

## LINDE ENGINEERING TERMS AND CONDITIONS OF PURCHASE FOR TRANSPORT AND LOGISTICS SERVICES

(Issue: May 2017)

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#### 1. Definitions

- 1.1. "**Affiliate**" means affiliated companies according to Article 15 of the German Stock Corporation Act (*Aktiengesetz*).
- 1.2. "**Agents**" shall mean all agents, servants and Affiliates which the respective Party employs to perform any of its duties hereunder (*Erfüllungsgehilfen*).
- 1.3. "**Applicable Law**" shall have the meaning as defined in Clause 21.1 hereof.
- 1.4. "**Contract**" means any contract made by the Order and, if needed, any related confirmation (whether express or implied), an agreed supplemental Order or any other contract entered into between the Parties in writing or by e-mail relating to transport, freight forwarding, logistics and/or related services, with the exception of a contractual relationship

between the Parties which is governed by a Logistics Frame Agreement.

- 1.5. "**Logistics Services Provider**" or "**LSP**" means the person or legal entity entering into the Contract with the Purchaser. If an Order is part of the exchanges leading to the Contract, the addressee of such Order shall be the LSP, unless expressly defined otherwise in such Order.
- 1.6. "**Order**" means a document issued by the Purchaser to the LSP labelled as "Logistics Services Order" or "FOB Order", irrespective of whether the document is signed or not, and/or sent as original, as e-mail attachment or otherwise transmitted.
- 1.7. "**Parties**" means the LSP and the Purchaser, and "**Party**" means either of those.
- 1.8. "**Purchaser**" means the Linde entity entering into the Contract with the LSP, being either Linde AG, Engineering Division, having its registered office in Dr.-Carl-von-Linde-Straße 6 - 14, 82049 Pullach, Germany, the branches [Werk Schalchen], having its business address in Carl-von-Linde Str. 15, 83342 Tacherting, Germany, and [Standort Dresden], having its business address in Bodenbacher Str. 80, 01277 Dresden, Germany or Selas-Linde GmbH having its registered office in Wolfratshausener Str. 138, 82049 Pullach, Germany.
- 1.9. "**Services**" shall mean all services to be provided by the LSP under the Contract.
- 1.10. "**Terms and Conditions**" or "**T&C**" means this document called "Terms and Conditions of Purchase for Transport and Logistics Services" and form an integrated part of the Contract.
- 1.11. "**Transit Times**" means transit times and/or delivery dates.
- 1.12. "**Promptly**" means without undue delay (*ohne schuldhaftes Zögern*).

- 1.13. "Written" or "in writing" refers to a personally signed form transferred by letter, telefax or e-mail attachment unless provided otherwise in a specific contractual provision.
- 2. Contract documents, priority of documents**
- 2.1. Unless otherwise agreed in the Order or other main document of the Contract, the Contract and the Services provided by the LSP thereunder shall be governed by the stipulations of the following contractual documents:
- the Order (or supplemental Order, as the case may be);
  - these Terms and Conditions;
  - documents linked to these T&C (in particular the Linde Supplier Code of Conduct and the Linde Standard LS 940-04);
  - the stipulations in the main document(s) of the Contract in case no Order exists; and
  - any other documents referred to in the Contract.
- 2.2. In case of any contradiction or conflict between stipulations of the documents referred to in Clause 2.1 hereof the higher ranking documents (the highest being item a)) shall supersede the lower ranking ones, and LSP shall promptly inform Purchaser of any such finding.
- 2.3. The Purchaser rejects incorporating other general terms and conditions (*Allgemeine Geschäftsbedingungen*) than those referred to in Clause 2.1 into the Contract. Any references to such other general terms and conditions (including, without limitation, any version of the ADSp) in the LSP's communications and documents are herewith rejected. Handing over of the goods, confirmation of receipt, payment of Services, or any support by Purchaser regarding the Services does not constitute agreement to any of the LSP's general terms and conditions (*Allgemeine Geschäftsbedingungen*), even if the acceptance or payment is made with knowledge of conflicting or supplementary terms and conditions of the LSP. Furthermore, any such general terms and conditions of the LSP previously agreed upon that conflict with or supplement these T&C shall no longer be recognized.
- 3. Services of the LSP**
- 3.1. The LSP shall perform the Services in accordance with all stipulations of the Contract.
- 3.2. The Services provided by the LSP shall comply with best practices and standards in the relevant trade, applicable at the time the relevant Services are provided.
- 3.3. The LSP shall perform the Services in accordance with the Linde Standard LS 940-04 ("Operating and HSE requirements for logistic service providers"), which can be downloaded at <http://ebusiness.linde-le.com/ls.ext/Data/LS900/940-04/E1502.pdf>
- 3.4. The LSP shall achieve a quality level as intended by an internationally recognized quality management system in accordance with ISO 9001 (or a comparable standard implementing equal or stricter requirements). Without limitation, this shall apply to the timely performance of all Services.
- 3.5. Providing the Services without any interruptions and delays is of the essence. This shall be taken into account by the LSP when planning and performing the Services, and this shall be considered when interpreting any stipulation of the Contract. Due to the nature of the Purchaser's business, any interruptions or delays are very likely to have a severe commercial and financial impact, such as the interruption of construction work and/or significant penalties or liquidated damages payable by the Purchaser to its customers, and therefore strictly need to be avoided.
- 3.6. Where the Services include the transport of goods, the LSP shall timely coordinate the delivery of such goods with the consignee. The same applies to coordinating pickup of goods from actual shippers different from the Purchaser. If the goods are carried to the site or a workshop of the Purchaser, this coordination duty may involve liaising with the site management and seeking instructions in particular to timely and locally accessibility of such site or workshop, safety regulations, routing and transport regulations at site and specific places for unloading. Such instructions may include reasonable assistance to unloading by the personnel of the LSP or its subcontractor.

- 3.7. If the LSP has reason to believe that instructions given by the consignee or its representatives and/or planned unloading operations of the consignee or its representatives are not suitable and/or otherwise including a risk for the goods, the LSP shall promptly communicate those concerns to the consignee. Unless such communication leads to changes satisfactory to the LSP, the LSP shall promptly inform Purchaser by telephone and e-mail of those concerns and the underlying circumstances.
- 3.8. Where the Services include the transport and/or other handling or storage of goods, the LSP shall implement and perform suitable interchange controls, in particular at any time when the custody over such goods changes. The interchange event as well as any particular circumstances (in particular any discernable loss or damage) shall be recorded. The interchange documentation shall be stored by the LSP and shall be provided to the Purchaser at once upon request; any particular circumstances shall be notified to the Purchaser at once.
- 3.9. Where the Services include the transport of goods,
- the LSP shall provide those Services for a fixed price (*Fixkosten*) pursuant to § 459 of the German Commercial Code (*HGB*),
  - the use of open, uncovered conveyances is not permissible unless expressly agreed by Purchaser;
  - unless shipment on deck has been agreed between the Parties, the goods shall be stowed under deck (this requirement shall, however, not apply where the goods have been stowed in a container; and
  - the LSP shall implement the transport-related duties of the Purchaser as seller or buyer (as the case may be) under the agreed INCOTERM (for example loading and securing of goods in case of a pick-up of EXW cargo); use of INCOTERMS without express reference to a specific version shall be read as a reference to INCOTERMS 2010.
- 4.1. The LSP shall promptly notify the Purchaser when having identified any such issue, and shall advise the Purchaser with the aim to resolving the issue in the Purchaser's best interest. The LSP shall further consult with the Purchaser and seek additional instructions, where needed.
- 4.2. The LSP's duty to review under Clause 4.1 sentence 1 and 2 hereof shall include a commercial review of any specific requirements as referred to in Clause 5 below. If the intended aim can be achieved otherwise for a lower price, the LSP shall promptly consult with the Purchaser on a potential adaptation of the requirements.
- 4.3. Furthermore, the LSP shall – to the extent possible for the LSP's personnel (or Agents, as the case may be) and regarding the circumstances – inspect any goods to be transported as part of the Services and the loading and securing thereof. In particular, the LSP shall review:
- the goods as to whether they have suitable packaging and any other discernable flaws or damage;
  - any loading, securing and unloading work even if not carried out by the LSP or its Agents;
  - proper marking of any goods and packages;
  - upon taking over and delivery of the goods, the identity and completeness of goods received or delivered (including a proper documentation in the transport documents) and
  - potential risks resulting from the nature of the goods (including, without limitation, the risk of breaking, of rusting, of drying out, or of leakages).
- The LSP shall promptly notify the Purchaser when having identified any issue as referred to in this Clause 4.3, and shall advise the Purchaser with the aim to resolving the issue in the Purchaser's best interest. The LSP shall further consult with the Purchaser and seek additional instructions, where needed.

#### 4. Review and notification duties

- 4.1. The LSP shall review the Contract and any information and documents received in relation to the Services, in order to identify potential issues which might impair the orderly, safe, secure and timely performance of the Services. This shall include any restrictions under customs laws or export/import control restrictions, unless the LSP has received

#### 5. Specific requirements

- 5.1. The LSP shall strictly comply with any specific requirements regarding the Services provided by the Purchaser to the LSP. If such specific requirements are not included (directly or by reference) in the Contract when the latter is entered into, but provided at a later stage by the Purchaser (whether in writing or by e-mail or orally), the LSP also has to

comply with such specific requirements, but shall then be entitled to reasonable extension of Transit Times and/or compensation against reasonable additional expenses, subject to Clause 10 hereof. If the intended aim can be achieved otherwise for a lower price, the LSP shall promptly consult with the Purchaser on a potential adaptation of the specific requirements.

- 5.2. Specific requirements may relate – without limitation – to
  - temperature controlled transports requiring the goods to be kept at a certain temperature;
  - the use of conveyances having air suspension;
  - speed limits applicable to conveyances;
  - limitations and exclusions requiring transport routes and/or instructions regarding routes and stops;
  - the use of specific technology such as shock wave detectors or RFID technology;
  - limitations and exclusions regarding the use of subcontractors;
  - specific transport documents;
  - pallets, boxes or other packing and bundling equipment used and its exchange;
  - specific methods, restrictions or requirements regarding the loading and/or unloading of goods or
  - specific requirements regarding the securing of cargo.
- 5.3. To the extent that Clause 5.1 is entitling the LSP to compensation for additional reasonable expenses, this claim shall only be justified if the total amount exceeds 2% of the total remuneration agreed in the Contract (de minimis).
- 5.4. Unless otherwise instructed, e.g. by transport drawings or package marks, a uniform load per unit area of 1 metric ton per m<sup>2</sup> must not be exceeded when packages (wooden boxes and crates) are stowed on top of each other. Any deviations from this rule must be approved by Purchaser or Purchaser's representative.
- 5.5. No items shall be stacked on unpacked goods, such as but not limited to cold boxes, tanks, columns and equivalent materials and equipment, and no other cargo must be stowed alongside in direct contact with such unpacked goods taken over by the LSP under the Contract. Once unpacked goods are loaded and lashed, such goods shall neither be repositioned on the means of transport nor transhipped without

the prior written approval of the Purchaser or the Purchaser's representative. Furthermore, the following shall apply to such shipments:

In case the Purchaser agrees for transshipment in writing, then Purchaser must have the chance to assign a representative of own choice for supervising the transshipment. The costs of this survey shall be for the account of the LSP. A notification of the planned transshipment port or other transshipment location must be send by LSP in due time - at least however 8 calendar days before arrival of the means of transport in the transshipment port or other transshipment location - in writing or e-mail to Purchaser.

## 6. Subcontractors

- 6.1. Unless provided to the contrary in the Contract, the LSP shall be entitled to engage subcontractors for the performance of the Services. The actual performance of the Services must be in the hands of the LSP, or of first or second tier subcontractors; further subcontracting is not permissible.
- 6.2. The LSP shall ensure that the subcontractors of any tier are diligently selected and sufficiently qualified to perform Services hereunder. The Subcontractors of any tier need to be made aware by LSP of all requirements under the Contract to the extent that these are concerning their services. Even if the above requirements were complied with, the LSP shall have responsibility for actions and omissions of any subcontractor and their personnel relating to the performance of Services hereunder.
- 6.3. The LSP shall implement a reasonable subcontractor management system, documenting the selection of subcontractors and, without limitation, evidencing the following:
  - Any subcontractor shall have reasonable liability insurance for its liabilities in relation to performance of Services, in accordance with market practice or better.
  - The subcontractor was informed about all requirements under the Contract to the extent that these are concerning their services, in particular about any specific requirements as addressed in Clause 5.
  - The criteria for selecting the subcontractor, aimed at ensuring that the subcontractor is meeting the required standards and capable of performing the Services in accordance with the Contract and in particular in time.

The LSP shall provide the Purchaser upon request with any such documentation regarding a subcontractor used to perform Services.

## 7. Transit and delivery times

7.1. Unless otherwise agreed, Transit Times provided in the Contract – or, if missing in this document, the most recent Transit Times provided in the correspondence between the Parties prior to the Order (or the Contract being concluded where no Order is issued) – shall be construed as binding Transit Times. Where no Transit Times have been agreed, the LSP shall be bound to deliver the goods within the Transit Times corresponding to the best practice in the high quality logistics industry for the applicable area and trade.

7.2. In view of the Purchaser's business, delivery within the Transit Times binding on the LSP in accordance with Clause 7.1 are of the essence. Even short delays in delivery will usually lead to delays of construction work and severe penalties. Therefore, the LSP shall implement a system being suitable to (i) plan and organize transports in a manner minimizing the risk of and avoiding delays (such as a constant monitoring of obstacles and feedback to the transport managers and drivers), (ii) to detect any delays as soon as possible (by using telematics technology and other suitable systems), and (iii) to promptly implement emergency measures aiming at avoiding and/or mitigating delays. The duty to take emergency measures may involve – if required to reach the aim – a duty to use alternative means or modes of transport and/or additional resources.

7.3. If the LSP fails to deliver cargo to be transported within the agreed Transit Times, and a penalty (*Vertragsstrafe*) is agreed in the Contract for the specific case, the Purchaser shall be entitled to charge a penalty (*Vertragsstrafe*) as agreed, unless the LSP can show that the delay could not be avoided applying the agreed standard of diligence. The Purchaser shall not be required to make a reservation of the claim upon delivery. Provided that the Purchaser has a claim for delay damages, the Purchaser shall be free to prove that his loss exceeded the amount of the penalty.

## 8. Events affecting performance

8.1. Unexpected obstacles and hindrances shall not limit or suspend the duties of the LSP under the Contract.

The LSP shall use best efforts to provide the Services as agreed, or, if that is not possible, to mitigate the impact of any obstacles and hindrances. The Purchaser shall be notified of the circumstances at once and of any measures promptly.

8.2. Where needed, the LSP shall – without undue delay – seek instructions from the Purchaser (for example, but without limitation, in cases where the consignee cannot be identified or does not take delivery).

8.3. Without limitation, the following events affecting performance shall be seen as falling within the LSP's sphere of risk:

- technical breakdown or unavailability of any equipment used by the LSP or its Agents for the Services,
- congestion of any ports or hubs used to perform the Services,
- lack or delay of any permits or authorizations which the LSP is obliged to obtain in order to perform the Services,
- strike of employees of the LSP or its Agents and strike at ports or hubs used to perform the Services if such strikes are not authorised by the trade union in question, and/or
- any other circumstances restricting or negatively affecting the use of any means of transport used for the Services and/or the route of transport planned by the LSP or its Agents.

8.4. Only if unexpected obstacles and hindrances have been caused by the Purchaser or any of its Agents other than the LSP and the LSP's Agents, additional measures taken under Clauses 8.1 and 8.2 above shall entitle the LSP to compensation of reasonable expenses and/or reasonable extension of Transit Times, all subject to Clause 10 hereof, and provided that LSP had obtained prior instructions from the Purchaser.

8.5. In no event whatsoever (other than the case addressed in Clause 16.14) shall the LSP be entitled to make additional measures taken under Clauses 8.1 and 8.2 above depending upon any advance payment of the Purchaser.

## 9. Changes and additions

9.1. The Purchaser may, at any time, request changes or additions to the Contract. In that case, the LSP shall without undue delay provide a proposal in writing or



e-mail on the time and price impact (increase or decrease) of any such change or amendment, if any. In case that the LSP is suggesting in its proposal a modification of Transit Times and/or the remuneration, such proposal shall be substantiated by providing evidence on the time and/or cost impact. Any increase or decrease of the remuneration shall be made on the basis of a calculation similar to the calculation on which the total remuneration agreed in the Contract was based; for that purpose, unit prices agreed shall apply also to reduced quantities, unless this would lead to an unjust and excessive financial burden for the LSP.

- 9.2. The terms of changes or additions requested shall be negotiated in good faith, taking into account the legitimate interest of both Parties. The agreement reached shall be evidenced in a supplemental order amending the Order.
- 9.3. An outstanding agreement on the terms of the supplemental order (including, without limitation, impact on time and price) shall not entitle the LSP to refuse performing additional or changed services if requested in writing or e-mail by the Purchaser.

## 10. Claims of the LSP

- 10.1. If the LSP believes that there are circumstances – other than those specifically governed by Clause 11 – entitling the LSP to additional remuneration, compensation against expenses and/or an extension of Transit Times, irrespective of the legal basis for such claim, the LSP shall notify the Purchaser thereof in writing within a time period of 7 calendar days after having or should have become aware of such circumstances.
- 10.2. If the LSP has failed to timely notify claims in accordance with Clause 10.1, such claims shall forthwith be barred and excluded.
- 10.3. Where the Contract allows the LSP to claim compensation for costs or expenses, such claim shall always be subject to documentation and evidence being provided by the LSP.

## 11. Truck Detention

- 11.1. Only if the LSP is kept waiting when picking up or delivering cargo by truck caused by negligence of the Purchaser or any of its Agents, the LSP shall be

entitled to an adequate statutory detention (*Standgeld*) claim. Waiting time and detention for other means of transport shall not be governed by this Clause 11.

- 11.2. A waiting time prior to commencement of loading and unloading of 3 hours shall be included and shall not give rise to a detention claim.
- 11.3. The agreed time for loading and unloading (and otherwise the usual time considering place and circumstances) plus a time buffer of 3 hours shall be included and shall not give rise to a detention claim.
- 11.4. In any event, the driver needs to notify loading or unloading readiness at once to the responsible office or person at the place of pick-up or delivery; the free waiting time (Clause 11.2) will not start to run prior to a proper notice being given. If a binding loading or unloading time is not obtained within 30 minutes after such notice, the Purchaser shall be informed at once, enabling the Purchaser to take appropriate action; if the LSP fails to comply, the free waiting time shall be extended accordingly.

## 12. Liability of the LSP

- 12.1. The liability of the LSP shall be governed by the provisions of the Applicable Law as amended by this Clause 12.
- 12.2. In cases where the Contract relates to multimodal transport Services, and unless the multimodal transport includes international transportation by air, the liability of the LSP shall be governed by the general provisions on contracts of carriage of goods of the Applicable Law, irrespective of whether it can be established or not that the relevant incident occurred on a particular leg of transport.
- 12.3. In cases where the liability of the LSP is governed (by statute or pursuant to Clauses 12.2) by the general provisions on contracts of carriage of goods of the Applicable Law (§§ 425 et seq. of the German Commercial Code (*HGB*)), the applicable limitation of liability of the LSP for loss of or damage to the goods shall be modified as follows:
- Unless a higher or no limitation amount is provided by the Applicable Law under the specific circumstances of the case, the statutory limit of 8,33 Special Drawing Rights / kilogram of the gross weight shall apply.

- Where the statutory limitation amount for loss or damage is less than EUR 10,000.-, the limitation amount shall be increased to the amount of EUR 10,000.-, unless the latter was more than the equivalent of 40 Special Drawing Rights per kilogram, in which case the limitation amount shall be the latter.
- 12.4. In cases where the liability of the LSP is governed by the provisions on contracts of carriage of goods by sea of the Applicable Law (§§ 498 et seq. of the German Commercial Code (*HGB*)), the applicable limitation of liability of the LSP for loss of or damage to the goods shall be as defined in the statutory provisions, but the limitation amount shall in no event be less than EUR 10,000.-.
  - 12.5. The LSP has to indemnify and hold harmless the Purchaser from liabilities towards any third parties resulting from a breach – by the LSP or any of its Agents – of statutory rules and regulations (for example, but without limitation, in environmental or social matters).
  - 12.6. If goods will be lost or damaged while LSP or any of its Agents was not complying with the duties provided in Clauses 3.8 and/or 5.5 hereof, it shall be presumed that the LSP has caused such loss or damage recklessly and with the knowledge that loss will probably result.
  - 12.7. Unless the Applicable Law provides for a stricter standard of care, the LSP and its Agents shall always at least have to act with the care of a diligent merchant (*Sorgfalt eines ordentlichen Kaufmanns*). This shall also apply in cases where the LSP is carrying out a specific Service without (additional) remuneration.
  - 12.8. Claims of the Purchaser under the Contract shall not be barred as a result of not inspecting the Services when those are rendered and not notifying irregularities or reserving the Purchaser's rights upon delivery.
  - 12.9. Claims of the Purchaser hereunder shall in no event become time barred earlier than two (2) years after the completion of the Services to which the claim relates; this shall not apply where the Applicable Law does not allow an extension of time bar periods. Longer time bar periods shall in any event remain unaffected.
13. **Liability of the Purchaser**
    - 13.1. The statutory liability of the Purchaser, if any, for insufficient packaging or marking, false or incomplete information or data, breach of notice obligations regarding dangerous goods and/or false or incomplete information or documentation regarding accompanying documents, shall, in respect to a particular transport, be limited to an amount corresponding to the value of the relevant goods, but not more than 8,33 Special Drawing Rights per kilogram of the gross weight, unless such loss was caused intentionally or recklessly with the knowledge that loss would probably result.
    - 13.2. Otherwise, the Purchaser's liability, if any, shall be determined in accordance with the Applicable law, subject to the following:
      - In case of intent or gross negligence (*grobe Fahrlässigkeit*) of the Purchaser or any of its Agents, there shall be no limitation of liability, if any.
      - In case of mere negligence (i.e. negligence of a lesser degree than gross negligence), the Purchaser's liability, if any, for personal injury (including loss of life and impairment of health) shall be unlimited. If case of mere negligence concerning a material contractual obligation, the liability of the Purchaser shall be limited to predictable loss typical for the Contract. Material contractual obligations are obligations which initially enable the contractually agreed fulfilment of the Contract and on which the LSP is entitled to reasonably rely on (*vertragswesentliche Pflichten*).
      - In other cases of mere negligence (i.e. negligence of a lesser degree than gross negligence), the liability of Purchaser shall be limited to EUR 200,000.- per event.
14. **Confidentiality and title**
    - 14.1. All documents, data and objects provided by the Purchaser to the LSP in connection with the Contract shall remain the Purchaser's property. They must not be used by the LSP for other purposes than performing the Services, and must not be copied or published without the Purchaser's advanced written confirmation. Upon request, such documents, data and objects shall be returned to the Purchaser.
    - 14.2. Unless otherwise required by law (and only then after consultation with, and taking into account the

reasonable requirements of Purchaser) all commercial and technical information related to the Contract as well as the Contract itself shall be kept strictly confidential by the LSP, unless to the extent that disclosure is required to perform the Services in accordance with the Contract. If such disclosure is needed, it shall be made on a strict need-to-know basis, and always provided that the recipient is subject to similar confidentiality duties.

- 14.3. Drawings, data and other documents prepared by the LSP in performance of the Services shall become the Purchaser's property, or, where IP-rights are created as a result of such works, the Purchaser shall be granted an exclusive and unlimited license to use and modify those works. These drawings, data, documents and rights shall be included in the remuneration agreed between the Parties.
- 14.4. The LSP shall not make any press releases, publications or references to the Contract and/or respective project of the Purchaser unless having received the written authorization of the Purchaser.
- 14.5. This clause shall survive term and termination of the Contract.

## 15. Suspension and termination

- 15.1. The Purchaser may at any time suspend or terminate the Contract by giving notice in writing to the LSP. Upon receiving such notice, the LSP shall take all reasonable steps to mitigate the financial impact and to ensure that any goods in the custody of the LSP shall be kept safe and secure until handing over to the Purchaser or a nominee. Mitigation measures may include, without limitation, not placing further orders with subcontractors, cancelling existing orders with subcontractors using best efforts to reduce the financial impact and following instructions of the Purchaser.
- 15.2. If termination is made for reasons related to the Purchaser's customer contract (e.g. cessation of payment or cancellation of Purchaser's customer contract), the LSP shall be entitled the pro rata remuneration agreed in the Contract for Services performed, to a reasonable compensation for overhead relating to Services not performed, and to compensation for reasonable and proven direct cost (including cost for mitigation measures) provided that the LSP complied with Clause 15.1.
- 15.3. If termination is made for reasons imputable on the LSP in accordance with Clause 15.4, the Purchaser shall be entitled to choose between the following options:
- in cases where the Services have not yet been provided, and Purchaser choose not to request any Services, Purchaser shall be entitled to claim refund of any payments made, or
  - in any event the Purchaser can request further Services (i.e. up to a certain location). In such case or in case Services have been provided upon termination, the LSP shall be entitled to the pro rata remuneration agreed in the Contract for the Services performed. Any cost and expenses in excess of the remaining Contract price incurred by Purchaser for completion of the Services shall be deducted from the payment to LSP and/or claimed from LSP.
- The LSP shall not be entitled to any other remuneration or cost. Claims for damages by the Purchaser, if any, shall remain unaffected by the above.
- 15.4. The following circumstances shall be considered as allowing termination for reasons imputable on the LSP:
- Circumstances reasonably showing that the LSP will not adhere to the applicable Transit Times, unless the LSP has taken best possible mitigation measures and it would be unreasonable to expect that another carrier would be able to deliver the goods earlier.
  - Payment delays of the LSP or any of its Agents towards any of their (sub-) subcontractors, employees, authorities or any other person or organisation, involving the risk that delivery of the goods could be delayed or rights of lien or retention exercised.
  - Cessation of payments by the LSP.
  - Application for insolvency proceedings or similar proceedings being filed regarding the LSP.
  - Any other breach of contract by the LSP in cases where the Purchaser, as a result of such breach and balancing the relevant interests, cannot reasonably be expected to accept continuation of the Contract. This is deemed to be given, where the Purchaser has set a reasonable time period for the LSP to remedy a breach, but the LSP failed to meet this time limit.
- 15.5. In case of termination, the documents (including, without limitation, drawings), data and objects provided to the LSP in relation to the Services shall be



returned or handed over without undue delay to the Purchaser or any third person advised by Purchaser.

- 15.6. In case of a suspension of the Contract in accordance with Clause 15.1, and a later restart, the LSP is entitled to a reasonable extension of any Transit Times and to compensation of reasonable and proven expenses incurred as a result of the suspension, subject to Clause 10.

## 16. Remuneration, invoicing and tax

- 16.1. The remuneration agreed in the Contract shall be considered as fully including all remuneration, cost and expenses for the Services, unless expressly agreed to the contrary. The LSP shall in particular not be entitled to charge remuneration, cost, surcharges, toll or similar payments made to any of its Agents or other third parties, unless expressly agreed to the contrary.
- 16.2. Prices indicated in the Contract are net-amounts, i.e. excluding tax, unless expressly stated otherwise in the Contract. VAT shall be payable in addition to those amounts, provided that the LSP submits invoices in accordance with all applicable laws enabling the Purchaser to obtain a refund of the VAT paid. Always provided that those requirements are adhered to, both Parties can request a modification of invoices due to changes in the applicable laws or acts of authorities affecting the relevant invoice and/or remuneration.
- 16.3. Claims or disadvantages arising to the Purchaser due to disregarding of aforementioned obligations by the LSP will be borne by the LSP.
- 16.4. Each of the Parties shall remain responsible for its own tax liabilities of any kind, and for duties on salaries, wages and other remuneration and on contributions to social security of its own employees and those of its subcontractors.
- 16.5. All payments under this Contract will be made without any deduction or withholding for or on account of any tax unless such deduction or withholding is required by any applicable law.
- 16.6. Always subject to proper invoicing in accordance with the Contract (and in particular Clause 16.7 hereof), remuneration under the Contract shall be payable when the agreed milestones are reached,

or, if no milestones have been agreed, when the respective Services have been performed. In case of milestone payments, no milestone payment shall be payable unless all previous milestone payments have become payable.

- 16.7. The LSP shall submit invoices accompanied by all agreed documentation and in any event by evidence showing that the relevant milestone has been reached or that the relevant Services have actually been performed.

The invoices (as well as any other payment requests or credit notes) shall be made in a proper manner allowing reasonable review, indicating:

- Purchaser's project number and project name,
- Purchaser's Order number,
- Purchaser's Part Delivery Number,
- number of packages, total weight and volume of Order,
- detailed description of Services,
- date of Services provided,
- unit price and total remuneration (incl. declaration of currency exchange rate, if applicable),
- copy of original invoice for third party services paid as per outlay, if applicable,
- LSP's IBAN and BIC,
- LSP's Value Added Tax Identification Numbers (VAT ID)
- VAT ID of the relevant Purchaser:
  - o Linde AG, Engineering Division:  
**DE113822613,**
  - o Selas-Linde GmbH:  
**DE811145404.**
- VAT rate/VAT exemption, and
- VAT amount, if applicable.

A LSP having its place of business in Germany has to use German VAT if the country of final destination of the cargo is inside the European Union, and has to use no German VAT if the country of final destination of the cargo is outside the European Union. The final destination of the cargo will be obvious from the project name disclosed in the Order; in case of any doubt, LSP shall inquire about it.

Should the Services provided by LSP be taxable outside of Germany, the LSP shall contact the Purchaser in order to obtain the information regarding the Purchaser's registration.

The invoice shall be addressed to Purchaser's department "FCA". The final invoice shall be labelled as such. Payments will only be due, if all criteria for payment and invoicing of the instalment in question and of the previous instalments have been fulfilled.

- 16.8. The LSP should provide the Export Confirmation (*Ausgangsvermerk*), if applicable, or the Certificate of Transport (*Spediteursbescheinigung*), if applicable, to the Purchaser before invoicing to the following e-mail address:
- [entry-certificate@linde-le.com](mailto:entry-certificate@linde-le.com) or
  - [spediteursbescheinigung.schalchen@linde.com](mailto:spediteursbescheinigung.schalchen@linde.com) (only if Werk Schalchen is the Purchaser).
- 16.9. The LSP's right to declare set-off with its claims against claims of the Purchaser shall be limited to claims of the LSP which are either undisputed or which have been confirmed in a final and binding court decision.
- 16.10. The Purchaser shall be entitled to declare set-off against claims of the LSP not only with the Purchaser's own claims, but also with claims of Purchaser's Affiliates; the Purchaser has obtained an according authorization from those Affiliates.
- 16.11. For the purpose of set-off to be declared by the Purchaser, its claims to be set-off shall fall due no later than any due claims of the LSP against the Purchaser, irrespective of other provisions in the Contract governing the due dates for payment.
- 16.12. The Purchaser will be deemed in delay with payment only if he fails to pay on receipt of a written reminder by the LSP after the expiry of 30 calendar days from the due date and receipt of invoice, or if he fails to pay on the calendar date stated in the Contract.
- 16.13. In the event of Purchaser's delay of payment, he shall owe interest, if any, limited to 5% p.a., unless the LSP can prove that he has suffered higher damages due to such delay.
- 16.14. The LSP shall not have a lien (*Pfandrecht*) on goods for claims arising out of other contracts than the Contract under which the relevant goods are carried, stored or otherwise handled (*inkonnexe Forderungen*); such claims shall not entitle the LSP to exercise any right of retention.
- 16.15. If the Purchaser is in default with earlier payments relating to the Contract under which specific goods are to be carried, stored or otherwise handled, the LSP shall inform the Purchaser no later than 12 hours prior to taking over such goods for transport, storage or other handling that the LSP intends to exercise a right of retention or a lien on the goods. Otherwise, the LSP shall not be entitled to stop a transport, refuse delivery or otherwise exercise retention rights and/or a lien based on the allegation that the Purchaser is in default.
- 16.16. Claims against the Purchaser under the Contract must not be assigned. Upon request, the Purchaser may decide to grant a waiver from this prohibition for specific claims.
- ## 17. Insurance
- 17.1. The LSP shall provide and maintain adequate insurance coverage for liability in relation with the Contract, but in any case not lower than required in this clause.
- 17.2. The LSP shall adequately insure against its liability risks, created by concluding and performing the Contract, by concluding a corresponding liability insurance and maintaining this insurance until the Contract ends/is fulfilled and thereafter. As a minimum requirement, the LSP shall maintain usual transport liability insurance (*Verkehrshaftungssicherung*) on terms equivalent to or more favourable to the insured than "*DTV-VHV laufende Versicherung 2003/2011*".
- 17.3. The LSP undertakes to provide the Purchaser upon request with appropriate written proof of the insurance cover.
- ## 18. Compliance
- 18.1. The LSP 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 LSP and which may be found at [www.linde.com/supplier-CoC](http://www.linde.com/supplier-CoC) (in this Clause 18 referred to as the "**Supplier Code of Conduct**").
- 18.2. The LSP, being a "Supplier" within the meaning of the Supplier Code of Conduct, shall demonstrate compliance with the requirements of the Supplier

Code of Conduct at the request and to the satisfaction of the Purchaser, e.g. by providing data or conducting self-assessments.

- 18.3. If the Purchaser has reason to believe that the LSP may be in material breach of the requirements laid out in the Supplier Code of Conduct, the Purchaser or a third party appointed by the Purchaser may conduct inspections at the LSP's premises in order to verify the LSP's compliance with the requirements of the Supplier Code of Conduct. The Purchaser 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 the LSP's business activities nor violate any of the LSP's confidentiality agreements with third parties. The LSP shall reasonably cooperate with any inspections conducted. Each party shall bear its own expenses in connection with such inspection.
- 18.4. In addition to any other rights and remedies the Purchaser shall also have the right to terminate the Contract and any order issued thereunder without any liability whatsoever, if the LSP is in material breach of the Supplier Code of Conduct or fails to remedy any breach, after written or e-mail notification about the breach by the Purchaser.
- 18.5. Material breaches include, but are not limited to, incidents of forced or child labour, corruption and bribery, and failure to comply with the Supplier Code of Conduct's environmental protection requirements.

## 19. Denied Parties

LSP confirms that he is not a Denied Party, and shall at once notify Purchaser if he becomes a Denied Party. Related to the Services, LSP shall make sure that Purchaser does not directly or indirectly deal with a Denied Party. Denied Party means a party, (i) to whom Purchaser cannot sell, (ii) to whom Purchaser cannot provide directly or indirectly an economic resources, and/or (iii) with whom Purchaser cannot otherwise deal with, all according to a trade regulation. A party, who is an Affiliate of a Denied Party, shall itself also be considered as a Denied Party.

## 20. Severability

Should one or more provisions of the Contracts or of this T&C be or become invalid or unenforceable in whole or in part, this shall not affect the validity and enforceability of the remaining provisions of the Contract and/or this T&C. In place of any general terms and conditions (*Allgemeine Geschäftsbedingungen*) which are invalid or not incorporated into the Contract, the statutory provisions of the Applicable Law shall apply. In all other cases, the Parties shall agree a valid provision to replace the invalid or unenforceable provision which reflects as closely as possible the original economic purpose, provided a supplementary interpretation of the Contract (*ergänzende Vertragsauslegung*) does not have precedence or is not possible.

## 21. Law and venue

- 21.1. The Contract and any services carried out by the LSP thereunder shall be governed by and construed in accordance with German law (the "**Applicable Law**"). German law also applies to the formation of the Contract including the inclusion of this T&C. Any reference to the Applicable Law shall include a reference to EU Regulations and to International Conventions having force of law in Germany, such as, but not limited to the CMR, the CMNI, or the Montreal Convention.
- 21.2. English language terms used in these T&C are describing German legal concepts only and shall not be interpreted by reference to any meaning attributed to them in any jurisdiction other than Germany. Where a German term has been inserted in brackets and/or italics, this German term alone shall be authoritative for the purpose of the interpretation of the relevant term.
- 21.3. The courts in Düsseldorf, Germany, shall have – subject to the following sentence – exclusive jurisdiction to decide on any dispute which may arise out of or in connection with the Contract. However, the Purchaser shall be entitled to sue the LSP at the domicile of the LSP (as defined in EU Regulation 1215/2012). If, in a particular case governed by this T&C, the Applicable Law provides for venues which must not be derogated by contract, the agreement in the first sentence hereof shall be construed as the agreement on an additional venue.