

供应合同采购条款

CONDITIONS OF PURCHASE

For Supply Contracts

(2013 版/Edition)

1.	定义 Definitions	2
2.	装置的设计、建造和操作要求 Requirements for Design, Construction and Operation of the Plant	2
3.	订单内容 Contents of the Order	2
4.	产品供应、分包 Provision of the Goods, Subcontracts	3
5.	产品变更 Changes to the Goods.....	3
6.	技术资料 Technical Documentation	4
7.	交货期、迟交罚款 Delivery Time, Liquidated Damages for Delay	4
8.	不可抗力 Force Majeure	5
9.	进度监控、检验、测试 Monitoring Progress, Inspections, Tests	5
10.	买方零部件或材料的供应 Provision of Parts or Materials by the Buyer	6
11.	备件 Spare Parts.....	6
12.	运输、储存 Shipping, Storage	6
13.	交接, 测试, 风险转移 Taking Over, Tests, Passing of Risk	7
14.	质量保证 Warranty for Defects	7
15.	产品责任、违约 Product Liability, Default	9
16.	功能保证 Warranty for Function.....	10
17.	知识产权保证 Intellectual Property Warranty	10
18.	保密、所有权、模版 Secrecy, Ownership, Models.....	10
19.	发布、广告 Publications, Advertising.....	11
20.	暂停、终止 Suspension, Termination.....	11
21.	付款、发票、保证金、账务抵销、延迟付款、转让、税收 Payment, Invoicing, Bonds, Offsetting Accounts, Delay in Payment, Assignment, Taxes	12
22.	共同责任 Corporate Responsibility.....	14
23.	局部失效 Voidness in Part	14
24.	履行地点 Place of Fulfilment	15
25.	适用法律 Applicable Law	15
26.	管辖、仲裁地 Place of Jurisdiction/Arbitration.....	15

1 定义/Definitions

1.1 “买方”指的是林德工程（杭州）有限公司 中国杭州市莲花街333号莲花商务中心北楼，邮编310012

"Buyer" shall mean Linde Engineering(Hangzhou) Co.,Ltd., North Building, Lotus Bussiness Center, No.333 Lianhua Street, Hangzhou, 310012, China.

1.2 “业主”指买方的客户，装置的所有者。

"Owner" shall mean the client of the Buyer for the Plant for which the Goods are intended.

1.3 “订单”指买方和卖方关于产品购销所达成的协议文件。

"Order" shall mean the documents comprising the agreements between the Buyer and the Vendor concerning the Goods.

1.4 “产品”指的是卖方根据订单提供的货物和服务。

"Goods" shall mean the Goods and services to be provided by the Vendor according to the Order.

1.5 “装置”指买方提供给业主的所订产品为之配套的全套装置。

"Plant" shall mean the total plant to be supplied to the Owner by the Buyer and for which the Goods are intended.

1.6 “现场”指的是装置安装的地点或场地。

"Site" shall mean the area or ground on which the Plant is to be erected.

1.7 “卖方”指获得买方订单的供应商。

"Vendor" shall mean the supplier to whom the Order has been awarded by the Buyer.

2 装置的设计、建造和操作要求/ Requirements for Design, Construction and Operation of the Plant

一旦接受订单，卖方应确保其在生产或提供产品时将执行与装置设计、建造和操作有关的所有相关要求，且知晓现场地址。

By accepting the Order, the Vendor acknowledges his obligation to take into account all relevant requirements for design, construction and operation of the Plant when preparing or providing the Goods and also that the Site location is known to him.

3 订单内容/Contents of the Order

3.1 卖方的任何与本采购条款相偏离或相矛盾的条款，须经买方书面同意后方可有效。

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 订单和其他声明只有经买方书面确认或提出后方可生效。

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

3.3 所有的条款、技术规格书、标准和其他订单附件或其中所列内容均应作为订单的一部分，条款之间如有冲突，应按以下优先顺序执行：

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:

- 采购订单
the Purchase Order
- 本采购条款
these Conditions of Purchase
- 买方关于包装，标记和运输的说明
the Buyer's Packing, Marking and Shipping Instructions

- 技术规格书
the Technical Specifications
- 通用规格书和买方标准
the General Specifications and the Buyer's Standards.

如果在技术规格书中没有另行约定，则这些标准和技术规范自合同生效时即生效。

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

4 产品供应、分包/Provision of the Goods, Subcontracts

- 4.1 除经同意不在供货范围之内，无论其有关部件和制造工艺是否已在订单中单独列明，卖方所供产品应功能齐全并可安全使用，仅订单中明确提到的不包含在供货范围内的产品和服务除外。

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

- 4.2 卖方应保证及时并按照国际公认的质量管理要求（ISO9000 及其序列版本或同等标准）开展工作。

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

- 4.3 卖方需提供直至并包括开机，操作及维护等现场活动相关的全部技术资料。

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 Goods.

- 4.4 卖方应遵守装置所在地当地实施的关于工人恤养保险，环境保护、事故防范和安全生产等的法律法规、建议和指导方针。

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 如卖方对买方提供的设计和其他说明有疑问，例如相关的材料、处理、工艺或由买方规定的分包商，由买方订购/提供的材料或零件质量，或由其他卖方提供的服务，该卖方应立即书面通知买方，如有可能应在工作开始前通知买方。

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 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 卖方应仅使用经证实合格的分供货商（本采购条款中也包含分包商）且应向其分供货商传递订单中规定的所有关于技术和时间进度的要求。

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

- 4.7 卖方应尽可能在其车间完成产品的预制。

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

- 4.8 卖方保证其产品在其国家无任何出口限制。

The Vendor warrants that the Goods are not **subject to** any export restrictions.

5 产品变更/Changes to the Goods

- 5.1 若买方对产品提出变更要求，卖方应立即书面通知买方相应的价格增减和对交期的影响并随附相关依据。价格的增减应基于原订单的计价方法。若仅是数量的增减则原有单价将维持不变，除非数量增减过多并对原有计价基础产生了实质性的影响，在此情况下买方或卖方可要求对单价作出合理调整并协商达成一致。

If the Buyer requires changes to the Goods, 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 双方应基于相互的利益和义务对订单的变更进行友好协商。买方将就己同意的产品和订单变更内容签发一份书面的补充订单。

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 Goods and modifications to the Order.

- 5.3 然而，即使对订单变更尚未完全达成一致，若买方指示，卖方仍应根据在原订单条款和条件暂且维持不变的情况下立即执行买方所要求的变更工作。

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 技术资料/Technical Documentation

- 6.1 买方对卖方技术资料的任何变更请求或批准都不能免除卖方对其所提供的包含产品的尺寸、设计、计算和功能等信息资料的责任。

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 Goods.

- 6.2 卖方对图纸和其他技术文件所做的任何修改都应书面通知买方，并清楚地标明每个改动之处。

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.

- 6.3 卖方应自付费用对其提供的技术资料中的任何错误进行修正。如买方或业主已依照此技术资料在他处采购设备，卖方应向买方偿还因这些错误引起的对此等设备的任何的变更、维修和/或更换费用。

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.

7 交货期、迟交罚款/Delivery Time, Liquidated Damages for Delay

- 7.1 卖方应对其自己的时间进度进行监控，同时也应自行监控和指导其分包商以确保按时交货，并能在任何时候提供标明有目标计划和实际进度的最新的进度报告。如有逾期交货或其他可能影响交货期的情形，应立即通知买方。无论此通知或买方给出的意见均不能解除卖方应履行的及时交货的义务。如因卖方的失误未能提交此通知，卖方应承担因此而产生的所有损失。卖方也应通知买方其为确保在规定的交货日期内交货而采取的纠正措施。

The Vendor shall carry out his own monitoring of time schedule. The Vendor shall be solely 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. Neither Such notification nor any advice given by the buyer 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 delivery dates.

- 7.2 如因卖方的过错发生逾期交货，卖方应采取必要措施自费加快工作进度。这些措施包括但不限于：增加人手和原材料、安排多班工作、加班、周末和公共假日加班、按买方要求安

排特别运输等，并承担买方因监督或协助所支付的费用。如果卖方虽已收到了书面警告，但仍不采取合理措施来加快工作进度，或对买方或第三方产生重大损害，或对装置的操作安全产生风险，买方有权决定由自己或第三方完成全部或部分产品，由此产生的风险和费用由卖方承担。

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 cost 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 Goods in whole or in part at the risk and expense of the Vendor.

- 7.3 即使在接收产品时没有提出，买方也可在最终发票支付前对卖方进行迟交货罚款、其他规定的罚款或性能罚款。迟交导致的进一步损失不应排除在外。订单的取消或终止将不影响买方对已经发生的罚款，赔偿和其他损失的索赔。

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 Goods. Further damages for delay shall not be excluded. 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.

8 不可抗力/Force Majeure

- 8.1 卖方无需对不可抗力事件负责。零件不合格、非不可抗力引起的分供货商延期和未经工会组织批准的罢工将不视作不可抗力。

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 trade union in question shall not be considered Force Majeure.

- 8.2 卖方应将不可抗力事件的起止时间、预计的延期和任何其他的影响及时通知买方并提供相关证据。若卖方未能通知并随附证据，推迟交货将不予接受。

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.

- 8.3 卖方应采取一切合理的防范措施和方法来减小不可抗力造成的影响。

The Vendor shall take all reasonable precautions and measures to minimise the effects of Force Majeure.

- 8.4 如不可抗力事件持续时间超过三个月，任何一方都可以书面通知对方要求取消订单。应买方要求，卖方应将其已经全部或部分完工的产品交付买方，卖方也有权开具已完工部分的产品发票（金额应少于已支付金额）。

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 Goods that are wholly or partially completed shall be delivered to Buyer, and Vendor shall be entitled to issue invoices for the completed portion of the Goods (less any amounts previously paid).

9 进度监控、检验、测试/Monitoring Progress, Inspections, Tests

- 9.1 买方、业主和他们的代表有权在卖方或其分包商的现场检查其工作进度，尤其是执行进度和质量检查。为此目的他们有权在正常工作时间内进入车间、查看图纸和其他必要的文件。卖方应据此要求其分包商提供便利，卖方将仅承担其自身部分的检验费用。

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.

- 9.2 买方、业主和他们的代表有权进行随机非破坏性测试（例如 X 光和超声波测试）。如发现缺陷，检验费将由卖方承担。

- 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.
- 9.3 如果由于卖方原因引起的产品缺陷和/或交货延期而导致的重复检验，所有费用由卖方承担。
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.
- 9.4 买方或业主的测试、检验或批准并不解除卖方对其产品质量的责任或义务，或订单和法律项下的任何保证责任。
Testing, inspection or approval by the Buyer or the Owner shall not release the Vendor from his responsibility or liability for the quality of the Goods, or from any warranty under the Order or at law.
- 10 **买方零部件或材料的供应/Provision of Parts or Materials by the Buyer**
如果买方提供零部件或材料，卖方只能将其用于本订单。这些零部件或材料属于买方财产，卖方应自负费用将其作为第三方的财产进行单独储存、标记、登记，保管和投保。卖方应核查这些零部件或材料没有缺陷，并对其丢失或损坏负全责。
If the Buyer provides parts or materials for the Goods, the Vendor may only use these for the Order. 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.
除非卖方能够证明这些材料已经被安装使用，所有买方提交给卖方的材料或物资应退还给买方。如果由于卖方原因导致材料丢失，买方有权采购或制作替代材料或物资，相关费用由卖方承担。卖方应准备一份材料清册，至少显示收到的材料品名，移转日期（收到，安装，储存，退还），材料状态，如：已安装，已存储，已退还买方等。
Unless Vendor can prove that the material has been installed, any materials or goods given to 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.
- 11 **备件/Spare Parts**
卖方应按订单条款和买方的要求，在产品的正常寿命期结束前，但最长不超过交货后 10 年的期限内，确保以合理的价格向买方提供备件。
The Vendor shall remain in a position to offer the Buyer spare parts at reasonable prices until the end of the normal lifetime of the Goods, up to 10 years from the delivery date of the Goods, based on the conditions of the Order and on request by the Buyer.
- 12 **运输、储存/Shipping, Storage**
- 12.1 分批运输应经买方事先同意，并在运输文件中予以明确标注。
Partial shipments shall require the express permission of the Buyer and shall be clearly designated as such in the shipping documents.
- 12.2 运输文件应显示买方规定的发货人、收货人、订单号、产品条目号、项目号、项目名称和每一产品条目的尺寸、数量和重量等信息。卖方应在运输将运输文件一式 3 份递交给买方。买方的包装、唛头和运输指导必须遵循。如缺少正确的运输文件、测试、检验或验收证书，买方可以拒绝收货。
The shipping documents shall show the information specified by the Buyer, consignor, consignee order no., order item no., job no., job name and dimensions, plus quantity and weight per item. The Vendor shall deliver the Buyer 3 copies shipping documents before shipment. The Buyer may reject deliveries without proper shipping documents, test, inspection or acceptance certificates.
- 12.3 卖方应在产品运输前，考虑采用的运输方式并按照运输代理或承运人的有关规定以及买方的包装、唛头和运输说明进行恰当的包装。如有必要，根据买方的要求，卖方应确保与其

选用的承运人订立补充协议在产品运抵后将包装拆除并退运回卖方或制造商供循环使用，买方对此不承担任何额外费用。

The Goods shall be suitably packed for shipment, taking into account the intended means and mode of transport, and according to applicable regulations of the rail agencies or carrier. The Buyer's packing, marking and Shipping instructions must be adhered to. 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.

- 12.4 除非在订单中另有规定，未经买方同意不得擅自发货。如买方临时无法接货，即使卖方已发出备妥待运通知，卖方仍应根据买方要求推迟发货并自负费用和 risk 将产品存储最长三个月。在此情形下买方应在卖方将产品所有权转移给己方后支付所有到期的发货款。

No dispatch can be made without the Buyer's permission unless it's indicated in the purchase order. On request of the Buyer - even after notification of readiness for shipment - the Vendor shall postpone shipment of the Goods if take-over thereof is temporarily impossible, and store the Goods 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 Goods to the Buyer.

13 交接、测试、风险转移/Taking Over, Tests, Passing of Risk

- 13.1 在业主对装置进行验收时，将对产品进行缺陷测试，卖方有权参加此等测试。

如果验收测试显示产品和订单不符，卖方应立即自负费用采取一切必要措施对产品进行整改以使其达到订单要求。如果由于卖方原因导致此等验收失败，则所有的相关验收测试费用，例如买方的人工费、测试和检验机构的费用等将由卖方承担。

对产品的技术或工厂测试或检验将不视作验收。

On occasion of the acceptance of the Plant by the Owner, the Goods will be tested for defects. The Vendor shall be entitled to participate in such tests.

If the acceptance test shows that the Goods are not in accordance with the Order, the Vendor shall, at his own expense, immediately carry out all measures necessary to rectify or complete the Goods 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.

A technical or factory test or inspection of the Goods shall not be deemed acceptance by the Buyer.

- 13.2 买方和业所有权在上述验收测试之前为测试目的对全部或部分产品进行试用。这将被不视为对产品的全部或部分验收。

The Buyer and the Owner shall be entitled to use the Goods in whole or in part for trial purposes prior to the aforesaid tests. This shall not be deemed full or partial acceptance or the Goods.

14 质量保证/Warranty for Defects

- 14.1 卖方应保证所提供的产品为全新且没有缺陷，包括但不限于：产品将至少满足订单所规定地所有性能指标及安全稳定运行的要求，符合最新的可接受的工艺技术水平和经济效能，并符合本采购条款第 3.3 和 4.4 条中所列的相关技术文件、规定、建议和准则的要求。

除非卖方在接收买方提供的零部件和材料时不能合理察觉的缺陷之外，由买方提供的零部件和材料也将包含在卖方的保证范围内。

The Vendor shall warrant that the supplied product is new. The Vendor warrants that the Goods will be free from defects, including, but not by way of limitation, that they will at least meet all properties and performances specified in the Purchase Order and be fully and safely operable for the purpose intended, that they conform to the latest accepted state of art and economic efficiency, and comply with the relevant technical documents and regulations, recommendations and guidelines as listed in Art. 3.3 & 4.4 of these Conditions of Purchase.

The Vendor's warranty shall also extend to parts and materials provided by Buyer except for defects the Vendor could not reasonably have detected when taking over such parts and materials.

14.2 由于装置安装的特殊性，如适用，产品的测试和相关缺陷通知将只有在产品安装和投入使用后方能进行。因此，若在产品拆箱、安装或投入使用后发现问题，如果无不适当的延期，买方向卖方发出的关于产品缺陷，不正确交付或数量错误的索赔通知仍应视为及时有效。Due to the special nature of plant construction, testing of the Goods and, if applicable, notification of defects, can only be carried out after the Goods have 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 use, as the case may be.

14.3 除非在订单中另有约定，产品的质保期为交货后 36 个月。然而，若该产品属于建筑材料或其典型用途通常用于或涉及到建筑物，则应适用自产品交货后 5 年的法定质保期。Unless otherwise agreed in the Order the Warranty Period for the Goods shall be thirty-six (36) months from supply of the Goods. However, in case the Goods constitute a building or a thing that as per its usual kind of use is typically used for building or if the Goods relate to a building, the statutory Warranty Period of five (5) years from supply of the Goods shall remain applicable.

14.4 卖方应根据买方的选择并自负费用对质保期内出现产品缺陷立即以维修或更换的方式对这些缺陷进行整改。卖方应就整改措施提前与买方进行磋商。所有费用包括但不限于拆卸费，运输费，重装费以及文件费等将由卖方自行承担。且买方将有权选择运输方式。

Vendor shall be obliged to promptly remedy any defects that arise within the Warranty Period by repair or replacement at Buyer's choice and at Vendor's expense. Vendor shall consult Buyer before any changes are made. All cost shall be for Vendor's account, including but not limited to disassembly, shipping, re-assembly and documentation. Buyer shall be entitled to choose the mode of transport.

14.4.1 如果买方认为必要，卖方应增加人员及物料、安排多班和/或加班，或在现场当地法律法规所允许的范围内安排星期日和公共节假日加班进行维修和/或更换工作。

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.

14.4.2 如果在保证期内发生卖方对零部件进行改造或替换，则这些已经订购或供货的相关零部件都应进行改造或替换，买方或业主对此不承担任何费用。

If, under the Warranty, parts are modified or replaced by other parts, any spare parts corresponding to the replaced or modified parts that have been already ordered or supplied must also be modified or replaced at no cost to Buyer or Owner.

14.4.3 如果因缺陷导致产品全部或部分不能使用，其质保期应自该产品不能正常使用之日算相应延长。如果买方要求且为了避免或减少停工损失，卖方应自负费用尽快安装临时设备并加以维护直至缺陷修复。

If, due to the defects, the Goods cannot be used either in whole or in part, the Warranty Period shall be extended by the period during which the Goods could not be used. If requested to do so by 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.

14.4.4 如果相同缺陷虽经多次整改依然反复出现，或该缺陷将可能影响到该产品的其他零部件的正常使用，卖方应根据买方要求，自负费用采取如改变设计或改变材料或合理延长保证期等适当的措施对所涉及的零部件包括其他可能受影响的零部件从根本上进行整改。

If, in spite of repeated remedial action, the same type of defect keeps appearing or if other parts of the Goods 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.

14.4.5 如果卖方未能在买方通知的合理期限内纠正缺陷，或卖方已经最终拒绝采取措施纠正缺陷，或卖方所采取的措施未能纠正缺陷，或所提出的纠正措施不能被买方合理接受，或因情况特别紧急不再可能通知卖方关于缺陷和缺陷危害并为卖方纠正缺陷设定一个适当的时限，买方有权作如下选择：

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,

14.4.5.1 买方可以自己或请第三方实施整改工作，由此产生的所有费用将由卖方承担。除非该整改工作证明是错误的，否则卖方的保证责任将不受此整改工作的影响。如发生装置的运行存在安全隐患，或可能发生其他重大危害的情形，买方将应具有上述权力。

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 或:

14.4.5.2 按照因缺陷造成的产品贬值比例对订单价格进行相应的扣减，如果该订单项下已经支付的金额超出了需扣除的金额，卖方应偿还差额部分。

to a reduction of the price of the Goods agreed to in the Order, pro-rata to the reduced value of the Goods 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 或:

14.4.5.3 由卖方赔偿买方所遭受的损害和损失，包括但不限于：对产品以外的财物造成的损失及耗费的费用，除非该缺陷不是由于卖方的疏忽造成。

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

or 或:

14.4.5.4 取消订单，此订单取消将无损于第14.4.5.3中规定的买方对其损失要求赔偿的权利。如在特殊情况下基于对双方合理利益的考虑认为立即取消订单将显得更为必要合理时，买方也应有权取消合同。

to cancel the Order, which cancellation shall be without prejudice to Buyer's right to claim damages as provided in 14.4.5.3. 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.

15 产品责任、违约/Product Liability, Default

15.1 卖方应对由于其产品缺陷引起的在中国产品责任法或其他产品强制责任规定项下对买方造成的索赔进行补偿并使买方免于其害。除非产品缺陷并不属于卖方责任范围，卖方应承担所有费用和开支，包括但不限于法律辩护和任何产品召回的费用。卖方应被告知任何产品召回的方式和范围。

The Vendor shall indemnify and hold the Buyer harmless from claims arising under the Chinese Product Liability Act or otherwise from statutory product liability to the extent damages are caused by a defect in the Goods. The Vendor shall bear all cost and expenditure including, but not limited to, cost 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.

- 15.2 如果卖方违反订单项下的任何责任和义务，买方将有权对由此违约造成的任何损害或损失包括但不限于对产品以外的财物造成的损失要求卖方赔偿。买方将不会对其生产损失或利润损失向卖方索赔，除非此等损失是因卖方的重大疏忽或恶意行为而造成的，或买方业主或第三方已就此等损失向买方提出索赔，或卖方已对此等损失进行了保险。

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, damage caused to property other than the Goods. 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 by 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.

16 功能保证/Warranty for Function

除第14条规定的保证责任外，卖方还应保证其产品在订单附件中所规定的流程和运行条件下和在现场当地条件下12个月运行期内的正常功能，并保证其产品应在设计，材料和制作上没有缺陷。

In addition to the warranty provided in Art. 14, the Vendor warrants the proper functioning of the Goods for an operation period of 12 months, under the specific process and operating conditions of the Plant as specified in the attachments to the Order and under local conditions at the Site, as well as that the Goods will be free from defects in design, material and workmanship.

17 知识产权保证/Intellectual Property Warranty

若卖方产品或任何零部件存在任何侵权行为（包括侵犯专利权，商标权或版权）卖方应予以赔偿并使买方免于遭受由此造成的任何索赔和损失、损害、责任、成本和费用。包括卖方应保证让买方获得购买、使用和销售涉及侵权的产品或零部件的权利，或用其他的无侵权行为的产品和零部件进行替换。买方也可根据自己的选择将此项权益转让给其业主。

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 Goods or any parts or components thereof. This includes obtaining for Buyer the right to buy, use and sell the Goods or such parts or components which may be found infringing, or replacing the same with equivalent, non-infringing Goods, parts or components. Buyer may, at his option, assign the benefits of any warranties hereunder to the Owner.

18 保密、所有权、模版/Secrecy, Ownership, Models

- 18.1 卖方为执行订单从买方处收到的文件、数据和物料以及其中包含的技术和商业信息应视为买方财产并予以保密。无买方书面同意，不得用于订单以外的目的或复制、发布或透露给第三方。且卖方应根据买的要求立即归还和/或从卖方的电脑或其他数据文件中删除此等信息，卖方应据此指导并督促其员工。

Documents, data and objects which the Vendor receives from the Buyer for the execution of the Order shall remain the property of the Buyer and 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 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.

- 18.2 卖方为执行订单而准备的所有图纸、模版和其他文件的所有权都应归属于买方。

Title in all drawings, models and other documents that the Vendor prepares for the Order shall be vested in the Buyer.

- 19 **发布、广告/Publications, Advertising**
未经买方书面同意，卖方不得公开发布有关订单或装置的任何信息或促成类似信息被公布。卖方也不得例如出于销售等目的将此作为业绩对外公布。
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.
- 20 **暂停、终止/Suspension, Termination**
- 20.1 买方可以在任何时候书面通知卖方暂停或终止执行订单。在收到此等通知后，卖方应：
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). 停止产品的相关工作；
stop work on the Goods;
b). 不再向第三方签发涉及该产品的任何分包订单；
not issue any further orders to third parties in respect of the Goods;
c). 如买方要求，尽一切努力取消或暂停已经签发给其分包商的涉及该产品的分包订单；
make every effort to cancel or suspend orders concerning the Goods that he has awarded to **sub-vendors** if requested to do so by the Buyer;
d). 保护好为执行此订单而采购或预留的所有材料以及当前正在生产或已完工的产品和服务，无论这些物料是在卖方处还是在其分包商处，直到买方签发进一步的指示；
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). 遵循买方关于这些产品和服务的指示。
follow the Buyer's instructions concerning these goods and services.
- 20.2 如果由于业主原因（如停止付款或取消合同）导致买方终止订单，卖方有权要求买方根据订单按比例支付已完工的产品价格。此外，卖方将有权要求偿还其合理的经证实的直接取消费用。如果买方从业主处成功获得相应的赔偿，卖方可合理分享其未完成产品部分的管理费用。
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 Goods completed according to the Order. In addition, Vendor shall be entitled to claim for reimbursement of the reasonable and proven direct cost of cancellation and, to the extent of Buyer succeeding in enforcing a corresponding claim against Owner, a reasonable share of the overhead costs for the part of the Goods that has not been completed.
- 20.3 如果订单被暂停后又重新执行，若卖方能提供充足的证明，卖方可对其已发生的合理费用要求补偿和/或合理调整产品交货期。
Vendor may, if the Order is suspended and later restarted, demand reimbursement of reasonable cost and/or reasonable adjustment of the completion deadlines, provided Vendor can provide sufficient proof of such cost or delay.
- 20.4 如果因卖方原因导致买方终止订单，买方可以：
If the Buyer terminates the order for reasons due to the Vendor, the Buyer may:
- 要求卖方交付已经完工的产品。并在卖方承担费用和 risk 的前提下，买方可自行决定是否由自己或是安排第三方来继续完成尚未完工的部分，条款第 14.4.5.1 条将相应适用。卖方应有权要求买方按比例支付其已交付给买方的那部分产品的订单价值，买方为完成并交付未完工部分所产生的超出剩余订单价值部分的费用将在付款中予以扣除。
- demand delivery of such part of the Goods already completed. At Vendor's risk and expense, Buyer may decide whether to complete and deliver himself the portion of the Goods that has not yet been completed or arrange for said portion of the Goods to be completed and delivered by third parties. Art. 14.4.5.1 of these Conditions of Purchase shall apply accordingly. The Vendor shall be entitled to the pro rata Order price for the Goods taken over by the Buyer. Any cost and expenses in excess of the remaining

Order price incurred by Buyer for completion and delivery shall be deducted from the payment to Vendor;

or 或者

- 放弃交付产品并要求卖方赔偿因其未能履行合同所造成的损失。产品拆除费及与订单终止相关的其他费用应由卖方承担。买方应可以免费使用卖方产品 12 个月直至其它替代产品备妥待用。此外，卖方还应将已支付的所有货款退还买方以换取买方退还其缺陷产品或零部件。

- waive delivery of the Goods and claim for damages for non-fulfilment of contract. The costs for dismantling and removal of the Goods and other costs incurred in connection with the termination shall be borne by the Vendor. The Buyer may use the Goods 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 Goods or of the parts in question.

因卖方导致订单终止的原因包括，但不限于：

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

- 卖方停止付款；
- cessation of payment by the Vendor;
- 卖方的资产进入清算或破产申请程序；
- application for opening of settlement or bankruptcy proceedings for the Vendor's assets.

20.5 如果订单被终止，卖方应将买方准备的或提供给他与该订单有关的所有图纸、方案和其他文件归还给买方。

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.

21 **付款、发票、保证金、账务抵销、延迟付款、转让、税收/Payment, Invoicing, Bonds, Offsetting Accounts, Delay in Payment, Assignment, Taxes**

21.1 付款申请、发票和借贷票据应标明订单号并以适当形式提交给买方财务部门。增值税（若有）应单列，此外，卖方应标明其增值税税号。

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.

21.2 当期分期付款将只有在所有付款条件已经满足且前期分期付款已经支付的前提下予以支付。

Payments will only be made, if all criteria for payment of the instalment in question and of the previous instalments have been fulfilled.

21.3 若采购订单规定以质保金的形式作为保证手段，若因卖方产品原因导致业主扣留对买方付款，买方有权拒绝返还此质保金。

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 Goods.

21.4 卖方只可用其自己的索赔权（如果此等索赔权是无争议的或已由最终法院或仲裁机构裁定）来冲抵买方对他的索赔。买方可以用其自己的或用无论直接或间接，全部或部分隶属于买方的其他公司的所有索赔权来冲抵的卖方对他的索赔。

如果这些索赔权在不同的日期到期，买方的索赔权应最迟在买方的所有债务到期前结算完毕。

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 Engineering(Hangzhou) Co.,Ltd., either directly or indirectly.

- 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.
- 21.5 只有当买方在即使收到卖方在付款到期且发票收讫后发出的书面提醒30天后依然未能支付，或未按订单中规定的付款日期支付时，方被视为付款延迟。
The Buyer will be deemed in delay with payment only 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.
- 21.6 如果买方延迟付款，应按5%年息支付卖方利息，除非卖方证明其因此延迟付款遭受了更大的损失。
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.
- 21.7 卖方对买方的索赔权进行转让必须经买方书面同意，买方不得无理由拒绝。
Assignment by the Vendor of claims against the Buyer shall require Buyer's written consent which shall not be withheld unreasonably.
- 21.8
- 21.8.1 任何一方都应各自承担因履行订单而产生的纳税责任和义务。
Each party shall be solely responsible to comply with its tax liabilities and obligations arising from the Order.
- 21.8.2 根据订单规定对产品的所有补偿应为净值，即不含增值税。
The remunerations for the Goods agreed on and to be rendered according to the Order are net-amounts, i.e. exclusive of VAT.
- 21.8.3 卖方应履行与发票开具有关的所有正式的法定要求以确保正确的增值税抵扣程序(若有)。
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.
- 21.8.4 如果因国家税务部门的法定调控行为导致增值税税率提高或合同当事人其中一方的进项税调低，双方应负责对受到影响的发票作相应修正。
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.
- 21.8.5 在买方国家对付款所征收的直接税费由卖方承担，所有合同项下的应付金额将在扣除一切依照法律规定须在源泉扣缴并支付给各税务部门的税费或行政管理费后予以支付，如根据相关的避免双重征税协定可对代扣所得税予以减免，买方将只有在不迟于付款日前收到卖方提交的有效免税证明后方可支付相应减免金额。
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.
- 21.8.6 卖方应履行法律对其规定的所有责任和义务，若因卖方未能履行前述责任和义务而引起的对买方的索赔或不利情形将由卖方负责。
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.
- 21.8.7 卖方应承担订单执行过程中产生的所有关税和其他税费，包括但不限于其员工及第三方员工的工资税、收入税和其他所得税。
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.

- 21.9 最终发票应注明订单中规定的项目号，发票号，发票日期，发票金额，未付总金额，到期付款额及增值税税额并在工作验收后四周以内提交。此外还须随附上由买卖双方签字的机械竣工证书或验收证书（若有）。最终发票的支付并不解除卖方在订单项下的任何的契约责任和义务。

If applicable, 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, invoice number, invoice date, invoice amount, the aggregate amount of retention, due payments and value added tax. In addition, the certificate of mechanical completion or Acceptance (if any) 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.

22 共同责任/Corporate Responsibility

- 22.1 卖方应遵循“林德集团供应商行为准则”的要求，此文件已提供给供应商并可在 www.linde.com/supplier-CoC 网页中找到（以下称“供应商行为准则”）。

Vendor 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 Vendor and which may be found at www.linde.com/supplier-CoC (hereinafter referred to as the 'Supplier Code of Conduct').

- 22.2 应林德要求，卖方应以提交相关数据或自我评估的方式向林德证实其已遵循了“供应商行为准则”的各项要求并获得林德的认可。

Vendor 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.

- 22.3 如果林德有理由认为卖方可能实质性违反了供应商行为准则的要求，则林德或其指定的第三方可至卖方的经营场所进行核查以验证其是否遵守了供应商行为准则。林德应采取一切合理措施来确保其所有的核查将满足所有适用的数据保护法的相关规定，且既不对卖方的商业活动造成不合理的干预也不对卖方与第三方之间的任何保密协议造成侵犯。卖方应合理配合所有的核查工作。与核查有关的费用由各方自行承担。

If Linde has reason to believe that Vendor 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 Vendor's premises in order to verify Vendor'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 Vendor's business activities nor violate any of Vendor's confidentiality agreements with third parties. Vendor shall reasonably cooperate with any inspections conducted. Each party shall bear its own expenses in connection with such inspection.

- 22.4 如果卖方实质性违反了供应商行为准则或在林德书面通知其违反行为后未能对此做出纠正，则除了享有任何其他权利和救济外，林德也应有权终止在此签订的协议以及任何订单且无须承担任何责任。

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 Vendor is in material breach of the Supplier Code of Conduct or fails to remedy any breach, after written notification about the breach by Linde.

- 22.5 实质性违反行为包括但不限于：强迫劳动或使用童工，腐败和贿赂以及违背供应商行为准则中有关环境保护要求等。

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

23 局部失效/Voidness in Part

如在本采购条款或订单条款中有任何条款被证明是无效的或不可操作的，其它剩余条款的有效性应不受影响。

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.

24 **履行地点/Place of Fulfilment**

除非订单中另有规定，履行地应为买方的营业地

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

25 **适用法律/Applicable Law**

订单应受“中华人民共和国合同法”管辖并按其解释。

The Purchase Order shall be governed by and construed in accordance with “The Contract Law of People's Republic of China”.

26 **管辖、仲裁地/Place of Jurisdiction/Arbitration**

26.1 若卖方主要营业地址在中华人民共和国境内：

凡因本订单引起的或与本订单有关的任何争议，双方应通过友好协商解决。如果协商不能解决，应提交杭州仲裁委员会在杭州进行仲裁。诉讼裁决是终局的，对双方都有约束力。诉讼费用由败诉方承担。买方也可以在对卖方有法律管辖权的任何其他地点提请诉讼。

For Vendors having their main place of business in People's Republic of China:

Any dispute arising from or in connection with this purchase order, shall be settled amicably through friendly negotiation. In case no settlement can be reached through negotiation, the case shall then be submitted for arbitration to Hangzhou arbitration commission with venue in Hangzhou. The arbitral award is final and binding upon both parties. Arbitration fee shall be borne by the losing party. The Buyer may also take legal action in any place of jurisdiction valid for the Vendor.

26.2 若卖方主要营业地址在其他国家：

凡因本订单引起的或与本订单有关的任何争议，双方应通过友好协商解决。如果协商不能解决，则任何一方可以将争议提交给中国国际经济贸易仲裁委员会根据该会有效的仲裁规则，由指定的3名仲裁员最终裁决。诉讼裁决是终局的，对双方都有约束力。诉讼费用由败诉方承担。

For Vendors having their main place of business in other Countries:

Any dispute arising from or in connection with this purchase order, shall be settled amicably through friendly negotiation. In case no settlement can be reached through negotiation, either Party may submit the dispute to China International Economic and Trade Arbitration Commission for final arbitration according to its effective rules by three arbitrators appointed in accordance with said Rules. The arbitral award is final and binding upon both parties. Arbitration fee shall be borne by the losing party.