



**CONDITIONS OF PURCHASE  
for Supply Contracts**  
(August 1998 edition)

**Table of Contents**

1 *Definitions*  
 2 *Contents of the Order*  
 3 *Scope of Supply, Subcontracts*  
 4 *Changes to the Goods*  
 5 *Technical Documentation*  
 6 *Delivery Time, Penalties for Delay*  
 7 *Force Majeure*  
 8 *Monitoring Progress, Inspections, Tests*  
 9 *Provision of Parts or Materials*  
 10 *Spare Parts*  
 11 *Shipping, Storage*  
 12 *Acceptance*  
 13 *Warranty, Notification of Defects*  
 14 *Liability*  
 15 *Industrial Property Warranty*  
 16 *Secrecy, Ownership, Models*  
 17 *Publications, Advertising*  
 18 *Suspension, Termination*  
 19 *Payment, Invoicing, Bonds, Offsetting Accounts*  
 20 *Partial Invalidity*  
 21 *Applicable Law*  
 22 *Place of Jurisdiction/Arbitration*

**1. Definitions**

- 1.1 "Purchaser" shall mean Linde AG Process Engineering and Contracting Division Dr.-Carl-von-Linde-Strasse 6-14, D-82049 Hoellriegelskreuth near Munich.  
 1.2 "Owner" shall mean the client of the Purchaser for the Plant for which the Goods are intended.  
 1.3 "Order" shall mean the documents comprising the agreements between the Purchaser 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 Purchaser and for which the Goods are intended.

**2. Contents of the Order**

- 2.1 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 Purchaser.

- 2.2 Orders and other conditions shall only be binding if they are confirmed or given in writing by the Purchaser.  
 2.3 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  
 - the General Specifications and the Purchaser's Standards  
 - general standards (DIN, VDE, UVV, VDI, etc.) and agreed standards (ASME, ANSI, etc.)

**3. Scope of Supply, Subcontracts**

- 3.1 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 goods and services shall be considered excluded from the Goods that are expressly mentioned as such in the Order.  
 3.2 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).  
 3.3 The Vendor shall supply the technical documentation for commissioning, operation and servicing of the Goods and shall update this immediately in line with any changes resulting from execution of the Order.  
 3.4 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.  
 3.5 If the Vendor has doubts about the proposed design, other instructions given by the Purchaser e.g. relating to materials, treatment, processing, or subvendors prescribed by the Purchaser, the quality of materials or components ordered/provided by the Purchaser or the

services provided by other contractors, he shall promptly notify the Purchaser thereof in writing, if possible before the start of work.

3.6 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 subvendors 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 Purchaser, which shall not unreasonably be withheld.

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

3.8 The Vendor warrants that the Goods are not prohibited by any export restrictions in his country.

#### **4. Changes to the Goods**

4.1 If the Purchaser requires changes to the Goods, the Vendor shall inform the Purchaser 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. In case of unit prices, these shall be applied to the increased or decreased quantities, unless the increase or decrease is excessive and materially affects the basis of calculation, in which case Purchaser or Vendor may demand negotiations about an equitable reduction or increase, respectively, of the unit price.

4.2 The parties shall negotiate in good faith about modifications to the Order, taking into due account their mutual interests and obligation of good faith. The Purchaser will issue a written Change Order stating the agreed changes to the Goods and modifications to the Order.

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

#### **5. Technical Documentation**

5.1 Any change requested or approval given by the Purchaser 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.

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

5.3 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 Purchaser or the Owner, the Vendor shall reimburse to the Purchaser the costs for any changes, repairs and/or replacement of such equipment resulting from such errors.

#### **6. Delivery Time, Penalties for Delay**

6.1 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 Purchaser 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 Purchaser 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 Purchaser of the corrective measures taken to meet the agreed delivery dates.

6.2 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, on Sundays and on public holidays, special transport as required by the Purchaser and the costs of monitoring or support by the Purchaser. 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 Purchaser or to third parties or if the operational safety of the Plant is endangered, the Purchaser may complete himself or have a third party complete the Goods in whole or in part at the risk and expense of the Vendor.

6.3 Time is of the essence of the Order. Penalties for delay, other agreed penalties and penalties or liquidated damages for performance guarantees may be applied by the Purchaser until the payment of the final invoice, even if no reservation is expressed on acceptance of the Goods. 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.

## **7. Force Majeure**

- 7.1 The Vendor shall not be liable for Force Majeure. Parts becoming rejects, delays caused by subvendors except if caused by Force Majeure, and wildcat strikes shall not be considered Force Majeure.
- 7.2 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.
- 7.3 The Vendor shall take all reasonable precautions and measures to minimise the effects of Force Majeure.
- 7.4 If the Force Majeure lasts longer than three months, either party may cancel the Order in writing. On request of the Purchaser, parts of the Goods which are wholly or partially completed shall be delivered against payment of the price pro rata (less any amounts previously paid).

## **8. Monitoring Progress, Inspections, Tests**

- 8.1 The Purchaser, 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.
- 8.2 The Purchaser, 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.
- 8.3 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.
- 8.4 Testing, inspections or approvals by the Purchaser 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.

## **9. Provision of Parts or Materials**

If the Purchaser 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.

## **10. Spare Parts**

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

## **11. Shipping, Storage**

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

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

- 11.3 The Goods shall be suitably packed for shipment, according to applicable regulations of the rail agencies or carrier. On Purchaser'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 Purchaser.
- 11.4 On request of the Purchaser - even after notification of readiness for shipment - the Vendor shall postpone shipment of the Goods if takeover 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 Purchaser.

## **12. Acceptance**

- 12.1 Unless otherwise agreed, Acceptance of the Goods by the Purchaser will take place at the Plant site in connection with the start-up or acceptance of the Plant by the Owner. A technical or factory test or inspection of the Goods shall not be deemed Acceptance unless otherwise expressly provided.

- 12.2 Acceptance is subject to the submission of all official test and inspection certificates from the authorities that the Vendor is required to provide.
- 12.3 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 Purchaser shall each bear their own personnel costs.
- 12.4 The Acceptance shall be recorded in a Report to be signed jointly by the Vendor and the Purchaser.
- 12.5 If the Acceptance test shows that the Goods are not in accordance with the Order, the Vendor shall immediately carry out all measures necessary to rectify or complete the Goods in accordance with the Order, at his own expense. The costs of the failed acceptance test, such as Purchaser's personnel costs, cost of test and inspection agencies, shall be borne by the Vendor if the failure was due to his fault.
- 12.6 Provisional Acceptance may be granted subject to the provision that minor defects listed in a punch list are repaired within a reasonable period as determined by the Purchaser, and subject to retention of a reasonable part of the price.
- 12.7 Acceptance of the Goods shall not be deemed a waiver of any of Purchaser's rights, especially claims under the Mechanical Warranty, claims for penalties for delays, liquidated damages, etc.
- 12.8 The Purchaser and the Owner shall be entitled to use the Goods 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.

**13. Warranty, Notification of Defects**

- 13.1 The Vendor warrants throughout the Mechanical Warranty Period that the Goods will be free from defects, i.e. in particular that they will conform to the descriptions set forth in the Order, that they will at least meet all properties and performances specified and be fully and safely operable for the purpose intended, that they will be free from defects in design, material and workmanship, 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. 3.4.

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

- 13.2 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, 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.
- 13.3 Unless otherwise agreed in the Order and regardless of whether or not the Goods are accepted separately by the Purchaser before the Plant is accepted, the Mechanical Warranty Period for the Goods shall be 12 months from acceptance of the Plant by the Owner, but shall not exceed 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 Purchaser.  
The Mechanical Warranty Period for spare parts shall be 12 months from their installation, but shall not exceed 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.
- 13.4 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 Purchaser, free on site at the Plant, including disassembly and reassembly; mode of transport shall be at Purchaser's option.

If necessary, the defects shall be repaired with increased use of staff and material resources, and by working multiple shifts, overtime, on Sundays and on public holidays.

The Vendor shall also be liable for all other costs of repairing the defects, such as material and personnel costs, daily allowances, costs of accommodation, irrespective of whether these are incurred by the Vendor, Purchaser or Owner.

- 13.5 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 to the Purchaser.
- 13.6 If the Goods 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 Goods cannot be used. In such event,

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.

- 13.7 If, in spite of repeated repairs, 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 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 Purchaser, for the parts in question.
- 13.8 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 Purchaser 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.
- 13.9 Any limitation/prescription periods for claims in respect of individual defects shall not end before the expiry of the Mechanical Warranty Period.
- 13.10 Claims under Art. 13 may also be made prior to Acceptance.

**14. Liability**

- 14.1 The Vendor shall indemnify and hold the Purchaser harmless from claims arising under the Product Liability Act or otherwise from product liability to the extent damages are caused by a defect in the Goods. The Vendor shall bear all costs and expenditure including costs of legal action and of any recall action. Any recall action shall be made in consultation with the Vendor, to the extent this is reasonable and feasible.
- 14.2 The Purchaser 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 Purchaser by the Owner or third parties in this respect or such damages are covered by an insurance held by the Vendor.

**15. Industrial Property Warranty**

- 15.1 The Vendor warrants that the Goods and their operation in the place of use do not infringe any rights of third parties.
- 15.2 The Vendor shall indemnify and hold the Purchaser harmless from and against any and all claims and 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 Goods or any parts or components thereof. In addition, Vendor will, at its cost, obtain for Purchaser the right to buy, use and sell the Goods or such parts or components which may be found infringing, or replace the same with equivalent, non-infringing Goods, parts or components. Purchaser may, at its option, assign the benefits of any warranties hereunder to the Owner.

**16. Secrecy, Ownership, Models**

- 16.1 Documents, data and objects which the Vendor receives from the Purchaser for the execution of the Order shall remain the property of the Purchaser 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 Purchaser. The Vendor shall instruct and oblige his personnel accordingly.
- 16.2 Title in all drawings, models and other documents that the Vendor prepares for the Order shall be vested in the Purchaser.

**17. Publications, Advertising**

Without the permission of the Purchaser, 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.

**18. Suspension, Termination**

- 18.1 The Purchaser 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 that he has awarded to third parties in respect of the Goods if requested to do so by the Purchaser;
  - 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 Purchaser;
  - e) follow the Purchaser's instructions as regards these goods and services.

18.2 If the Purchaser 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 proven reasonable cancellation costs, and, to the extent Purchaser succeeds 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.

18.3 If the Order is suspended/restarted, the Vendor may demand reimbursement of the reasonable proven costs incurred and a reasonable adjustment of the completion date.

18.4 If the Purchaser terminates the order for reasons due to the Vendor, the Purchaser 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. 13.8, 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 Purchaser, less any costs and expenses incurred by the Purchaser for completion and delivery in excess of the remaining Order price; 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 Purchaser 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 Purchaser 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 Purchaser;
- defects in the Goods, repair of which is impossible or unacceptable to Purchaser, 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 Goods 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 Purchaser.

18.5 In the event of termination of the Order, the Vendor shall return to the Purchaser 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 Purchaser, assign any sub-contracts entered into by the Vendor for the Order.

## 19. Payment, Invoicing, Bonds, Offsetting Accounts

19.1 Requests for payment, invoices and credit and debit notes shall be submitted in four copies in an appropriate form, stating the Order number, to the Purchaser's Accounting Department. Value Added Tax, if applicable, shall be shown separately.

19.2 Payments will only be made, if all events which trigger payment of the instalment in question and the previous instalments have occurred.

19.3 If the Order provides that the warranty retention can be redeemed by a warranty bond, the Purchaser may refuse the retention to be redeemed as long as the Owner withholds payments from him relating to the Goods.

19.4 The Vendor may only offset the Purchaser's claims for payments against his own claims if these are undisputed or have been determined by final court or arbitration award.

The Purchaser 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 on the basis of authorisations issued to him. If these claims are due on different dates, the Purchaser's claims shall be settled at the latest when the Purchaser's liabilities fall due and with valuation.

## 20. 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. The Purchaser 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.

**21. 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).

**22. Place of Jurisdiction/Arbitration**

- 22.1 For Vendors having their main place of business in a country which has signed the European Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters:

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

- 22.2 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.