

CONDITIONS OF PURCHASE for SUBCONTRACTS

(December 1998 edition)

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1. Definitions

- 1.1 "Buyer" shall mean Linde AG Process Engineering and Contracting Division, Dr.-Carl-von-Linde-Straße 6 - 14, D-82049 Höllriegelskreuth 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 Scope of Work.
- 1.4 "Scope of Work" 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 for which the goods and services are intended.
- 1.6 "Site" is the place where the Plant or parts thereof are to be installed.
- 1.7 "Buyer's Site Management" are the persons authorized by the Buyer to represent him on Site.
- 1.8 "Vendor's Site Manager" is the Vendor's nominated representative on Site. He shall be entitled as such to give and receive legally binding declarations on behalf of the Vendor.
- 1.9 "Vendor's Site Management" is the management team (including the Site Manager) employed by the Vendor to carry out the work on Site.

2. Quotation

- 2.1 By submitting a quotation, the Vendor confirms that he is familiar with the nature and location of the Site, the soil conditions at and the means of transportation to the Site, as well as with the accommodation situation in the area of the Site and to know, to have understood and to accept the invitation to bid, especially the specifications, safety conditions and the compensation basis. He will not raise any subsequent objections.
- 2.2 Requests concerning the formation of a consortium shall be included in the quotation for approval by the Buyer.

3. Contents of the Order

- 3.1 Any conditions of the Vendor which deviate from these Conditions of Purchase or which are contradictory thereto shall only apply if they are agreed to in writing by the Buyer.
- 3.2 Orders and other conditions 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 Technical Specifications and the Buyer's Standards
- general standards (DIN, EN, VDE, UVV, VDI, etc.) and agreed standards (ASME, ANSI, etc.)

4. Scope of Work , Subcontracts

- 4.1 The Scope of Work 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 scope of work are listed separately in the Order. Only those goods and services shall be considered excluded from the Scope of Work that are expressly mentioned as such in the Order.
- 4.2 The Vendor warrants that the work will be carried out 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 commissioning, operation and servicing of the Scope of Work and shall update this immediately in line with any changes resulting from execution of the Order.
- 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 of work, etc.) that are valid at the location of the Plant if such location is known to him.
- 4.5 If the Vendor has doubts about the proposed design, other instructions given by the Buyer e.g. relating to materials, treatment, processing, or subvendors prescribed by the Buyer, the quality of materials or components ordered/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 subvendors (which term, for the purposes of these conditions, shall include subcontractors) and shall pass on to such subcontractors any technical and time schedule requirements given in the Order. Subcontracts for major parts of the Scope of Work shall require the prior written consent of the Buyer, which shall not unreasonably be withheld.
- 4.7 The Vendor shall release the Buyer from all claims under public and private law which are made against the Buyer due to non-compliance with statutory obligations by the Vendor, irrespective of the legal foundation therefore. In particular, if hired staff are used, the Vendor shall bear sole responsibility for ensuring that the provisions of the German Contractor Transfer Act („Arbeitnehmerüberlassungsgesetz“) are complied with.
- 4.8 The Vendor shall prefabricate the Goods in his workshop as far as its possible and appropriate.
- 4.9 The Vendor gives his assurance that his goods and/or services are not subject to any limitations under Export Law, in particular of Directive (EC) No. 3381/94 (EC-dual-use-VO) and the German Export Decree (AWV). If this is not the case, the Buyer shall be informed accordingly when the quotation is submitted, if necessary with an indication of the export list item.

5. Modification of Scope of Work

- 5.1 If the Buyer requires modification of Scope of Work , the Vendor shall inform the Buyer immediately in writing of any increases or decreases in price and any effects on the completion date, accompanied by supporting evidence. The price increases or decreases shall be determined on the basis of calculation used for the Order. If unit prices have been agreed, the Vendor may only demand an increase in unit prices if the quantities have been reduced in case he can prove that there has been an unacceptable financial burden.
- 5.2 The parties shall negotiate about modifications to the Order, taking into due account their mutual interests and obligation of good faith with the aim of reaching an agreement as regards the Order modifications. After the order modifications have been agreed, the Buyer will issue a written Change Order stating the required changes and modifications to the Order .
- 5.3 The Vendor shall, however, even if modifications to the Order have not yet been agreed, promptly proceed to carry out the required changes with the other conditions of the Order remaining unchanged for the time being.

6. Commencement of Work, Approvals

- 6.1 The Buyer's Site Management shall be competent and authorized to deal with all matters and decisions and to give all instructions regarding commencement of work, scope of work and execution of the work, the technical execution of the Scope of Work and the behaviour on the Site.
- 6.2 The Vendor shall inform the Buyer of a reasonable latest date by which the Buyer shall inform him of any modifications arising from requirements on the part of the Owner and from the conditions on Site with regard to the Vendor's works as set out in the Order, in order that these modification can be carried out by the Vendor without any additional charge. The Buyer will provide the Vendor by this date with documentation updated in line with the latest information, which shall also contain any changes as regards the work of the Vendor.
- 6.3 Before the commencement of his work, the Vendor shall find out about the status of any prior works (especially with regard to possible effects on the works to be provided by him) and shall inform the Buyer in writing immediately of any concern that he may have in this respect. If the Vendor fails to do this, he is not allowed to make any claims against the Buyer because of the status of any prior work.

7. Execution of the Order

- 7.1 Material provided by the Buyer or the Owner

Material received from the Buyer or Owner shall remain the property of the Buyer or Owner. The Vendor shall be fully responsible for such material. Material that is not proven to have been installed, e.g. by recognized drawings and parts lists, shall be returned. If the Vendor is unable to do this because the material has been lost, replacements shall be obtained at his expense for the lost material through the Buyer's warehouse. If the administration of the material is part of the Scope of Work of the Vendor, he shall prepare a schedule of materials.

7.2 Vendor's performance's and supplies

The Vendor shall be responsible for the provision of all materials, substances, components, instruments, tools and equipment (incl. organizing the transport thereof) in due time, which he needs for the execution of the Scope of Work, proper storage on Site so that they do not block traffic in agreement with the Buyer's Site Management, compliance with all relevant laws, Decrees and Regulations (e.g. the Site Decree and the official Accident Prevention Regulations) also with regard to storage and if necessary disposal, and to ensure that they are in a first-class, safe condition ready for use and they are suitable for safe, economical work.

If any of these obligations are violated, the relevant objects shall be replaced by the Vendor immediately at no cost to the Buyer and without causing any delay by objects to be approved by the Buyer's Site Management.

7.3 Job safety, behaviour on Site

7.3.1 The Vendor shall take all necessary safety precautions and comply with all safety and other precautions to protect persons and objects against injury or damage which could occur in the performance of his services, and shall coordinate with other contractors on Site to avoid any risks or dangers between themselves.

7.3.2 When the Order has been placed, the Vendor shall disclose to the Buyer a written organizational plan, containing the names, addresses, telephone and fax numbers plus e-mail addresses of all persons exercising management positions for the Vendor on Site (including the person responsible for job safety on the Site).

7.3.3 The Buyer's Site Management shall be informed on all accidents involving Vendor's employees which have to be reported under the statutory and local authority regulations by providing a description of the sequence and causes of the accident in the form of a copy of the prescribed accident notification.

7.3.4 The taking of photographs on the Site shall only be permitted with the prior approval of the Owner and the Buyer.

7.4 Vendor's staff

7.4.1 Prior to commencement of the works, the Vendor shall nominate a suitable Vendor's Site Manager who shall bear full responsibility for provision of the Goods.

7.4.2 The absence of the Vendor's Site Manager from the Site shall be notified in advance to the Buyer's Site Management. In such a case, a qualified deputy with equal authority shall be nominated by the Vendor.

7.4.3 At least 50 % of the staff used by the Vendor for the execution of the Scope of Work shall be his own staff, i. e. staff employed by him, unless the Buyer specifies a higher quota of own staff. The Vendor's Site Management shall consist entirely of his own staff.

7.4.4 The Vendor shall ensure, at his own expense, that the staff used by him and the Buyer's staff shall always be able to understand each other sufficiently.

7.4.5 If one of his staff is not available on Site or unable to work, because of accident or illness, for a longer period than 4 weeks, or if one of his staff should die, the Vendor shall be entitled and obliged to provide an equivalent substitute at his own expense.

- 7.4.6 The Vendor shall, in accordance with the provisions of the German Employee Dispatch Act („Arbeitnehmerentsendegesetz“), for all building work as defined in § 75 Para. 1 No. 2, German Work Development Act („Arbeitsförderungsgesetz“) carried out in the area of the Federal Republic of Germany, guarantee his staff the minimum working conditions (e.g. with regard to wages, duration of vacation, holiday pay) set out in a Building Industry Tariff Agreement declared as being generally binding. This shall also apply for foreign Vendors, even if these use foreign staff only.
- 7.5 Working time, standby and lost time, daily reports
- 7.5.1 The Vendor shall organize his working time in accordance with the Site regulations of the Owner in such a way that the completion of the Scope of Work in time is guaranteed, whilst complying with the statutory regulations on working time.
- 7.5.2 The Vendor shall minimize standby time and lost time as far as possible. He shall take into account in his staff planning that hourly paid and additional works that are not part of the Vendor's contractual scope of work to date may occur and must be carried out by him.
- 7.5.3 Payment for standby time and time lost which the Buyer is responsible for shall only be made if the Vendor informs the Buyer's Site Management in writing immediately after they occurred. Payment for accepted standby times shall only be made for the staff waiting on the Site, at the hourly rates agreed to in the Order.
- 7.5.4 In the case of interruptions in erection for which the Buyer is responsible
- a) the Buyer may demand that the Vendor withdraws the staff in question;
 - b) the Vendor may withdraw the staff if the interruption lasts more than three weeks.
- In these cases, the Buyer shall pay the costs of removal of staff and their later return to the Site.
- 7.5.5 The Vendor knows that his goods and services are part of a complex overall Plant which is to be constructed. He is aware that, normally a number of companies will be working on the Site at the same time, and that mutual dependencies will be created with regard to execution of the works and that coordination of the progress of the work with other companies working on Site will be required to avoid, or at least to minimize, mutual obstructions as far as possible. The Vendor accepts that, particularly because of these mutual dependencies, changes in plan and changes to the proposed sequence of execution of the works - even if short-term - will occur frequently on the Site as a matter of course. The Vendor may therefore not demand the reimbursement of additional costs caused by a non-systematic sequence of operations, changes in the proposed sequence of operations or other changes in plan.
- 7.5.6 The Vendor shall report the names of his staff to the Buyer's Site Management every day by 10 a.m.
- 7.6 Insurances
- 7.6.1 For the duration of his work, the Vendor shall conclude and maintain the following insurances at a sufficient level and at his own expense:

7.6.1.1 A manufacturer's public liability and product liability insurance, whereby statutory liability for damages from the environmental effect on soil, air or water, including oceans, lakes, rivers and canals (environmental damage) and all resultant further damage must be covered. Statutory resulting insurance from cases of less occurring abroad should also be covered.

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

7.6.2 The Vendor shall provide the Buyer with the corresponding proof of the above-mentioned insurances by production of an insurance cover note.

7.6.3 Erection All-Risk Insurance

If the Buyer concludes an erection all-risk insurance, the Vendor shall be considered as being included in the insurance; the Vendor shall pay the agreed deduction. The Vendor's erection equipment is not included in the insurance.

If the party causing the damage cannot be determined or in the case of Force Majeure, the agreed deduction shall be paid by all the damaged joint policy-holders proportionally according to the respective damage amount.

Execution damage claim have to be settled with the insurance company at the actual cost via the Buyer.

8. Vendor's Claims

The Vendor has to inform the Buyer within seven (7) working days in writing of the occurrence of any event if he thinks he may as a result of such event have a claim to an increase in the contract price or a change of a deadline. Otherwise he will lose the right to make such claims.

9. Technical Documentation

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

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

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

10. Delivery Time, Contractual Penalties

- 10.1 The Vendor shall carry out his own monitoring of time schedule. The Vendor shall be solely responsible for monitoring and directing his subvendors 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 immediately of expected delays or other problems likely to affect the agreed delivery dates. Neither such notification nor any advice given by the Buyer shall relieve the Vendor of his obligation to make timely delivery. If the Vendor due to his fault fails to submit such notification, the Vendor shall be liable for all damage resulting therefrom. The Vendor shall also inform the Buyer of the corrective measures taken to meet the agreed delivery dates.
- 10.2 If delays occur through the fault of the Vendor, he shall take the necessary measures to speed up the work at his own expense. These include, in particular, increased use of staff and material resources, working multiple shifts, overtime, special transport as required by the Buyer and the costs of monitoring or support by the Buyer. If, in spite of receiving a written warning, the Vendor fails to take reasonable measures to accelerate the work, or if major damage would otherwise occur for the Buyer or to third parties or if the operational safety of the Plant is endangered, 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.
- 10.3 Contractual penalties for delay, other agreed contractual penalties/liquidated damages and contractual penalties for liquidated damages performance guarantees may be applied by the Buyer until the payment of the final invoice, even if no reservation is expressed on acceptance of the Scope of Work. Cancellation or termination of the Order shall not affect any claims to payment of contractual penalties liquidated damages and other damages that have already accrued.
- 10.4 If the Buyer, as part of the execution of the overall works on the Site, changes the Vendor's deadlines, the Vendor shall, as part of his obligation to be flexible, accept these time changes without charge as far as this is possible and acceptable. If this ceases to be acceptable, he shall list the additional costs he has incurred and provide evidence thereof. Any savings made by the Vendor caused by the changes in timing will be added in.
- 10.5 If, as part of the overall assembly, work has to be carried out by a number of contractors, the Vendor undertakes to work with and coordinate with the Buyer and the other companies on the Site so that the contractual deadlines are met.

11. Force Majeure

- 11.1 The Vendor shall not be liable for Force Majeure. Parts becoming rejects, delays caused by subvendors except if caused by Force Majeure, and strikes shall not be considered Force Majeure.
- 11.2 The Vendor shall give immediate notice and provide evidence of the start and end of such events, the expected delay and any other consequences. Failing such notification with evidence, no postponement of completion will be accepted.
- 11.3 The Vendor shall take all reasonable precautions and measures to minimise the effects of Force Majeure.
- 11.4 If the Force Majeure lasts longer than three months, either party may cancel the Order in writing. On request of the Buyer, parts of the Scope of Work which are wholly or partially completed shall be delivered against payment of the price pro rata.

12. Monitoring Progress, Inspections, Tests

- 12.1 When goods are ordered including erection, the Vendor shall disclose to the Buyer, within one month of the Order being placed, a timetable for all the Scope of Work covered in the contract, showing all the main stages in the work from the receipt of the Order to the end of the contractual obligations in the form of a bar chart. This plan shall be prepared according to the Buyer's requirements and shall be submitted by the Vendor to the Buyer without being asked on the third working day of every month, in four copies, with the actual status recorded in the plan.
- 12.2 The Buyer, the Owner and their representatives shall be entitled to check the progress of work at the Vendor's premises or those of his subvendors, 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 subvendors accordingly.
- 12.3 The Buyer, the Owner and their representatives shall be entitled to carry out non-destructive testing (e. g. X-ray and ultra-sound tests) on a random basis. If defects are found, the Vendor shall bear the costs of these inspections.
- 12.4 If repeated inspections are necessary because of defects and/or delays in production/delivery due to Vendor's fault, the Vendor shall bear the costs.
- 12.5 If the Vendor, deviating from the Contract, wishes to move his pre-manufacturing work to production locations outside the Site, he shall require the prior approval of the Buyer to do so.

13. Provision of Parts or Materials

If the Purchase provides parts or materials, the Vendor may use these only to complete the Order. They shall remain the property of the Purchaser and as such must be stored, labelled and recorded separately by the Vendor, safeguarded and insured as third party property at his expense.

14. Spare Parts

The Vendor shall on request supply to the Buyer spare parts at reasonable prices and otherwise subject to the conditions of the Order until the end of the normal lifetime of the Scope of Work, up to 10 years from the delivery date of the Scope of Work.

15. Shipping, Storage

- 15.1 Partial shipments shall require the express permission of the Buyer and shall be clearly designated as such in the shipping documents.
- 15.2 The shipping documents shall show the information specified by the Buyer, especially the order no., order item no., job no., code no. and dimensions, plus quantity and weight per item.

The Buyer's packaging, marking and dispatch regulations shall be complied with.

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

- 15.3 The Scope of Work shall be suitably packed for shipment, according to applicable regulations of the rail agencies or carrier. On the Buyer's request, the Vendor shall ensure, if necessary by supplementary agreement with the carrier used by him, that the packaging is removed on arrival, transported back to the Vendor or manufacturer and recycled, all at no cost to the Buyer.
- 15.4 On request of the Buyer - even after notification of readiness for shipment - the Vendor shall postpone shipment of the Goods if take-over thereof is temporarily impossible. If shipment is the trigger for payment, this trigger shall be regarded as having occurred with the demand for postponement of shipment. However, payment of any instalment due shall only be made in return for the anticipated transfer of title in the Scope of Work to the Buyer.

16. Acceptance

- 16.1 Unless otherwise agreed, Acceptance of the Scope of Work by the Buyer will take place at the Plant Site in connection with the start-up or acceptance of the Plant by the Owner. A mere reference to Incoterms clauses - even if this is made in the Order - shall not by any means be considered as being "otherwise agreed" in this sense. A technical or factory test or inspection of the Scope of Work by the Buyer shall not be deemed Acceptance.
- 16.2 Acceptance is subject to the submission of all official test and inspection certificates from the authorities that the Vendor is required to provide.
- 16.3 The Vendor shall provide all test appliances and other equipment required for the Acceptance and the related tests without charge and bear the material costs incurred for the Acceptance. The Vendor and the Buyer shall each bear their own personnel costs.
- 16.4 The Acceptance shall be recorded in a Report.
- 16.5 If the Acceptance test shows that the Scope of Work is not in accordance with the Order, the Vendor shall immediately carry out all measures necessary to rectify or complete the Scope of Work in accordance with the Order, at his own expense. 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 failure was due to his fault.
- 16.6 Provisional Acceptance may be granted on the sole decision of the Buyer, subject to the provision that defects being not essential are repaired within a reasonable period as determined by the Buyer, and subject to retention of a reasonable part of the price.
- 16.7 Acceptance of the Scope of Work shall not be deemed a waiver of any of Buyer's rights, especially warranty claims, claims for damages for delays, contractual penalties, liquidated damages etc.
- 16.8 The Buyer or the Owner shall be entitled to use the Scope of Work in whole or in part for trial purposes prior to Acceptance provided that the Vendor has been informed thereof and has not objected for cause. This shall not be deemed full or partial Acceptance nor modify the duration or extent of the Vendor's Warranty.

17. Warranty, Notification of Defects

- 17.1 The Vendor warrants throughout the mechanical warranty period that the Scope of Work set forth in the order will at least meet all properties and performances, will be free from defects, i. e. in particular that they will conform to the descriptions, meet all properties and performances specified and be fully and safely operable for the purpose intended, that they conform to the latest accepted state of technology and comply with the relevant technical documents and regulations, recommendations and guidelines as listed in Art. 4.4.

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.

- 17.2 Due to the special nature of plant construction, testing of the Scope of Work and, if applicable, notification of defects, can only be carried out after the Scope of Work have been installed and taken into use. Therefore, any notice of defects, of incorrect delivery or quantity deviation shall be deemed as timely made if made without undue delay after detection thereof after unpacking, installation or taking into use, as the case may be.

- 17.3 Unless otherwise agreed in the Order and regardless of whether or not the Scope of Work is accepted separately by the Buyer before the plant is accepted, the Warranty Period for the Scope of Work shall be 12 months from acceptance of the Plant by the Owner, but not longer than 36 months after complete and proper delivery of the Goods, in the event that Acceptance of the Plant is delayed for reasons due to the Buyer.

The mechanical Warranty Period for spare parts shall be 12 months from their installation, but not longer than 36 months after complete and proper delivery. For repairs or replacements, the Mechanical Warranty Period shall be 12 months from putting into operation after such repair or replacement.

- 17.4 If defects appear within the mechanical Warranty Period, the Vendor shall immediately remedy the same at its cost by repairs and/or replacements, in consultation with the Buyer, free on Site at the Plant, including disassembly and reassembly; mode of transport shall be at Buyer's option. If necessary, the defects shall be repaired with increased use of staff and material resources, or by working multiple shifts or overtime. As far as it is permitted in the country in which the repair works are to be carried out, the defects shall also be repaired, as far as necessary, by working on Sundays or public holidays.

- 17.5 If, under the Warranty, parts are modified or replaced by other parts, the corresponding spare parts already supplied must also be modified or replaced at no cost.

- 17.6 If the Scope of Work cannot be used, in whole or in part, because of the defects, the Mechanical Warranty Period shall be extended by the period during which the Scope of Work cannot be used.

In this case, the Vendor shall, in order to avoid such loss of use, where reasonable, immediately install at his cost provisional facilities and maintain these until the defect has been repaired.

- 17.7 If, in spite of repeated repairs, the same type of defect keeps appearing or if other parts of the Scope of Work are likely to be also affected by the defect, the Vendor shall at his cost remedy the underlying cause of the defect, including defects in the said other parts, by 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.
- 17.8 If the Vendor is unable to remedy a defect within a reasonable time, or if the operational safety of the Plant is at risk, or if major damages would otherwise occur, the Buyer may perform or cause to be performed by third parties such remedial work. All costs shall be paid 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.
- 17.9 Any limitation/prescription periods for claims in respect of individual defects shall not end before the expiry of the mechanical Warranty Period.
- 17.10 Claims under Art. 16 may also be made before Acceptance.

18. Liability

- 18.1 The Vendor shall indemnify and hold the Buyer harmless from claims arising from product liability and on the basis of the Product Liability Act to the extent damages are caused by a defect in the Scope of Work. The Vendor shall bear all costs and expenditure including costs of legal action and of any recall action. The subject matter and scope of any recall action shall be determined in consultation with the Vendor, to the extent this is reasonable and feasible.
- 18.2 The Buyer will not claim loss of production or loss of profit unless damages or losses are due to gross negligence or wilful misconduct of the Vendor or claims are made in turn against the Buyer by the Owner or third parties in this respect or such damages are covered by an insurance held by the Vendor.

19. Industrial Property Warranty

- 19.1 The Vendor warrants that the Scope of Work and its operation in the place of use do not infringe any rights of third parties.
- 19.2 The Vendor shall indemnify and hold the Buyer harmless from and against any and all claims, loss, damage, liability, cost and expense resulting from or arising in connection with any actual or alleged patent, trademark, or copyright infringement with respect to the Scope of Work or any parts or components thereof. In addition, Vendor will at its cost obtain for the Buyer the right to buy, use and sell the Scope of Work or such parts or components which may be found infringing, or replace the same with equivalent, non-infringing Scope of Work parts or components. Buyer may, at its option, assign the benefits of any warranties hereunder to the Owner.

20. Secrecy, Ownership, Models

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

21. Publications, Advertising

Without the permission of the Buyer, the Vendor may not issue any publicity in connection with the Order or the Plant or cause any such publicity to be issued. This shall also apply for use of the same as reference.

22. Suspension, Termination

- 22.1 The Buyer may at any time suspend or terminate the execution of the Order by written notice to the Vendor. On receipt of such notification, the Vendor shall:
- a) stop work on the Scope of Work;
 - b) not issue any further orders to third parties in respect of the Scope of Work;
 - c) make every effort to cancel or suspend orders that he has awarded to third parties in respect of the Scope of Work 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 subvendors, until further instructions are issued by the Buyer;
 - e) follow the Buyer's instructions as regards these goods and services.
- 22.2 If the Buyer terminates the Order for reasons which are due 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 and services completed according to the Order, plus a reasonable share of the overhead costs for the part of the Scope of Work that has not been completed and the proven, reasonable costs for ceasing to implement the Order.
- 22.3 If the Order is suspended/restarted, the Vendor may demand reimbursement of the reasonable proven additional costs incurred and a reasonable adjustment of the completion date.
- 22.4 If the Buyer terminates the Order for reasons due to the Vendor, the Buyer may
- demand delivery of the goods and services already completed, and complete and deliver, either himself or through third parties at his option, the goods and services not yet completed, at the expense and risk of the Vendor. Art. 16.8, sentence 3, shall apply accordingly. The Vendor shall be entitled to the pro rata Order price for the goods and services taken over by the Buyer, less any additional costs and expenses incurred by the Buyer for completion and delivery; or

- waive delivery of the Goods and demand 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 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 be, in particular:

- cessation of payment by the Vendor;
- application for opening of settlement or bankruptcy proceedings in respect of the Vendor's assets;
- refusal to repair defects by the Vendor or failure to repair defects within a reasonable period specified by written notice of the Buyer;
- defects in the Scope of Work, repair of which is impossible or unacceptable to Buyer, or defects because of which, through official regulation or order, operation of the Plant is enjoined, made unduly onerous or restricted;
- major default by the Vendor such as in respect of quality or agreed deadlines which make it unlikely that the Scope of Work will be completed in accordance with the Order or on time, if the Vendor has failed to make good such default within a reasonable period specified by written notice of the Buyer.

22.5 In the event of termination of the Order, the Vendor shall, without being asked, 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, on demand of the Buyer, assign any subcontracts entered into by the Vendor for the Order.

23. Taxes/Charges, Payment, Invoicing, Bonds, Offsetting Accounts

23.1 The Vendor shall bear the costs for all customs, taxes and official dues of any type, in particular taxes and charges on salaries, wages and other remunerations arising in the execution of the Scope of Work.

23.2 Basis for invoicing of unit price purchase orders will be verifiable calculation of the quantity of materials used (the so-called volume calculation). In the event several requests for payment are made, as agreed, the volume calculations shall indicate the quantities carried out up to the contractually agreed end of the invoicing period and the total quantities of the individual items.

Buyer's Site Management's signature on the dimensions sheet shall only certify the correctness of the quantities in respect of the described performances. Verification of conformity of performance items indicated and of all prices with the dimension sheet shall be subject to subsequent auditing.

The volume calculations of individual works shall be prepared immediately after completion of the individual works and submitted to the Buyer's Site Management, independently of the invoices, in line with the progress of the work.

- 23.3 Hourly paid works will be charged on the basis of a time sheet. Time sheets shall be prepared for each working day and handed to the Buyer's Site Management for confirmation by 10 a.m. of the working day following the day on which the work was done. The time sheet must show the order number, the place of execution and exact description of the works performed, the names and qualifications of the workers, the number of working hours completed by them and the name of the person placing the order. As far as travel time is to be remunerated, this should not be included in the verified working hours. Materials, tools and supporting facilities provided by the Vendor will only be remunerated when this has been provided for in the Order and these are included on a separate dimensions sheet. Works for which a lumpsum price has been agreed will only be remunerated if the execution of the works by the Vendor is proven.
- 23.4 Requests for payment, invoices and credit and debit notes shall be submitted in duplicate in a form which can be checked, stating the Order number, to the Buyer's Accounting Department. Value Added Tax shall be shown separately.
- 23.5 Payments will only be made, if all events which trigger payment of the instalment in question and the previous instalments have occurred.
- 23.6 If the Order provides that the warranty retention can be redeemed by a warranty bond, the Buyer may refuse the retention to be redeemed as long as the Owner withholds payments from him relating to the Scope of Work.
- 23.7 The Vendor may only offset the Buyer's claims for payments against his own claims if these are undisputed or have been determined by final court or arbitration award.

The Buyer may offset claims for payment by the Vendor against not only his own claims but also against all claims of other companies of the LINDE Group (§18 AktG) on the basis of authorisations issued to him. 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 and with valuation.

- 23.8 Unless otherwise agreed in the Order, final invoices shall be submitted within 4 weeks after mechanical completion of the Scope of Work, split up in accordance with the code numbers listed in the Order and all other invoices submitted to date, showing invoice number, date, amount, retention as well as total retentions, payments due and VAT. In addition and as far as available, the protocol, of the mechanical completion of the Scope of Work jointly signed by vendor and Buyer shall also be enclosed for purposes of payment release.
- Payment of the final invoice shall not release the Vendor from his contractual obligations and warranties.

24. Voidness in Part

Should any provision in these Conditions of Purchase or in the Order prove to be or become void, ineffective or inoperable, the validity of the remaining provisions shall not be affected. The Buyer and the Vendor shall be obliged, however, in such a case to replace the respective provision by a valid and operable provision which meets as closely as possible the purpose of the original provision.

25. Place of Fulfilment

Unless otherwise stated in the Order, the place of fulfilment is the Site.

26. 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).

27. Place of Jurisdiction/Arbitration

27.1 For Vendors having their main place of business in a country which has signed the European Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters (EuGVÜ):

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

27.2 For Vendors having their main place of business in a country which has not signed the European Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters (EuGVÜ):

All disputes arising out of or in connection with the Order shall be finally decided in accordance with the Rules of Conciliation and 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 German language.