CONDITIONS OF PURCHASE
for Engineering Services
(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 Work is intended.

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

1.4 "Work" shall mean the work and services to be executed 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 Work is intended.

1.6 "Hardware" shall mean that part of the Plant to be fabricated, built, constructed and/or erected on the basis of the Work.

1.7 "Vendor" shall mean the engineering company to which the Order has been awarded.

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 executing the Work and also that the location of the Plant 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 Technical Specifications and Standards.

4. Execution of the Work, Subcontracts

4.1 The Vendor shall carry out the Work in a diligent and timely manner and in accordance with the requirements of internationally recognised quality management (ISO 9000 et seq. or equivalent).

4.2 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 where the Hardware will be used.

4.3 The Vendor shall indemnify and hold the Buyer harmless from any liabilities, claims and fines of third parties or public authorities which may arise against the Buyer due to the non-compliance by the Vendor with any of his statutory obligations relating to his work or to his staff.

4.4 The Vendor warrants that the Work is not subject to any export or import restrictions.

4.5 The Vendor shall be exclusively responsible for briefing, directing and supervising his personnel, without prejudice to the Buyer's right to inspect the Work at any time for verification of its execution in

accordance with the Order in respect of, but not limited to, quality and schedule.

The Vendor shall nominate a contact person to be available for any queries up to start-up of the Plant.

4.6 The Vendor shall only employ proven and qualified subcontractors and shall pass on to such subcontractors any technical and time schedule requirements given in the Order. Such subcontracts shall require the prior written consent of the Buyer, which shall not be withheld unreasonably.

4.7 If the Work is carried out on the Buyer's premises, the Buyer will provide suitable office space .The Vendor shall ensure that his personnel complies with all regulations pertaining to safety and prevention of accidents, as well as any regulations pertaining to order and conduct, and shall indemnify and hold the Buyer harmless from any claims or other consequences arising out of the non-compliance with such regulations.

5. Changes to the Work

5.1 If the Buyer requires changes to the Work, the scope of Work, or the manner of execution, 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.

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 Work and modifications to the Order. Changes or additions to the scope of Work will only be remunerated if a written change order has been so issued.

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. Claims of the Vendor

The Vendor shall inform the Buyer within seven (7) days in writing of gaining knowledge of any event pursuant to which he believes to have a claim to an increase in the Order price or a change to the time of completion. Otherwise any such claim based on such event shall be deemed waived.

7. Time for Completion, Liquidated Damages for Delay

7.1 If delays in the Work 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 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 at risk, the Buyer may complete himself or have a third party complete the Work 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 Work. 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. Acceptance

8.1 Unless otherwise agreed, Acceptance of the Work by the Buyer will take place - to the exclusion of §§ 640, 1st subpara, 3rd sentence, 641a of the German Civil Code (BGB) – only by an express declaration of Acceptance by the Buyer. A mere reference to Incoterms clauses – even if made in the Order – shall not by any means be considered as being "otherwise agreed" in this sense.

8.2 If the Acceptance test shows that the Work is not in accordance with the Order, the Vendor shall immediately carry out all measures necessary to rectify or complete the 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.

8.3 In the event of defects that are not substantial, provisional Acceptance may be granted at the sole discretion of the Buyer, subject to the provision that such defects are remedied within a reasonable period as determined by the Buyer.

8.4 Acceptance of the 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.

9. Warranty for Defects

9.1 The Vendor warrants that the Work will be free from defects, including, but not by way of limitation, that it

will at least meet all properties and performances specified in the Order and will enable the Hardware to be fully and safely operable for the purpose intended, that it conforms 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.

9.2 Due to the special nature of plant construction, testing of the Work and, if applicable, notification of defects, can only be carried out after the Hardware has been installed and taken into use. Therefore, Buyer's notice to Vendor claiming defects shall be deemed to be in time if issued without undue delay after testing, or taking into use, as the case may be, of the Hardware.

9.3 Unless otherwise agreed in the Order the Warranty Period for the Work shall be thirty-six (36) months from Acceptance of the Work. For engineering regarding civil works the legal statute of limitations of 5 years from Acceptance of the Work shall apply.

9.4 The Vendor shall be obliged to promptly remedy any defects that arise within the Warranty Period by reengineering or new engineering at Buyer's choice and at Vendor's expense. The Vendor shall consult Buyer before any changes are made. All cost shall be for Vendor's account, including but not limited to any cost necessary for resulting repairs or modifications of the Hardware free on Site, and documentation.

9.5 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,

9.5.1 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

9.5.2 to a reduction of the price of the Work agreed to in the Order, pro-rata to the reduced value of the Work 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

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

or

9.5.4 to cancel the Order, which cancellation shall be without prejudice to Buyer’s right to claim damages as provided in 9.5.3. 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.

9.6 The provisions of law regarding the stopping, interruption, or re-start of the statute of limitations shall apply to the Warranty Period or statute of limitations, as the case may be.

9.7 The Buyer shall be entitled to avail himself of the rights under this Article 9 also prior to Acceptance.

10. Product Liability, Default

10.1 The Vendor shall indemnify and hold the Buyer harmless from claims arising under the Product Liability Act ("Produkthaftungsgesetz") or otherwise from statutory product liability to the extent damages are caused by a defect in the Work. The Vendor shall bear all costs and expenditures including, but not limited to, costs 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.

10.2 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, damages caused to property other than the Work. 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.

11. Intellectual Property Warranty

11.1 The Vendor warrants that the Work and the use of the Hardware on the Site do not infringe any rights of third parties.

11.2 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 Work or to the Hardware.

12. Secrecy, Ownership

12.1 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, 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.

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

13. 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.

14. Suspension, Termination

14.1 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 the Work;
b) not issue any further orders to third parties in respect of the Work;
c) make every effort to cancel or suspend orders that he has awarded to subcontractors in respect of the Work if requested to do so by the Buyer;
d) safeguard all material procured or reserved for execution of the Order and all services currently being worked on or which have already been completed, whether these are with the Vendor or his subcontractors, until further instructions are issued by the Buyer;
e) follow the Buyer's instructions concerning these services.

14.2 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 Work completed according to the Order. In addition, Vendor shall be entitled to claim for reimbursement of the reasonable and proven direct costs of cancellation, and, to the extent of Buyer succeeding in enforcing a corresponding claim against the Owner, a reasonable share of the overhead costs for the part of the Work that has not been completed.

14.3 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.

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

- demand delivery of such part of the Work already completed. At Vendor's risk and expense, Buyer may decide whether to complete and deliver himself the Work that has not yet been completed or arrange for said portion of the Work, to be completed and delivered by third parties. Art. 9.5.1, of these Conditions of Purchase shall apply accordingly. The Vendor shall be entitled to the pro rata Order price for the Work 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 completion of the Work and claim for damages for non-fulfilment of contract. Any additional costs incurred in connection with the termination shall be borne by the Vendor. In addition, the Vendor shall refund to the Buyer all payments made, in exchange for the return of the Work 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;
- defects of the Work that are incapable of being remedied, or the rectification of which is not reasonably acceptable to the Buyer, or due to which the operation of the Hardware or the Plant is prohibited or made unduly onerous by official requirements;
- material defaults by the Vendor in respect of quality or time schedule which jeopardize the orderly or timely completion of the Work, which

have not been remedied within a reasonable deadline set in a notice of default by the Buyer.

14.5 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.

15. Payment, Invoicing, Bonds, Offsetting Accounts, Delay in Payment, Assignment, Taxes

15.1 The Vendor shall be responsible for any cost for customs, duties, taxes of any description, including but not limited to taxes and duties on salaries, wages and other remuneration, incurred in the execution of the Work.

15.2 Work for which a lump sum price has been agreed will only be remunerated if the Vendor provides evidence that such work has been executed.

15.3 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.

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

15.5 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 Work.

15.6 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.

15.7 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.

15.8 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.

15.9 Assignment by the Vendor of claims against the Buyer shall require Buyer's written consent which shall not be withheld unreasonably.

16. Insurance

For the duration of the Work, the Vendor shall take out and maintain at his own expense a third party liability insurance with a minimum coverage of EUR 500.000 per case of loss. The Vendor shall submit to the Buyer suitable insurance certificates as proof of such insurance.

17 Copyrights

In the event that copyrightable work is created as part of the Work, only the Buyer shall be entitled to exercise any rights in connection therewith, such as, but not limited to the right of use and exploitation.

18. 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.

19. 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).

20. Place of Jurisdiction/Arbitration

20.1 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.

20.2 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.