



# General Terms and Conditions of Purchase of Linde

Panama

## STANDARD TERMS & CONDITIONS

**ACCEPTANCE; TITLE AND RISK OF LOSS:** Except as otherwise expressly provided in this order, acceptance of any of the goods and or services shall not occur until Buyer has been given a reasonable opportunity to inspect and test such goods and services after arrival at destination or after completion of installation or completion of the services, if Seller is obligated to install the goods or perform any services. Buyer may reject any non-conformance or defective goods F.O.B. the location at which Buyer discovers the non-conformance or defect in the goods or services, if Seller fails to promptly correct said non-conformance or defect after being given the opportunity to do so. Seller shall pay the cost of inspecting and testing of goods rejected and all transportation charges thereon. Except as otherwise mutually agreed in writing, delivery will occur, and title and risk of loss will transfer, when: (i) with respect to goods not incorporated into services, goods are accepted and are placed in operation or into Buyer's storage facility; and (ii) with respect to product incorporated into services, the completed services have been accepted by Buyer.

**EXCESS QUANTITY; TERMINATION; CHANGES:** (a) Goods shipped in excess of quantity designated in this order may be returned at Seller's expense. Buyer shall have no obligation to Seller to purchase any minimum amount of goods or services; (b) Buyer may, by written notice to Seller, terminate its purchase of any quantity of products or services (i) for convenience, (ii) if Seller fails to complete or deliver any part thereof when required, and (iii) if Seller is in breach of any material term of this order, immediately prior to the delivery thereof. If terminating for convenience, Buyer will pay Seller termination charges equal to the cost of materials and labor incurred (and not otherwise mitigated) on ordered products or services prior to the date of Buyer's termination notice; provided Seller takes all steps reasonably necessary to mitigate such costs. Seller will notify Buyer of the actual termination charges within thirty (30) days after termination. If termination is due to a failure of completion or delivery or breach of any material term of the order, no termination charges will apply, and Buyer may procure substitute products or services and Seller will be liable to Buyer for any excess costs incurred by Buyer.

**TRANSPORTATION CHARGES:** Except as otherwise mutually agreed to in writing, (a) where transportation charges are separately charged to Buyer by Seller, such charges shall in no event exceed the lowest legal freight charges via the carrier or routing specified herein, in effect on the date of shipment, and (b) where transportation charges are allowed to Buyer by Seller, such allowance shall not be less than the actual freight charges paid by Buyer or, where Buyer performs the transportation, such allowance shall be in an amount equal to the freight charges which would have been assessed for a like movement via common carrier.

**DELIVERY:** The goods shall be properly packaged for shipment. Each package shall be numbered and labeled with Buyer's order number, stock number, contents, and weight, and shall contain an itemized packing slip. No charges will be allowed for packing, crating, freight express or cartage unless specified on the face hereof. Seller will promptly notify Buyer in writing if Seller anticipates difficulty in complying with any required delivery date. Time is of the essence hereof. If any goods are not delivered within the time specified in this order, or within a reasonable time if no time is specified, Buyer may either (i) refuse to accept such goods and terminate this order, or (ii) cause Seller to ship the goods by the most expeditious means of transportation whereupon any additional transportation charges in excess of those which would apply for the usual means of transportation shall be for the account of Seller, or (iii) Buyer may procure replacement products or services and Seller will be responsible for all costs incurred by Buyer as a result of such late deliveries.

**INVOICES:** Unless otherwise requested by Buyer, invoices shall (a) be rendered separately for each delivery; (b) cover not more than one order (c) be rendered with order number noted thereon.

**PRICING; PAYMENT:** (a) Unless otherwise provided elsewhere in the order, prices are: (i) stated in U.S. dollars; (ii) not subject to increase for the duration of the order; and (iii) FCA (INCOTERMS 2000) at a facility specified by Buyer. No extra charges of any kind will be allowed unless specifically agreed to by Buyer in writing; (b) Unless prohibited by law, Seller will separately indicate on its invoices any taxes imposed on the sale or delivery of products or services. Any claim for payment for any goods or services ordered pursuant to this order must be made within one year of when such goods or services are delivered to Buyer, otherwise such claim shall be waived; (c) Unless



otherwise provided elsewhere in the order, terms of payment shall be net 60 days from the later of (i) the date of Buyer's receipt of a correctly stated invoice; or (ii) receipt of goods or services, as applicable; (d) Seller warrants that it is selling at the lowest prices and upon the most favorable terms (including, without limitation, volume, quality and/or payment terms) that it offers any buyer for goods or services of the same or similar quality to that provided for in this order; (e) Buyer will be responsible for all sales, use, and similar taxes (excluding taxes based on or measured by the net income, net worth or gross receipts of Seller) imposed as a result of the sale of products or services. With notice to Seller, Buyer may pay such taxes directly to the taxing authority where allowed by law. Seller shall remit all taxes paid by Buyer to the appropriate taxing authority. Upon Buyer's request, Seller will provide written evidence that Seller is properly licensed to collect the taxes paid by Buyer.

WARRANTY: (a) Seller warrants that the goods shall (i) conform to the description and specifications contained in or referred to in this order; (ii) be free from all defects in material, workmanship and all defects due to design; (iii) will comply with the requirements of this order; and (iv) be of merchantable quality and fit and suitable for the purpose intended by Buyer; (b) Seller further represents and warrants that (i) the goods and all parts thereof will consist of new (not used or recycled) material, and (ii) Buyer shall acquire good and marketable title to the goods, free and clear of all liens, claims and encumbrances; (c) The above warranties will be in effect for a period of the longer of (1) twelve (12) months from the date such goods are used or placed in operation or (2) the standard warranty period provided by Seller for such goods. If any products fail to conform to the above warranties, Seller, at Buyer's option, will: (i) with respect to goods and products, replace or repair the nonconforming products; (ii) refund the purchase price of the nonconforming products and any related costs incurred by Buyer. Any replacement products also will be subject to the above warranties and warranty period. The warranty period for repaired products will be extended for the period of the original warranty period as set forth above. If Seller does not replace or repair, as applicable, within a reasonable time after notice, Buyer may do so at Seller's expense.

PATENTS: Except as hereinafter limited, Seller shall defend, indemnify and hold harmless Buyer from and against claims, damages, judgments, expenses and loss arising from infringement or alleged infringement of any patent by any of the goods delivered hereunder, and Seller shall defend or settle at its own expense any suit or proceeding brought against Buyer for such infringement.

COMPLIANCE WITH LAWS AND GOVERNMENT LABOR REGULATIONS: Seller shall comply with all laws, ordinances, permits and governmental rules & regulations applicable to Seller and the goods and services provided by the Seller, including but not limited to those laws, ordinances, rules & regulations with respect to or under the Occupational Safety Health Act of 1970, or any other statute, rule or regulation of any governmental authority or agency concerning safety, health, welfare and conduct of employees. Seller hereby agrees that any services will be provided in compliance with the Fair Labor Standards Act, as amended.

Seller agrees that all personnel contracted to perform the services requested by Buyer, is personnel contracted directly by Seller with no liabilities or responsibility of any type to Buyer. Seller is responsible for all of its personnel salaries, payments, insurance, professional risks, accidents and whichever other liabilities stated in the applicable laws. If the services are performed in Costa Rica, Seller must comply with the laws and ordinances of the Caja Costarricense del Seguro Social.

INSURANCE: Seller shall, at its expense, procure and maintain Workmen's Compensation insurance to the extent required by law and Seller's Bodily Injury Liability and Property Damage Liability insurance (including Contractual Liability, covering the indemnities set forth herein) in amounts approved by Buyer. Seller shall furnish to Buyer written certificates establishing that the above insurance has been procured and is being maintained, which certificates shall provide that a written notice of cancellation shall be given to Buyer at least thirty (30) days prior to the effective date of such cancellation.

INDEMNITY: Seller shall defend, indemnify, and hold harmless Buyer from and against any and all claims, losses, damages, expenses and liabilities, including attorneys' fees (collectively "Claims"), arising from or in connection with Seller's performance pursuant to this order, including without limitation any Claims arising from the failure of the goods to conform to specifications, or from personal injuries or property damage proximately caused by defects in design or manufacture of the goods or by Seller's failure to provide adequate warnings or instructions with respect to the goods. Seller shall also defend, indemnify and hold harmless Buyer, any party on whose property the goods are installed, and their employees, agents, contractors and subcontractors from and against all Claims for bodily injury, sickness and/or disease, including death at any time sustained by any employee of Seller, or of a contractor or subcontractor of Seller, while in, on or about the property of Buyer or the site of installation of the goods, if or where such injury, sickness, disease and/or death was in any way connected with (i) any work under the WARRANTY paragraph of this order, (ii) any services performed by Seller for Buyer with respect to this order or with respect to any of the goods sold to Seller pursuant to this order or otherwise, (iii) any other terms of this order



or (iv) the performance of or failure to perform said work or services, unless such injury, sickness, disease and/or death is the result of the sole negligence of Buyer, contractor or subcontractor of Buyer, or any of Buyer's employees or agents.

**FORCE MAJEURE:** Neither party hereto shall be liable to the other for default or delay in performing its obligations hereunder if caused by an occurrence beyond the reasonable control of the party so defaulting or delaying. If a force majeure event compels Seller to allocate deliveries of products or services, Seller will make such allocation in a manner that ensures Buyer at least the same proportion of the Seller's total output as was purchased by Buyer prior to the force majeure. Seller will use best efforts to source products or other items, at Seller's expense, from its own or its affiliates' global operations or the market in order to meet Buyer's required delivery dates.

**DRAWINGS AND OTHER ITEMS:** Unless otherwise expressly provided in this order, all drawings, blueprints, dies, patterns, tools, printing plates and other items used in connection with the manufacture of the goods hereunder, which are prepared or constructed by Seller pursuant to the terms of this order, shall be the property of Buyer, and upon completion of deliveries of the goods hereunder, or upon termination of this order, shall be delivered to Buyer.

**COMPLIANCE WITH AND GOVERNMENT CONTRACTING REGULATIONS:** Seller shall comply with all laws, ordinances, permits and governmental rules and regulations in Costa Rica and the U.S. applicable to Seller and the goods and services provided by the Seller, including but not limited to those laws, ordinances, rules and regulations with respect to Health and Safety or under the Occupational Safety Health Act of 1970, or any other statute, rule, or regulation of any governmental authority or agency concerning safety, health, welfare and conduct of employees. Seller hereby agrees that any services will be provided in compliance with the applicable Fair Labor Laws Standards Act, as amended, and agrees to so certify on its invoices. If applicable, Seller shall also comply with all applicable equal employment opportunity (EEO), affirmative action (AA), and employee notice laws and requirements including but not limited to those set forth in 41 C.F.R. Part 60-1.4(a) (EEO/AA for women and minorities), 41 C.F.R. Part 60-250.5(a) (EEO/AA for covered veterans), 41 C.F.R. Part 60-741.5(a) (EEO/AA for individuals with disabilities), and 29 C.F.R. Part 470 (employee notice clause requirements). If applicable, Seller shall comply with Federal Acquisition Regulations ("FARS") 52-219-8, "Utilization of Small Business Concerns" and FAR 52-219-9, "Small Business Subcontracting Plan." Without limiting the foregoing, if applicable, Seller shall (a) adopt a subcontracting plan that complies with FAR 52-219-9 and shall provide Buyer with a copy of such plan and a copy of any amendment or modification thereof; and (b) track and maintain spending data regarding its Small Business Concern (as such term is defined in FAR 52-219-8) spending as required by FAR 52-219-9 and shall report the same to the appropriate U.S. federal agency, as and when required, and to Buyer in a form as may be designated by Buyer. The foregoing requirements to comply with the FARS shall not apply if Seller is a Small Business Concern. Seller shall comply and shall indemnify and hold harmless Buyer from and against all damages or penalties arising out of Seller's failure to comply with all laws, ordinances, and government rules, regulations and orders applicable to this order. Seller shall also comply with all U.S. & Costa Rica export/import laws, regulations, ordinances, rules and/or orders applicable.

**ASSIGNMENT:** Any assignment of this order without the prior written consent of Buyer shall be void.

**NON-WAIVER:** No waiver by either party of any breach of any of the terms of this order to be performed by the other party shall be construed as a waiver of any subsequent breach, whether of the same or of any other term of this order.

**REMEDIES AND SET-OFF:** The rights and remedies of Buyer set forth in this order are not exclusive and are in addition to all other rights and remedies of Buyer. Buyer may set off any amount owing at any time from Seller to Buyer or any of its affiliated companies against any amount payable at any time by Buyer to Seller under this order.

**GOVERNING LAW AND JURISDICTION:** The validity, interpretation, and performance of this order shall be governed by and construed and enforced in accordance with the law of Costa Rica without giving effect to the principles of conflicts of law. The Buyer and Seller consent and submit exclusively to the jurisdiction of the competent courts sitting in the City of San José, Costa Rica.

**NO GRATUITY; FCPA.** Neither party will offer or give any gratuity to induce any person or entity to enter into, execute or perform any term or condition of this order or any other agreement between the parties.

**SECRECY:** As used in this order, "Confidential Information" shall mean and include all of the information, know-how and data, whether technical or non-technical, which is in any way, heretofore or hereafter, disclosed to Seller by or on behalf of Buyer in the course of, or in



connection with this order or in connection with proposals or negotiations for the order. Except as provided below and except as otherwise agreed to in writing by Buyer, Seller shall use its best efforts to keep confidential and to prevent the disclosure of Confidential Information except on a confidential basis, to such of its employees and subcontractors who need such Confidential Information in order to enable Seller to properly perform under this order and who sign secrecy agreements obligating them at least to the same extent as Seller is obligated under this provision, and Seller shall not use or permit to be used Confidential Information for anyone other than Buyer.

NOTICES: All notices will be in writing and deemed given on the date the notice is hand delivered, mailed or electronically transmitted to the receiving party at such party's address set forth on the face of this order. Either party may change its address upon notice to the other party.

PUBLICITY: No information relative to this order shall be released by Seller and Seller shall not use the name, trade name, trademarks, service marks or logos of Buyer, either before or after completion of the order, for publication through newspapers, radio, television or other media, or for advertising purposes without the prior written consent of Buyer.

MISCELLANEOUS: If this order constitutes an offer, Seller's acceptance of this order is hereby expressly limited to the terms of this order and shipment of any part of the goods covered hereunder shall be deemed to constitute such acceptance. If this order constitutes an acceptance of an offer, such acceptance is expressly made conditional on Seller's assent to the terms of this order, and shipment of any part of the goods covered hereunder shall be deemed to constitute such assent. This order constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and there are no oral understandings, representations or warranties affecting it. Neither course of performance nor course of dealing nor usage of trade shall be used to interpret, construe, qualify, explain or supplement any of the terms of this order. This order shall not be amended except in writing signed by the parties hereto.

THE SUPPLIER CODE OF CONDUCT: The SUPPLIER acknowledges that LINDE has a 'Code of Conduct for the SUPPLIERS of the Linde Group' (the "SUPPLIER Code of Conduct"). Copies of it may be viewed at: and will be made available by LINDE upon request. The 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, the SUPPLIER shall not take any action that violates the SUPPLIER Code of Conduct. Further, the SUPPLIER acknowledges that no employee of LINDE is authorized to propose to the SUPPLIER or approve conduct which is inconsistent with the SUPPLIER Code of Conduct.

The 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.

If LINDE has reason to believe that the 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 the SUPPLIER's premises in order to verify the 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 the SUPPLIER's business activities nor violate any of the SUPPLIER's confidentiality agreements with third parties. The SUPPLIER shall reasonably cooperate with any inspections conducted. Each party shall bear its own expenses in connection with such inspection.

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 the 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.

Material breaches include, but are not limited to, incidents of forced or child labor, corruption and bribery, and failure to comply with the SUPPLIER Code of Conduct's environmental protection requirements.

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.