

**CONDITIONS OF PURCHASE
for Supply Contracts**
(February 2003 edition)

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1. Definitions

- 1.1 "Buyer" shall mean Linde AG, Linde Engineering Division Dr.-Carl-von-Linde-Strasse 6-14, D-82049 Hoellriegelskreuth near Munich.
- 1.2 "Owner" shall mean the client of the Buyer for the Plant for which the Goods are intended.
- 1.3 "Order" shall mean the documents comprising the agreements between the Buyer and the Vendor concerning the Goods.
- 1.4 "Goods" shall mean the Goods and services to be provided 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 Goods are intended.
- 1.6 "Site" shall mean the area or ground on which the Plant is to be erected.
- 1.7 "Vendor" shall mean the supplier to whom the Order has been awarded by the Buyer

2. Requirements for Design, Construction and Operation of the Plant

- 2.1 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. 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
 - the General Specifications and the Buyer's Standards.

4. Provision of the Goods, Subcontracts

- 4.1 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 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 Goods.
- 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), and shall pass on to such sub-vendors any technical and time schedule requirements given in the Order. Subcontracts for major parts of the Goods shall require

the prior written consent of the Buyer, which shall not be withheld unreasonably.

- 4.7 The Vendor shall pre-fabricate the Goods in his workshop as far as is possible and feasible.
- 4.8 The Vendor warrants that the Goods are not subject to any export or import restrictions.

5. Changes to the Goods

- 5.1 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 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 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. Technical Documentation

- 6.1 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 Goods.
- 6.2 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.
- 6.3 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.

7. Delivery Time, Liquidated Damages for Delay

- 7.1 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 delivery dates.

- 7.2 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 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 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. Force Majeure

- 8.1 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 trade union in question shall not be considered Force Majeure.
- 8.2 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.
- 8.3 The Vendor shall take all reasonable precautions and measures to minimise the effects of Force Majeure.
- 8.4 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 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. Monitoring Progress, Inspections, Tests

- 9.1 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 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 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 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. Provision of Parts or Materials by the Buyer

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.

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. 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 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. Shipping, Storage

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

- 12.2 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 may reject deliveries without proper shipping documents, test, inspection or acceptance certificates.

- 12.3 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 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. Taking Over, Tests, Passing of Risk

- 13.1 In the event that a defect in the Goods appears within twelve months after delivery, such defect will be deemed to have existed at the time of delivery unless proven otherwise by the Vendor.

- 13.2 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.

- 13.3 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 of the Goods.

14. Warranty for Defects

- 14.1 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 Order and be fully and safely operable

for the purpose intended, that they conform 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.

- 14.2 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 Unless otherwise agreed in the Order and regardless of whether or not the Goods are accepted separately by the Buyer before the Plant is accepted, the Warranty Period for the Goods shall be twelve (12) months from acceptance of the Plant by the Owner, but shall not exceed thirty-six (36) months from complete delivery of the Goods. For repaired or replaced parts the Warranty Period shall start anew and shall terminate at the latest eighteen (18) months after the expiry of the original Warranty Period.
- 14.4 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 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 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 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 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 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,

the Buyer shall have the right, at his option,

14.4.5.1 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

14.4.5.2 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

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

or

14.4.5.4 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. Product Liability, Default

15.1 The Vendor shall indemnify and hold the Buyer harmless from claims arising under the German Product Liability Act ("Produkthaftungsgesetz") 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 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. Warranty for Function

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. Intellectual Property Warranty

17.1 The Vendor warrants that the Goods and their operation on the Site do not infringe any rights of third parties.

17.2 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 actual or alleged patent, trademark, or copyright infringement 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. Secrecy, Ownership, Models

18.1 Documents, data and objects which the Vendor receives from the Buyer for the execution of the Order shall remain the property of the Buyer 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 Title in all drawings, models and other documents that the Vendor prepares for the Order shall be vested in the Buyer.

19. 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.

20. Suspension, Termination

20.1 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 work on the Goods;
- b) not issue any further orders to third parties in respect of the Goods;
- c) 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) 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.

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

- 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

- 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.

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.

20.5 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. In addition, Vendor shall, if requested to do so by Buyer, assign to Buyer any sub-contracts entered into by the Vendor for the Order.

21. Payment, Invoicing, Bonds, Offsetting Accounts, Delay in Payment, Assignment

21.1 Requests for payment, invoices and credit and debit notes shall be submitted in three copies 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 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 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 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 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 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 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 Assignment by the Vendor of claims against the Buyer shall require Buyer's written consent which shall not be withheld unreasonably.

22. Partial Invalidity

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.

23. Place of Fulfilment

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

24. 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).

25. Place of Jurisdiction/Arbitration

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

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

25.2 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 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.