



**CONDITIONS OF PURCHASE**  
**for Contracts for Supplies and Site 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 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 "Buyer's Site Management" shall mean the person or persons assigned to represent the Buyer on the Site.
- 1.8 "Vendor" shall mean the supplier to whom the Order has been awarded by the Buyer.
- 1.9 "Vendor's Site Manager" shall mean the person assigned to represent the Vendor on the Site who shall be authorised to act and to give and receive binding declarations on behalf of the Vendor.
- 1.10 "Vendor's Site Management" shall mean the team assigned by the Vendor to manage his work on the Site (including Vendor's Site Manager).
- 1.11 "Measurement" shall mean the measuring of completed sections of the Goods as basis for invoicing for parts of the work.
- 1.12 "Measurement Sheet" shall mean the document containing the results of Measurement.

**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, Start of Work, Approvals, Execution of Order**
- 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. 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. In particular, but not by way of limitation, the Vendor shall, in the event of him using hired labour, be obliged to comply with the applicable laws and regulations, and shall ensure that all personnel employed by him and his sub-vendors have valid work permits.
- 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.
- 4.9 The Buyer's Site Management shall be responsible for dealing and authorised 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 Goods and behaviour on the Site.
- 4.10 Modifications to the execution of work on the Goods may arise from requirements on the part of the Owner and from the conditions on Site. The Vendor shall state to the Buyer a reasonable latest date by which the Buyer must inform him of such modifications in order that the Vendor can carry out these modifications without any additional charge or schedule impact.
- 4.11 Before commencing any of his work, the Vendor shall examine and verify the status of any prior work that is relevant to his work on the Goods and shall notify the Buyer promptly and in writing of any concern or complaint that he may have in this respect. Failing such notification, any claims against the Buyer based on the status of any such prior work shall be excluded.
- 4.12 Vendor's Services and Supplies

The Vendor shall be responsible for the timely and orderly provision of all materials, substances, components, instruments, tools and equipment (including arranging for the transport thereof) which he needs for the provision of the Goods. In consultation with the Buyer's Site Management, he shall also be responsible for their proper storage on Site so that they do not obstruct or impede other site activities, e.g. the transport of other goods or site traffic. Vendor's activities must be in compliance with all relevant laws, decrees and regulations (e.g. the site regulations and any official regulations regarding prevention of accidents), also concerning storage and, if necessary, disposal, and to ensure that they are in a first class, safe condition ready for use and that they are suitable for safe, economical work.
- 4.13 Job Safety, Behaviour on Site
  - 4.13.1 The Vendor shall take all necessary safety precautions and comply with all safety and other precautions to prevent personal injury or damage to property occurring in the performance of his services, and he shall co-ordinate his services with other contractors on the Site to avoid any hazards for each other's property or personnel.

- 4.13.2 When the Order has been placed, the Vendor shall submit to the Buyer a written organisation chart containing the names, business addresses, telephone and fax numbers as well as e-mail addresses of all members of Vendor's Site Management (including the person responsible for job safety on the Site).
- 4.13.3 By transmitting a copy of the prescribed accident notification, the Vendor shall inform Buyer's Site Management of all accidents involving Vendor's personnel which have to be reported under the statutory and local authority regulations with a description of the sequence and causes of the accident.
- 4.13.4 The taking of photographs on the Site shall require the Buyer's prior approval.
- 4.14 Vendor's Staff
- 4.14.1 Prior to commencement of his work, the Vendor shall nominate a suitable Vendor's Site Manager who shall be responsible for the provision of the Goods.
- 4.14.2 The absence of the Vendor's Site Manager from the Site shall be notified in advance to the Buyer's Site Management. In such event a qualified deputy with equal authority shall be nominated by the Vendor, and notified to the Buyer.
- 4.14.3 At least 50% of the staff used by the Vendor for the execution of the Goods shall be staff directly employed by him, unless the Order specifies a higher quota of own staff. The Vendor's Site Management shall consist only of staff employed directly by him.
- 4.14.4 The Vendor shall ensure, at his own cost, that his staff has sufficient language skills, or that qualified interpreters are available, so as to enable at all times sufficiently effective and efficient communication between his staff and the Buyer's staff.
- 4.14.5 If any of Vendor's staff is not available on Site or unable to work for longer than four consecutive weeks, or in the event that any staff member should die, the Vendor shall be entitled and obliged to promptly provide an appropriate substitute or substitutes at his own expense. The same applies accordingly to sick or injured staff members who have not yet been unavailable for four consecutive weeks but where this is likely to happen, e.g. due to the nature of an illness or injury.
- 4.14.6 For all building work in the sense of the 3<sup>rd</sup> Book of the Social Act ("Sozialgesetzbuch") to be carried out in Germany, the Vendor shall, in accordance with Article 1 of the German Employee Dispatch Act ("Arbeitnehmerentsendegesetz"), grant his staff the minimum working conditions (e.g. wages, holidays, holiday pay) set out in a Building Industry Tariff Agreement declared as being generally binding. This shall also apply to Vendors based outside Germany, even if these use non-German staff only. The Vendor shall ensure, and be held responsible by the Buyer, that his sub-vendors observe such minimum working conditions for their staff.
- 4.15 Working Time, Standby and Lost Time, Daily Reports
- 4.15.1 The Vendor shall organise his working time in accordance with the Site regulations of the Owner and Buyer in such a way so as to ensure the timely completion of the Goods, whilst complying with the statutory regulations on working time.
- 4.15.2 The Vendor shall minimise standby time and lost time as far as possible. In order to ensure this, the Vendor shall, if necessary, reallocate his staff to other sections of his scope of work, or provide his staff for other work outside the agreed scope of the Order. He shall take into account in his staff-planning that additional work and work paid at hourly rates (force-account work) that is not part of the Vendor's original contractual scope of work may occur and must be carried out by him.
- 4.15.3 Buyer shall only pay for standby time and lost time for which he is responsible if the Vendor has informed the Buyer's Site Management in writing promptly after has commenced. Payment for accepted standby times shall only be made for the staff waiting on the Site, at the hourly or daily rates agreed to in the Order, as the case may be.
- 4.15.4 In the case of disruptions in erection for which the Buyer is responsible
- a) the Buyer may demand that the Vendor withdraws the staff in question; or
  - b) the Vendor may withdraw the staff if the disruption lasts for more than three weeks.
- In these cases, the Buyer shall pay the costs of demobilisation of staff and their subsequent re-mobilisation to the Site.
- 4.15.5 The Vendor is aware that the Goods are intended to become part of a complex Plant. He is aware that normally several contractors will be working on the Site at the same time, and that mutual dependencies will be created concerning the various contractors' work and that co-ordination of the progress of the work with other contractors working on Site will be required to avoid, or at least to minimise, mutual obstruction as far as possible. The Vendor accepts that, particularly because of these mutual dependencies, the plans, the scheduled activities and/or the proposed sequence of work on the Site may –

even at short notice – be frequently changed as a matter of course. The Vendor may therefore not claim 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.

4.15.6 The Vendor shall report numbers and names of his personnel employed on the Site to the Buyer's Site Management every day by 10 a.m.

4.15.7 In the event that the duration specified for Vendor's work on Site is exceeded for reasons attributable to the Vendor, the Vendor shall bear all resulting cost, such as, but not limited to

- a) his personnel,
- b) auxiliary personnel provided to him,
- c) equipment, cranes and tools provided to him.

#### 4.16 Insurance

4.16.1 For the duration of this work, the Vendor shall conclude and maintain the following insurance at a sufficient level and at his own expense:

4.16.1.1 A manufacturer's third party liability and product liability insurance, whereby also 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 liability for cases of loss occurring abroad shall also be covered.

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

4.16.2 The Vendor shall submit to the Buyer suitable insurance certificates as proof of the above mentioned insurance.

#### 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.

5.4 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.

#### 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. 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.
- 7.4 If, as part of the overall Plant assembly, work has to be carried out by a number of contractors, the Vendor shall be obliged to co-operate and co-ordinate with the Buyer and the other contractors on the Site so that the Buyer's contractual deadlines for the Plant are met.

## **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.
- 9.5 If the Goods are ordered to include erection, the Vendor shall submit to the Buyer, within one month of the effective date of the Order, a time schedule for all the work on the Goods showing all the main stages in the work from the receipt of the Order to the completion of the contractual obligations in the form of a bar chart. This time schedule shall be prepared according to the Buyer's requirements and shall be submitted by the Vendor to the Buyer on the third working day of every month, in four copies, showing the actual status.
- 9.6 If the Vendor desires to deviate from the Order by moving pre-fabrication to manufacturing facilities outside the Site, the prior approval of the Buyer will be required.

## **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's Packing, Marking and Shipping Instructions must be adhered to.

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. 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.

13.3 The Buyer and the Owner shall be entitled to use the Goods in whole or in part for trial purposes prior to acceptance. 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 delivery and completion 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 costs 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, Taxes**

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.

21.8 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 Goods.

21.9 Invoices for unit price orders shall be based on proper determination of material quantities. If it was agreed in the Order that several invoices may be issued, the determination of quantities shall state the quantities completed by the end of the period covered by the invoice as well as the total quantities of each item as shown in the Order. The Buyer's Site Management will attest by its signature on the Measurement Sheets only that the quantities are correct in relation to the specified services. Verification of the stated items of the Order and of any prices in relation to the Measurement will be subject to the subsequent verification of the invoice. Determination of quantities for items of the Order shall be made promptly after completion of the respective Order items and shall be submitted to Buyer's Site Management in accordance with the progress of Vendor's work for the Goods, independently of preparing the invoice,.

21.10 All work payable at hourly or daily rates will be invoiced on the basis of time sheets. Time sheets shall be prepared for each working day

and submitted to the Buyer's Site Management for confirmation by 10 a.m. of the subsequent working day. Time sheets must show the Order number, the place of execution and exact description of the work performed, the names and qualifications of the workers, the number of working hours completed by them, specifying work done during the normal working time, night time, on Saturdays and Sundays and public holidays as well as the name of the person who has instructed the Vendor to perform such work. To the extent travel time is to be paid, this shall not be included in the shown working hours. Materials, tools and supporting facilities provided by the Vendor will only be remunerated if this has been provided for in the Order and if these are included on a separate Measurement Sheet. 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.

21.11 The final invoice shall, unless otherwise provided for in the Order, be submitted within four weeks after acceptance of the Goods, with a breakdown as to code numbers specified in the Order, all prior requests for payment with invoice number, invoice date, invoice amount, retention amount as well as the aggregate amount of retention, due payments and value added tax. In addition and if applicable, the certificate on mechanical completion or acceptance signed by the Buyer and the Vendor shall be attached.

Payment of the final invoice shall not release the Vendor of any of his contractual obligations or warranties under the Order.

## **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.