be subject to the subsequent verification of the invoice. Determination of quantities for items of the Order shall be made promptly after completion of the respective Order items and shall be submitted to Buyer's Site Management, in accordance with the progress of the Work, independently of preparing the invoice.

23.3 All work payable at hourly or daily rates will be invoiced on the basis of time sheets. Time sheets shall be prepared for each working day and submitted to the Buyer's Site Management for confirmation by 10 a.m. of the subsequent working day. Time sheets must show the Order number, the place of execution and exact description of the work performed, the names and qualifications of the workers, the number of working hours completed by them, specifying work done during the normal working time, night time, on Saturdays and Sundays and public holidays as well as the name of the person who has instructed the Vendor to perform such work. To the extent travel time is to be paid, this shall not be included in the shown working hours. Materials, tools and supporting facilities provided by the Vendor will only be

remunerated if this has been provided for in the Order and if these are included on a separate Measurement Sheet. Work for which a lump sum price has been agreed will only be remunerated if the Vendor provides evidence that such work has been executed.

- 23.4 Requests for payment, invoices and credit and debit notes shall be submitted in an appropriate form, stating the Order number, to the Buyer's Cost Accounts Department. Value Added Tax, if applicable, shall be shown separately. In addition, the Vendor must state his Value Added Tax number.
- 23.5 Payments will only be made, if all criteria for payment of the instalment in question and of the previous instalments have been fulfilled.
- 23.6 If the Order provides that the warranty retention can be redeemed by a warranty bond, the Buyer may refuse the retention to be redeemed for such time as the Owner withholds payments from the Buyer by any reason attributable to the Work.
- 23.7 The Vendor may only offset the Buyer's claims for payments against his own claims if these are undisputed or have been determined by final court or arbitration award.

The Buyer may offset claims for payment by the Vendor against not only his own claims but also against all claims of other companies wholly or partly affiliated to LINDE AG. 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.

- 23.8 The final invoice shall be labelled as such and be submitted within four weeks after acceptance of the Work, with a breakdown as to code numbers specified in the Order, all prior requests for payment with 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 of mechanical completion or Acceptance signed by the Buyer and the Vendor shall be attached.

Payment of the final invoice shall not release the Vendor of any of his contractual obligations or warranties under the Order.

- 23.9 The Buyer will be deemed in delay with payment only in the event if he fails to pay on receipt of a written reminder by the Vendor after the expiry of thirty days from the due date and receipt of invoice, or if he fails to pay on the calendar date stated in the Order.

- 23.10 In the event of Buyer's delay of payment, he shall owe interest of 5% p.a., unless the Vendor can prove that he has suffered higher damages due to such delay.

- 23.11 Assignment by the Vendor of claims against the Buyer shall require Buyer's written consent which shall not be withheld unreasonably.

## 24. Compliance

- 24.1 Supplier shall comply with the requirements of the 'Code of Conduct for Suppliers of the Linde Group', a copy of which has been provided to the Supplier and which may be found at [www.linde.com/supplier-CoC](http://www.linde.com/supplier-CoC) (hereinafter referred to as the 'Supplier Code of Conduct').

- 24.2 Supplier shall demonstrate compliance with the requirements of the 'Supplier Code of Conduct' at the request and to the satisfaction of Linde, e.g. by providing data or conducting self-assessments.

- 24.3 If Linde has reason to believe that Supplier may be in material breach of the requirements laid out in the Supplier Code of Conduct, Linde or a third party appointed by Linde may conduct inspections at Supplier's premises in order to verify Supplier's compliance with the requirements of the Supplier Code of Conduct. Linde shall use all reasonable efforts to ensure that all inspections will be conducted in accordance with any applicable data protection law and shall neither unreasonably interfere with Supplier's business activities nor violate any of Supplier's confidentiality agreements with third parties. Supplier shall reasonably cooperate with any inspections conducted. Each party shall bear its own expenses in connection with such inspection.

- 24.4 In addition to any other rights and remedies Linde shall also have the right to terminate this agreement and any purchase order issued hereunder without any liability whatsoever, if Supplier is in material breach of the Supplier Code

of Conduct or fails to remedy any breach, after written notification about the breach by Linde.

- 24.5 Material breaches include, but are not limited to, incidents of forced or child labor, corruption and bribery, and failure to comply with the Supplier Code of Conduct's environmental protection requirements.

the Rules of Arbitration of the International Chamber of Commerce in Paris, by one or more arbitrators appointed according to these Rules, on the basis of German procedural law and without recourse to the ordinary courts.

The Arbitration shall be held in Munich in the English language.

## 25. Voidness in Part

Should any provision in these Conditions of Purchase or in the Order prove to be void, ineffective or inoperable, the validity of the remaining provisions shall not be affected.

## 26. Place of Fulfilment

Unless otherwise provided in the Order, place of fulfilment shall be Buyer's place of business.

## 27. Applicable Law

The Order shall be governed by German law, excluding, however, its conflicts of law provisions, the Hague Uniform Laws of Purchase and the Vienna UNCITRAL Convention on the International Sale of Goods (CISG).

## 28. Place of Jurisdiction/Arbitration

- 28.1 For Vendors having their main place of business in the European Union, Iceland, Norway or Switzerland:

The place of jurisdiction for all disputes arising out of or in connection with the Order shall be Munich. Alternatively, and at its sole option, the Buyer may also take legal action in any place of jurisdiction valid for the Vendor.

- 28.2 For Vendors having their main place of business in other countries:

All disputes arising out of or in connection with the Order shall be finally decided in accordance with