

# General Terms and Conditions of Purchase of The Linde Group

1. **APPLICABILITY, ORDERS, KEY DEFINITIONS**
  - 1.1. These General Conditions of Purchase ("**Conditions**") apply to the purchase of (i) any goods and materials, including, without limitation, products, parts or components specifically developed or customized and deliverables resulting from a service ("**Goods**") and (ii) any services ("**Services**") by LINDE. "**LINDE**" means the legal entity of The Linde Group ordering the Goods or Services from the supplier of such Goods and Services ("**SUPPLIER**"). "**The Linde Group**" is an international group of companies headed by Linde AG, Germany (www.linde.com).
  - 1.2. The Conditions apply to all current and future business relations for the purchase of Goods and Services by LINDE, even if not explicitly referred to. Standard terms of SUPPLIER shall not apply unless LINDE expressly consents thereto in writing. The Conditions also apply where LINDE, having knowledge of conflicting or deviating terms of SUPPLIER, accepts the Goods or Services without reservation.
  - 1.3. "**Order**" means a request (in whatever form) to SUPPLIER for the supply of Goods or Services, and any drawings, specifications, and other attachments thereto and which is deemed to always include the Conditions. The Conditions supplement the Order and in case of a conflict between the Order and the Conditions, the terms of the Order prevail.
  - 1.4. If an Order is not accepted by SUPPLIER within 14 days after receipt or any other period stipulated in the Order ("**Acceptance Period**"), the Order is deemed revoked. Until an Order is accepted by SUPPLIER in writing, LINDE is not bound by such Order and may revoke, modify or change the Order at any time.
  - 1.5. Any (i) Order accepted without reservation or modification within the Acceptance Period by SUPPLIER, (ii) Order accepted by Supplier with a reservation or modification or received by LINDE after the Acceptance Period, but accepted by LINDE (in whatever form), or (iii) other agreement between SUPPLIER and LINDE which refers to these Conditions, constitutes a "**Contract**". Any specifications for the Goods and/or Services contained in or incorporated in the Contract by reference, or any other specifications agreed in writing between LINDE and SUPPLIER from time to time are referred to as "**Specifications**".
  - 1.6. "**Applicable Law**" means the laws applicable in the country according to section 19.1, unless agreed otherwise in the Contract.
  - 1.7. If in these Conditions the term "in writing" is used, this shall include communication via e-mail or fax.
2. **DELIVERY OF GOODS AND PERFORMANCE OF SERVICES**
  - 2.1. Time is of the essence for performance of the Contract by SUPPLIER. Without prejudice to any other rights LINDE may have under the Contract or any other legal grounds SUPPLIER shall inform LINDE in writing without delay if circumstances become apparent which indicate that the agreed time for delivery of Goods or performance of Services will not be met.
  - 2.2. SUPPLIER shall deliver the Goods and perform the Services during regular business hours (as applicable at the place of delivery/ performance) in accordance with the time schedule in the Contract ("**Delivery Dates**"). If no Delivery Dates have been stated, SUPPLIER shall deliver the Goods and perform the Services as soon as reasonably possible and SUPPLIER shall inform LINDE of the date of delivery in writing reasonably in advance. Unless otherwise agreed in the Contract, SUPPLIER shall deliver the Goods in accordance with Incoterms 2010 "DDP" and the Contract to the destination specified in the Order or Contract ("**Location of Receipt**").
  - 2.3. If SUPPLIER fails to deliver the Goods or fails to perform the Services by the Delivery Dates, or, if no Delivery Dates have been stated, by the time reasonably set by LINDE, LINDE may, without prejudice to other rights or remedies LINDE may have under the Contract or any other legal grounds and without liability to SUPPLIER, rescind the Contract by giving written notice to SUPPLIER. In such a case, LINDE may request a refund of the purchase price, if already paid, and claim compensation for all costs, expenses, damages and other losses suffered due to SUPPLIER's failure. In addition, regarding Services, LINDE shall have the rights as set forth in section 8.3.
  - 2.4. For each delivery of Goods, SUPPLIER is responsible for ensuring continuous compliance with all legislation and regulations applicable to the transportation and delivery of such Goods.
  - 2.5. Each delivery of Goods must include documents containing the following minimum information and any additional information requested by LINDE: order number, description of Goods and name of SUPPLIER, unit of measure specifying volume, quantity or number and delivery point for the Goods.
  - 2.6. All Goods must be packaged (i) securely so as to prevent damage during loading, transportation and off-loading and (ii) in compliance with LINDE's packaging specifications if provided to SUPPLIER.
  - 2.7. In addition, SUPPLIER shall:
    - 2.7.1. provide LINDE, upon request, with certificates of origin, declarations, documents and data pertaining to trade requirements and, upon request, inform LINDE in detail and in writing of any possible export restrictions or approval obligations in the country of origin of the Goods or Services or their destination;
    - 2.7.2. furnish full details regarding all immediate and long-term potential hazards or dangers relating to the Goods, including, but not limited to, toxicity, flammability, harmful effect due to inhalation or direct contact and whether due to direct or indirect use thereof;
    - 2.7.3. furnish full details relating to the most appropriate safety precautions to be taken in connection with the use and handling of the Goods; and
    - 2.7.4. appropriately and prominently label all packages and containers that contain dangerous, toxic or otherwise harmful Goods in order to protect those who handle or are exposed to them.
  - 2.8. Partial shipments of Goods or early deliveries may only be made with LINDE's prior written approval. In the event of a delivery earlier than agreed, LINDE reserves the right to return the shipment at the expense of SUPPLIER. If LINDE does not return an early delivery, it may store the Goods up to the delivery date at SUPPLIER's risk and expense.
  - 2.9. If, for any reason, LINDE is unable to accept delivery of the Goods at the time specified in the Contract, SUPPLIER shall, if requested by LINDE, store the Goods and maintain them in merchantable condition. Subject to prior written agreement, LINDE shall reimburse SUPPLIER for the reasonable costs of such storage.
  - 2.10. SUPPLIER shall carry out Services at the agreed locations at the Delivery Dates according to the Specifications and good industry practice and standard. SUPPLIER shall document the performance of Services and provide such documents to LINDE upon request or completion of the Services, at the latest together with SUPPLIER's invoice. If a deliverable or a specific result is to be achieved through the Services, the provisions of these Conditions relating to Goods shall apply accordingly.
  - 2.11. SUPPLIER shall ensure that its personnel performing the Services, in particular when working on LINDE's or LINDE's customer's premises, is not considered having entered into or being entitled to enter into an employment relationship with LINDE or LINDE's customer. In the case of a breach, SUPPLIER shall indemnify LINDE against all related costs, expenses, damages or other losses.
  - 2.12. If SUPPLIER is required to operate on premises owned or operated by or on behalf of LINDE, then SUPPLIER shall comply with all LINDE's site safety rules and procedures at its own expense. These include, but are not limited to, using appropriate personal protective equipment, attending site induction training, and removing all rubbish, debris, surplus materials and temporary structures, and leaving the site tidy. SUPPLIER bears the risk of loss and damage for all materials used or to be used until completion of the Contract.
3. **TRANSFER OF RISK AND TITLE**
  - 3.1. Unless the parties agree otherwise, the risk of loss and damage passes to LINDE at the time of receipt of the Goods at the Location of Receipt. Where an Acceptance Procedure (as defined in section 6.3) is agreed or required, the date of final acceptance by LINDE will be determinative for the transfer of risk.
  - 3.2. Title to all or the relevant part of the Goods passes to LINDE on the earlier of (i) payment for such Goods or part thereof; and (ii) delivery of such Goods at the agreed Location of Receipt. Where title to all or any part of the Goods has passed to LINDE but the Goods remain in the possession of SUPPLIER, SUPPLIER shall clearly label the Goods as the property of LINDE and store them separately from all other goods.
4. **PRICE AND PAYMENT**
  - 4.1. The price(s) for the Goods and/or Services must be specified in the Contract and remain fixed for the term of the Contract.
  - 4.2. Unless otherwise stated in the Contract, the price payable for the Goods and/or Services is:
    - 4.2.1. exclusive of value added tax ("**VAT**") or other sales tax; and

- 4.2.2. inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods, all travel expenses, food and beverage accommodation and other costs related to the Services and all duties, licenses, permits and taxes (other than VAT or other sales tax) as may be payable for the Goods and/or Services from time to time.
- 4.3. If the Contract states that VAT or other sales tax is payable with respect to any Goods or Services, LINDE is only required to pay such tax upon receipt of a valid VAT or other sales tax invoice.
- 4.4. Unless otherwise specified in the Contract, and subject to SUPPLIER complying with its obligations under the Contract, LINDE shall pay for the Goods and/or the Services within 30 working days after receipt of SUPPLIER's duly prepared and accurate invoice. SUPPLIER may not issue the invoice until the relevant Goods have been delivered to LINDE or the relevant Services have been completed. Invoices must always include the official order number and comply with all applicable laws and any specifications requested by LINDE.
- 4.5. LINDE may withhold payment of any disputed or insufficiently documented amounts included in any invoice. LINDE may further set-off any sum due from SUPPLIER to LINDE or any other member of The Linde Group, against any amount due from LINDE to SUPPLIER under the Contract, or to recover such sums as a debt.
- 4.6. Payment of an invoice by LINDE does not constitute acceptance of the Goods and/or Services covered by the invoice and is without prejudice to any and all claims LINDE may have against SUPPLIER in connection with the Contract.

## 5. QUALITY REQUIREMENTS

- 5.1. SUPPLIER shall provide Goods of the highest quality and in accordance with SUPPLIER's Warranties as defined in section 7.3. SUPPLIER shall comply with the applicable statutory provisions and good industry practice and standard and shall develop, manufacture and test the Goods to be delivered so that they are in accordance therewith and with the Contract.
- 5.2. If SUPPLIER becomes aware that the Goods or Services do not comply with quality requirements and SUPPLIER's Warranties as defined in section 7.3 and/or if SUPPLIER has legitimate doubts regarding the Goods' or Services' compliance with such requirements, then SUPPLIER shall promptly notify LINDE in writing and shall advise LINDE on any further steps to be taken. The same applies if SUPPLIER becomes aware of property rights of third parties which conflict with the unrestricted use of the Goods or Services by LINDE. Receipt and handling of such information by LINDE is without prejudice to any and all claims LINDE may have against SUPPLIER resulting from such non-compliance.
- 5.3. LINDE may inspect the Goods or Services at any time prior to delivery or completion of the Goods or Services at the SUPPLIER's premises or at any other location. Inspection by LINDE does not relieve SUPPLIER of its responsibility or liability for the Goods and Services and does not imply LINDE's acceptance of the Goods or Services. LINDE's right of inspection prior to delivery is without prejudice to LINDE's right to reject the Goods after delivery.
- 5.4. LINDE may call for certificates of raw materials and test certificates for materials and equipment used in the sourcing and manufacture of the Goods. SUPPLIER shall provide such certificates to LINDE within five working days after receipt of such request.

## 6. INSPECTION, TESTING

- 6.1. SUPPLIER shall supply all Goods and Services in accordance with the Contract and the Specifications. LINDE may inspect and test the Goods upon or after LINDE's receipt of the Goods. Any obligation of LINDE under the Applicable Law to inspect the Goods or Services or to notify SUPPLIER of any defects within a certain period of time is hereby excluded to the extent legally possible. If the obligation to inspect cannot be excluded, the following will apply: (i) LINDE is only required to inspect the Goods for variations in identity and quantity and obvious transport damage and (ii) LINDE shall notify SUPPLIER of any such discrepancies and damages within 14 days after receipt of the Goods at the Location of Receipt. To fulfil the notification requirement, LINDE need only provide SUPPLIER with a brief description of the discrepancy, damage or defect.
- 6.2. Before and within 30 days following delivery or performance, or any longer period as set forth in section 6.3, and without prejudice to other rights or remedies LINDE may have under the Contract or any other legal grounds, LINDE may reject in whole or in part any delivery of Goods or performance of Services which are not in full compliance with the Contract. If certain parts of the Goods or Services do not comply with the Contract, LINDE may reject the entire delivery or performance unless SUPPLIER can prove that the remainder of such delivery or performance is in compliance with the Contract.
- 6.3. If, according to the Contract or under the particular circumstances, LINDE is required to test and approve the Goods or Services as to their compliance with the Contract, SUPPLIER shall request that LINDE carry out such test and acceptance after the Goods or Services are completed ("**Acceptance Procedure**"). SUPPLIER shall make such request in accordance with the dates stated in the

Contract or, if no date is specified, as soon as practicable. Upon reasonable request by LINDE, SUPPLIER shall provide suitable personnel to attend any such tests at its own cost. LINDE may reject the Goods or Services in whole or in part if they are not proven by SUPPLIER to be compliant with the requirements under the Contract and/or any acceptance criteria agreed. If LINDE does not accept the Goods or Services in whole or in part, SUPPLIER shall promptly investigate the non-conformity, correct such non-conformity and repeat the Acceptance Procedure. After failure of the second Acceptance Procedure, LINDE may at its discretion choose whether to repeat the Acceptance Procedure or assert the remedies set forth in section 8. LINDE will not be deemed to have accepted the Goods or Services solely because it is using them in whole or in part due to operational necessities.

## 7. SUPPLIER WARRANTIES AND OBLIGATIONS

- 7.1. Without prejudice to any warranties under the Contract or any other legal grounds, SUPPLIER warrants that the Goods and any parts or materials used in the manufacture or performance of any work related to the Goods will:
- 7.1.1. be fit for the intended purpose;
- 7.1.2. be fit for any special purpose as defined by LINDE to SUPPLIER;
- 7.1.3. conform to the Specifications in all respects and, where applicable, to any samples or drawings; in particular, the weights, measures, signs, legends, words, particulars, or descriptions, if any, stamped, printed, or otherwise attached to the Goods or containers (including any required country of origin markings) or referring to the Goods delivered hereunder are true and correct and comply with all statutes, regulations and legislations;
- 7.1.4. be new and unused, of sound materials and workmanship and free from any defects (latent or otherwise);
- 7.1.5. conform to all applicable international and local laws and regulations relating to the design, manufacture, sale, packaging, labelling, safety standards and use of the Goods, which are in force on the date of delivery;
- 7.1.6. be accompanied by all information, warnings, instructions and documentation relevant for the use, storage, operation, consumption, transportation and disposal of such Goods; and
- 7.1.7. unless agreed otherwise, conform to the representations and warranties in SUPPLIER's literature and advertising materials.
- 7.2. In addition to any other warranties LINDE may have under the Contract or any other legal grounds, SUPPLIER warrants that all Services will be performed (i) with a degree of high professional skill, sound practices and good judgment normally exercised by recognized professional firms providing services of a similar nature. (ii) in full compliance with all applicable laws and (iii) so as to ensure that the Services completed under the Contract are free from defects in materials and workmanship and are fit for the intended purpose.
- 7.3. Any warranties set forth in this section 7 or existing under the Contract or any other legal grounds ("**SUPPLIER's Warranties**") apply for a period of 24 months after acceptance of the Goods at the Location of Receipt, approval by LINDE according to section 6.3, or completion of the Services (whatever occurs later) or any longer period stipulated by the Applicable Law or in the Contract ("**Warranty Period**").
- ## 8. REMEDIES
- 8.1. If the Goods delivered fail to conform with SUPPLIER's Warranties ("**Defective Goods**"), then, without prejudice to other rights or remedies LINDE may have under the Contract or any other legal grounds, LINDE may, at its option choose one or several of the following remedies:
- 8.1.1. refuse to take delivery;
- 8.1.2. require SUPPLIER to repair or replace the Defective Goods at SUPPLIER's sole cost within any period reasonably specified by LINDE, however at the latest within 21 days of receipt of LINDE's request;
- 8.1.3. carry out the repair instead of SUPPLIER or may have it carried out by a third party at SUPPLIER's sole cost;
- 8.1.4. require SUPPLIER to reimburse LINDE for all costs, expenses, damages and other losses associated with the repair or replacement, including, without limitation, costs for investigation and analysis of the defect, for installation/de-installation, for the use of its own or external personnel, costs for parts, attorneys' fees or other legal cost, accommodation, travel or transportation costs;
- 8.1.5. claim compensation from SUPPLIER for all costs, expenses, damages and other losses incurred by LINDE due to the Defective Goods.

- 8.2. If SUPPLIER fails to remedy its breach of SUPPLIER's Warranties with respect to the Defective Goods within the period according to section 8.1.2, or if SUPPLIER is not able to or rejects the repair or replacement of the Defective Goods, then, without prejudice to other rights or remedies LINDE may have under the Contract or any other legal grounds and in addition to the remedies set forth in section 8.1, LINDE may, at its option:
- 8.2.1. rescind the Contract and request a refund of the purchase price, if already paid, in which case LINDE shall return the Defective Goods to SUPPLIER at SUPPLIER's sole cost and expense; or
  - 8.2.2. claim a reduction or refund (as the case may be) of the purchase price in the amount of the reduced value of the Defective Goods; or
  - 8.2.3. return the Defective Goods to SUPPLIER at SUPPLIER's risk and expense and obtain identical or similar goods from an alternative supplier and claim reimbursement from SUPPLIER for any additional costs and expenses reasonably incurred by LINDE;
- and
- 8.2.4. claim compensation from SUPPLIER for all costs, expenses, damages and other losses incurred by LINDE due to the Defective Products.
- 8.3. If the Services performed fail to conform with SUPPLIER's Warranties ("**Defective Services**"), then, without prejudice to other rights or remedies LINDE may have under the Contract or any other legal grounds, LINDE may, at its option choose one or several of the following remedies:
- 8.3.1. require SUPPLIER to re-perform the Services free of charge and as soon as is reasonably practicable;
  - 8.3.2. require SUPPLIER to reduce pro-rata the compensation allocable to the Defective Services;
  - 8.3.3. obtain the Services from a third party and require SUPPLIER to reimburse for all reasonable costs and expenses thereby incurred;
  - 8.3.4. terminate the Contract and refuse to accept any further performance of Services under the Contract;
  - 8.3.5. claim compensation from SUPPLIER for all costs, expenses, damages and other losses incurred by LINDE due to the Defective Services.
- 9. INDEMNIFICATION**
- 9.1. If a claim is made against LINDE based on a violation of public safety or product liability regulations in connection with the delivery of the Goods or performance of the Services by SUPPLIER, then, to the greatest extent permitted by the Applicable Law, SUPPLIER shall, without prejudice to other rights or remedies LINDE may have under the Contract or any other legal grounds, indemnify LINDE and its employees, officers, agents, customers and successors and assignees ("**Indemnified Parties**") against any liability, loss, expense, costs (including attorneys' fees or other legal costs, costs for recalls and costs for its own employees), damage or injury resulting from such violation, unless SUPPLIER proves that SUPPLIER has not caused the violation.
- 9.2. Without prejudice to other rights or remedies LINDE may have under the Contract or any other legal grounds and to the greatest extent permitted by the Applicable Law, SUPPLIER shall indemnify LINDE and the Indemnified Parties against any liability, loss, expense, costs (including attorneys' fees or other legal costs, costs for recalls and costs for its own employees), damage or injury in consequence of (i) any Defective Goods and/or Defective Services or (ii) any breach by SUPPLIER or its suppliers or subcontractors of the Contract (including any late delivery of Goods or performance of the Services), or (iii) any negligence, wilful default or wrongful act or omission of SUPPLIER or its suppliers or subcontractors.
- 10. INSURANCE**
- SUPPLIER shall arrange and maintain, at its own cost, all insurance customary and on terms common in the industry and satisfactory to LINDE, in particular a professional, public and product liability insurance. SUPPLIER shall produce evidence of such insurance to LINDE upon request. For the avoidance of doubt, the insurance coverage shall not limit in any way SUPPLIER's responsibility and liability for its Goods delivered and Services performed to LINDE.
- 11. INTELLECTUAL PROPERTY, CONFIDENTIALITY**
- 11.1. Any know-how, confidential information intellectual property rights, including, without limitation, patents, trademarks, service marks, design rights (whether registered or unregistered), copyrights (including any future copyrights) and any application for any of the foregoing, developed by SUPPLIER, or on behalf of SUPPLIER, in connection with (i) a specifically agreed development, (ii) a LINDE-specific modification of a product or (iii) a part or the design of a tool ("**New IP Rights**") shall become the property of LINDE and is covered by the payment of the price for the Goods and/or Services. SUPPLIER shall take all actions reasonably necessary to secure the assignment of such rights to LINDE. Notwithstanding its obligation to assign ownership, SUPPLIER hereby grants to LINDE in advance an unconditional, irrevocable, transferable, exclusive and worldwide license in any New IP Rights, either in their original or in any modified form, free of charge. SUPPLIER shall not use any New IP Rights other than for the purposes of the Contract.
- 11.2. SUPPLIER shall keep confidential all information and documents that LINDE makes available to it, or that it otherwise acquires relating to LINDE's business, or that it creates or produces, or has created or produced, specifically in connection with the performance of the Contract for LINDE. SUPPLIER shall not use or cause to be used such information or documents other than for the purposes of the Contract. Such obligation will continue in force notwithstanding termination or completion of the Contract, however caused, although such provisions do not apply to any information or document in the public domain or coming into the public domain other than through SUPPLIER's violation of its obligations and to such information disclosed to SUPPLIER's subcontractors to the extent necessary for performance of the Contract.
- 11.3. SUPPLIER shall use objects, documents and auxiliary resources of all types that LINDE provides to it to carry out the Services or manufacture the Goods, exclusively to perform the Services or manufacture the Goods and shall return such items to LINDE without delay after performance of the Services or manufacturing of the Goods or the termination or expiry of the Contract.
- 11.4. SUPPLIER warrants that the sale, possession, resale or use of the Goods and/or the performance of the Services to be supplied do not infringe any third party intellectual property rights or third party know-how. LINDE shall have the remedies as set forth in section 8. In addition to these remedies, SUPPLIER shall, to the greatest extent permitted by the Applicable Law, indemnify LINDE and the Indemnified Parties against all payments or loss of royalties or licence fees, and against all costs, losses and expenses suffered by them or for which they may be liable in respect of any breach of this warranty, including attorneys' fees or other legal cost. SUPPLIER will give LINDE and the Indemnified Parties all assistance that is reasonably required in defending any such infringement claim. If it comes to LINDE's knowledge that a claim may arise under this warranty, then LINDE may terminate the Contract immediately and without any liability towards SUPPLIER.
- 11.5. SUPPLIER shall not make any reference to LINDE in its advertising, literature or correspondence without LINDE's prior written consent. Nothing in the Contract will entitle SUPPLIER to use any name, trademark or logo of LINDE.
- 12. SPARE PARTS**
- SUPPLIER shall, for a period of at least seven years after discontinuation of production of the Goods, have available compatible spare parts substantially equivalent in terms of function and quality to the parts contained in the Goods, or shall provide equivalent solutions on commercially reasonable conditions for LINDE.
- 13. TOOLS**
- Any material, software, equipment or tools (i) provided by LINDE to SUPPLIER, (ii) purchased by LINDE under this Contract or (iii) purchased or used by SUPPLIER in connection with this Contract and paid by LINDE ("**Tools**") shall remain the property of LINDE and may only be used for the sole purpose of performing SUPPLIER's obligations under this Contract. The ownership of all Tools is transferred to LINDE by SUPPLIER on the date of the acquisition of the Tool by SUPPLIER, or in the case of Tools manufactured by SUPPLIER, on the date of the completion of the manufacturing by SUPPLIER. No further action by any party is required to make such transfer effective. SUPPLIER shall mark such Tools directly after they are provided to it or directly after the acquisition by SUPPLIER or the completion as being LINDE's property. Upon request SUPPLIER shall prove such marking through photos or otherwise. SUPPLIER shall use the Tools exclusively for the provision of Services to LINDE or for the manufacturing of the Goods ordered by LINDE. SUPPLIER, at its own expense, shall insure the Tools belonging to LINDE at the replacement value on appropriate terms. SUPPLIER shall carry out timely inspection, servicing, maintenance and repair work at its own expense. Upon request of LINDE, SUPPLIER shall hand over the Tools to LINDE.
- 14. SUBCONTRACTORS**
- SUPPLIER shall not engage subcontractors without LINDE's prior written consent. SUPPLIER shall require its subcontractors to comply with all obligations under this Contract, including secrecy. Notwithstanding any consent given by LINDE, SUPPLIER shall remain liable to LINDE for any acts or omissions of its subcontractors as if they were its own. No sub-contract shall relieve SUPPLIER from the obligation to provide the Goods or perform the Services or from any liability under the Contract.
- 15. SUPPLIER CODE OF CONDUCT**

- 15.1. SUPPLIER acknowledges that LINDE has a 'Code of Conduct for Suppliers of the Linde Group' (the "Supplier Code of Conduct"). Copies of it may be viewed at <http://www.linde.com/supplier-coc> and will be made available by LINDE upon request. SUPPLIER shall comply with the requirements of the Supplier Code of Conduct and maintain a consistently high standard of integrity in all its business relationships with LINDE as well as foster the highest possible standards of professional competence in all its activities. To this end, in supplying Goods to LINDE and/or in performing any Services, SUPPLIER shall not take any action that violates the Supplier Code of Conduct. Further, SUPPLIER acknowledges that no employee of LINDE is authorised to propose to SUPPLIER or approve conduct which is inconsistent with the Supplier Code of Conduct.
- 15.2. SUPPLIER shall demonstrate compliance with the requirements of the Supplier Code of Conduct at the request and to the satisfaction of LINDE, e.g. by providing data or conducting self-assessments.
- 15.3. If LINDE has reason to believe that SUPPLIER may be in material breach of the requirements laid out in the Supplier Code of Conduct, LINDE or a third party appointed by LINDE may conduct inspections at SUPPLIER's premises in order to verify SUPPLIER's compliance with the requirements of the Supplier Code of Conduct. LINDE shall use reasonable efforts to ensure that all inspections will be conducted in accordance with any applicable data protection law and shall neither unreasonably interfere with SUPPLIER's business activities nor violate any of SUPPLIER's confidentiality agreements with third parties. SUPPLIER shall reasonably cooperate with any inspections conducted. Each party shall bear its own expenses in connection with such inspection.
- 15.4. Without prejudice to other rights or remedies LINDE may have under the Contract or any other legal grounds, LINDE may terminate the Contract and any purchase order issued hereunder without any liability whatsoever, if SUPPLIER is in material breach of the Supplier Code of Conduct or fails to remedy any breach after written notification of the breach by LINDE.
- 15.5. Material breaches include, but are not limited to, incidents of forced or child labour, corruption and bribery, and failure to comply with the Supplier Code of Conduct's environmental protection requirements.
- 15.6. Any reference to the Supplier Code of Conduct shall (except where the context otherwise requires) be construed as referring to such Supplier Code of Conduct as amended and in force from time to time.
- 16. COMPENSATION IN THE CASE OF SUPPLIER'S VIOLATION OF COMPETITION LAW**
- Without prejudice to other rights or remedies LINDE may have under the Contract or any other legal grounds, if SUPPLIER made an agreement constituting an illegal restriction of competition in connection with the Contract's conclusion, SUPPLIER shall pay to LINDE 15% of the price of all related deliveries or services. Further claims of LINDE for compensation of damages exceeding this lump sum compensation remain unaffected. However, SUPPLIER may pay only the actual damages caused by its illegal restriction of competition if it proves that these are lower than the lump sum compensation set forth in this section. This provision also applies if the Contract expires, is terminated or has already been fulfilled.
- 17. OBLIGATION TO INFORM**
- If any of the following events occur with respect to SUPPLIER, SUPPLIER shall promptly inform LINDE of the details regarding such event and shall further promptly answer in good faith any questions of LINDE regarding such circumstances: (i) a change in the legal form of SUPPLIER; (ii) a disposition of all or substantially all of the assets of SUPPLIER; (iii) any entity or person(s) becomes the direct or indirect owner of voting securities representing more than 50% of the outstanding voting interests in SUPPLIER; (iv) the merger of SUPPLIER with another entity; (v) any change in the senior management of SUPPLIER; or (vi) any other event resulting in a change of control of SUPPLIER, meaning a change of the entity or person(s) having the ability to direct the management and/or strategy of SUPPLIER.
- 18. TERMINATION**
- 18.1. LINDE may at any time and for any reason terminate the Contract in whole or in part by giving SUPPLIER written notice whereupon all work on the Contract shall be discontinued and LINDE shall pay to SUPPLIER a fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss and never be higher than the price of the Goods or Services under that terminated Contract. LINDE may request that any Goods and Services or results of Services to which the payment of compensation by LINDE pertains shall be delivered to LINDE in their current state.
- 18.2. LINDE may terminate the Contract, without liability to SUPPLIER and while preserving to itself any accrued rights or remedies, by giving written notice to SUPPLIER with effect from the date specified in the termination notice, if:
- 18.2.1. SUPPLIER commits a material breach of any provision of the Contract and (in the case of a breach capable of remedy) fails to remedy that breach within 21 days of being notified of such breach by LINDE (SUPPLIER acknowledges that a series of minor breaches may together constitute a material breach); or
- 18.2.2. SUPPLIER files a petition in bankruptcy or has such a petition filed against it or is subject to an insolvency proceeding or a proceeding giving protection against creditors, or if an order is issued appointing a receiver or trustee or a levy or attachment is made against a substantial portion of its assets, or if any assignment for the benefit of its creditors is made.
- 18.3. Those conditions expressly or impliedly having effect after termination continue to be enforceable notwithstanding termination.
- 19. GOVERNING LAW AND JURISDICTION**
- 19.1. The Contract and any supply of Goods and Services stipulated thereunder shall be governed by the laws applicable in the country in which LINDE has its registered seat, without regard to principles of conflicts of laws and excluding the application of the UN-Convention on Contracts for the International Sale of Goods.
- 19.2. The Parties shall submit any dispute, controversy or claim arising out of or in connection with the Contract, including any dispute as to the validity of the Contract, exclusively to an appropriate court in the country or jurisdiction in which LINDE has its registered seat and at the place of such registered seat, save that LINDE may always initiate court action against SUPPLIER at the court of general jurisdiction at the place of the registered office of SUPPLIER.
- 20. GENERAL**
- 20.1. SUPPLIER may not set-off any claims it may have under the Contract against any claims of LINDE or refuse to perform any obligation it may have under the Contract on the grounds that it has a right of retention, unless the rights or claims of SUPPLIER are not disputed by LINDE or have been confirmed by a final decision of a competent court.
- 20.2. No failure or delay on the part of LINDE to exercise any power, right or remedy under the Contract shall operate as a waiver thereof nor shall any single or partial exercise by LINDE of any power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy. No waiver by LINDE of any breach of any of the terms and conditions of the Contract shall be construed as a waiver of any subsequent breach whether of the same or of any other term or condition hereof. No waiver by LINDE is validly made unless made in writing.
- 20.3. The Contract constitutes the entire agreement between LINDE and SUPPLIER relating to the sale and purchase of Goods and/or Services. No amendment to or variation of the Contract shall be effective unless it is expressly agreed to in writing by LINDE. No course of prior dealings between the parties and no usage of trade is relevant to supplement or explain any term of the Contract.
- 20.4. Except as expressly provided in the Contract, no provisions of the Contract are enforceable by a third party. LINDE may assign the Contract or any right or claim under the Contract to any third party without the prior written consent of SUPPLIER.
- 20.5. If any term or provision of the Contract is void or unenforceable, the remainder of the provisions of the Contract shall remain in full force and effect to the fullest extent permitted by the Applicable Law. In place of the invalid or unenforceable provision, or to fill a contractual lacuna, such valid and enforceable provision shall apply which reflects as closely as possible the commercial intention of the parties as regards the invalid, unenforceable or missing provision.
- 20.6. In case of discrepancies between different language versions of these Conditions, the English language version shall prevail.