Conditions of Contract

between

Linde Engineering GmbH

and

<Contractor>

covering

Mechanical Installation

at

Kosice, Slovakia

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Attachment 1 - Definitions and abbreviations

1. GENERAL PROVISIONS

# Agreement and Effective Date

This CONTRACT is entered into between <Linde xx> (“COMPANY”) with address at <detailed address> and <Name of Contractor> with address at <detailed address> (“CONTRACTOR”), jointly referred as PARTIES and the EFFECTIVE DATE is the <XX of XXXX 20XX>.

PARTIES’ SIGNATURES

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| For COMPANY | |  | For CONTRACTOR | |
|  | |  |  | |
| 1st Signature | |  | 1st Signature | |
| Name: |  |  | Name: |  |
| Position: |  |  | Position: |  |
|  | |  |  | |
| 2nd Signature | |  | 2nd Signature | |
| Name: |  |  | Name: |  |
| Position: |  |  | Position: |  |

# Contract Documents

* 1. Words and expressions set forth in attachment 1 – “Definitions and abbreviations”, shall have the same meanings as assigned to them in the CONTRACT including all related EXHIBITS and their attachments. Whenever a reference is made to an "article", the articles of the Conditions of Contract are meant.
  2. The CONTRACT consists of these Conditions of Contract, the relevant attachments and the following EXHIBITS including their attachments:

EXHIBIT A: SCOPE OF WORK  
EXHIBIT B: COMPENSATION  
EXHIBIT C: CONTRACT MILESTONES  
EXHIBIT D: ADMINISTRATION REQUIREMENTS  
EXHIBIT E: SPECIFICATIONS  
EXHIBIT F: DRAWINGS  
EXHIBIT G: COMPANY PROVIDED ITEMS  
EXHIBIT H: SUBCONTRACTORS AND VENDORS  
EXHIBIT I: INSURANCES  
EXHIBIT J: GUARANTEES  
EXHIBIT K: COMPANY AND CONTRACTOR INFORMATION

* 1. In the event a conflict or discrepancy is found in the documents forming the CONTRACT as listed in art. 2.2, for the purpose of their interpretation the priority shall be in accordance with the following order:
     1. these Conditions of Contract and its attachments
     2. all EXHIBITS and their attachments in the order they are listed in art. 2.2.
  2. English language shall be used for all communications, correspondence and documentation submitted throughout the validity of the CONTRACT, unless otherwise agreed by COMPANY.

# Representatives and Personnel of the Parties

* 1. Latest 14 (fourteen) DAYS after the EFFECTIVE DATE, each PARTY shall appoint a representative with authority to act on its behalf in all matters concerning the CONTRACT and appoint a deputy to act in its stead.
  2. CONTRACTOR shall provide its signature authorisation form with the names and specimen signatures of those individuals within its organisation authorised to sign documents on behalf of CONTRACTOR.
  3. CONTRACTOR shall provide sufficient key personnel for the execution of the WORK and as specified in EXHIBIT D – ADMINISTRATION REQUIREMENTS.
  4. Personnel used by CONTRACTOR for the execution of the WORK shall be employed on a long-term basis, familiar with the work processes and procedures of CONTRACTOR and have sufficient language skills to enable communication with COMPANY.
  5. CONTRACTOR shall at its own cost replace personnel who conduct themselves in an improper manner, are unsuitable or incapable to perform their tasks.
  6. CONTRACTOR shall grant COMPANY and / or persons authorised by COMPANY access to the SITE at any time.

1. WORK

# Scope of Work

* 1. CONTRACTOR shall:
     1. Conduct, execute and complete the WORK in accordance with the terms and conditions of the CONTRACT;
     2. perform all WORK as described in EXHIBIT A – SCOPE OF WORK in a safe and timely manner;
     3. perform any other activities necessarily inferred from EXHIBIT A – SCOPE OF WORK or anywhere else in this CONTRACT for the fulfilment of CONTRACTOR’S obligations under the CONTRACT.

# Schedule

* 1. CONTRACTOR shall commence the WORK promptly after the EFFECTIVE DATE and shall perform the WORK in accordance with EXHIBIT C – CONTRACT MILESTONES. CONTRACTOR understands and acknowledges that the timely performance of the WORK is a matter of paramount importance to COMPANY.
  2. CONTRACTOR shall, by the date specified in EXHIBIT C – CONTRACT MILESTONES and in accordance with EXHIBIT D – ADMINISTRATION REQUIREMENTS, submit the CONTRACT NETWORK SCHEDULE.
  3. This CONTRACT NETWORK SCHEDULE shall contain:
     1. CONTRACTOR’S resources required for the WORK
     2. the sequence in which CONTRACTOR plans to carry out the WORK
     3. any time limits for COMPANY approvals
     4. general descriptions of arrangements and methods to carry out the WORKS
     5. mobilization and deployment plan of required resources and their estimated average production rates to achieve the MILESTONES as specified in EXHIBIT C – CONTRACT MILESTONES, and
     6. time limits for the execution of any tests, and
     7. the CRITICAL PATH for the execution of the WORKS.
  4. CONTRACTOR shall maintain and keep updated the CONTRACT NETWORK SCHEDULE during the execution of the WORK.

# Authority Requirements

* 1. CONTRACTOR shall ensure that the WORK complies with:
     1. LAWS and regulations which apply on SITE and at the place where the PLANT is operated and used according to the CONTRACT, and
     2. requirements and orders of classification societies and governmental/public authorities as applicable to the WORK, and
     3. current trade union and wage agreements as applicable to any persons employed for the WORK by the CONTRACTOR GROUP.

CONTRACTOR shall notify COMPANY of any conflicts between applicable LAWS and regulations and the CONTRACT. In case of changes in LAWS and regulations after the EFFECTIVE DATE which affects the CONTRACT the provisions of art. 14 to art. 17 shall apply. In case such change in LAWS and regulations is based on a case of FORCE MAJEURE, the provisions of art. 34 shall prevail.

* 1. CONTRACTOR shall obtain and maintain all approvals and permits necessary for the performance of the WORK.
  2. COMPANY may require that CONTRACTOR submits to COMPANY such information about the performance of the WORK and CONTRACTOR GROUP as COMPANY is obliged to submit such information to public authorities.
  3. If CONTRACTOR in its performance of the WORK is in breach of any obligation according to the LAWS and regulations, and if governmental authorities impose any fines, penalties and / or any form of tax payments against COMPANY arising as a result of such breach, then CONTRACTOR shall indemnify COMPANY from such fines, penalties and / or any such form of tax payments, even if such imposition occurs after the completion or termination of the CONTRACT.

# Subcontracts

* 1. CONTRACTOR shall not enter into any SUBCONTRACTS other than those listed in EXHIBIT H – SUBCONTRACTORS AND VENDORS unless otherwise agreed with COMPANY.
  2. CONTRACTOR is responsible for its SUBCONTRACTORS and vendors.
  3. SUBCONTRACTS shall state that the SUBCONTRACT may be assigned to COMPANY or to any AFFILIATED COMPANY of COMPANY GROUP.

# Health, Safety and Environment

CONTRACTOR shall be responsible for managing all HSE aspects of the WORK in accordance with the CONTRACT. CONTRACTOR shall cover all health, safety and environment activities and requirements necessary for the protection of people and the environment during the WORK. COMPANY’S HSE requirements are defined in EXHIBIT A – SCOPE OF WORK and EXHIBIT E – SPECIFICATIONS.

# Quality Management

CONTRACTOR shall implement and maintain a quality management system to demonstrate to COMPANY that the WORK is in accordance with the requirements of the CONTRACT. This quality management system shall comply with ISO 9001 standard (latest version) or equivalent. CONTRACTOR shall ensure that its SUBCONTRACTORS do comply with its quality management system. COMPANY’S quality requirements are defined in EXHIBIT A – SCOPE OF WORK.

1. PROGRESS OF THE WORK

# Delayed Progress

* 1. If the progress of the WORK is behind the planned progress as per the CONTRACT NETWORK SCHEDULE or CONTRACTOR should have cause to believe that the WORK cannot be carried out in accordance with the MILESTONES set out in EXHIBIT C – CONTRACT MILESTONES, it shall promptly notify COMPANY.
  2. Such notification shall state:
     1. the cause of the delayed progress, and
     2. its estimated impact on the CRITICAL PATH.
  3. Irrespective of the cause notified under art. 10.2.1 COMPANY has the rights as set forth in art. 13.

# Excusable Delay

* 1. If the progress of the WORK is behind the planned progress as per the CONTRACT NETWORK SCHEDULE or the WORK cannot be performed in accordance with the MILESTONES set out in EXHIBIT C – CONTRACT MILESTONES due to an EXCUSABLE DELAY, CONTRACTOR shall be entitled to an extension of time if and to the extent CONTRACTOR can demonstrate that:
     1. the CRITICAL PATH is affected by such EXCUSABLE DELAY, and
     2. such EXCUSABLE DELAY was not in consequence of CONTRACTOR’S earlier default or CONTRACTOR’S concurrent delay, and
     3. the EXCUSABLE DELAY is predicted to reduce to below zero the total float on the CRITICAL PATH affected by such delay, and
     4. CONTRACTOR has used its best endeavours to minimize or adsorb any delay by adjusting the CONTRACT NETWORK SCHEDULE.
  2. In case CONTRACTOR is entitled to an extension of time according to art. 11.1, CONTRACTOR shall submit a VARIATION ORDER REQUEST according to the provision in art. 14.

# Contractor’s Delay

* 1. If the WORK cannot be performed in accordance with the LIQUIDATED DAMAGES MILESTONE(S) set out in EXHIBIT C – CONTRACT MILESTONES due to reasons attributable to CONTRACTOR, CONTRACTOR shall pay to COMPANY the LIQUIDATED DAMAGES as set out in EXHIBIT B – COMPENSATION.
  2. CONTRACTOR’S cumulative liability for LIQUIDATED DAMAGES pertaining to CONTRACTOR’S delay under the CONTRACT shall be limited to 10 % (ten percent) of the final CONTRACT SUM. Accrued LIQUIDATED DAMAGES shall be deducted from each monthly invoice, at the latest however from the final invoice as per EXHIBIT B – COMPENSATION.
  3. Notwithstanding art. 12.1 and art. 12.2, CONTRACTOR shall bear all resulting cost for its own personnel and WORKING EQUIPMENT, and any related THIRD-PARTY cost until the issuance of the COMPLETION OF WORKS CERTIFICATE by COMPANY.
  4. COMPANY’S exercise of any of its right or remedy under this art. 12 shall not affect the exercise of any other right or remedy to which COMPANY may be entitled under the CONTRACT.

# Acceleration, Progress Recovery

* 1. In case of an EXCUSABLE DELAY as per art. 11, COMPANY shall be entitled to instruct CONTRACTOR to accelerate the WORK and to mitigate the delayed progress.
  2. If CONTRACTOR receives an instruction as per art. 13.1, CONTRACTOR shall submit a VARIATION ORDER REQUEST as per art. 14.3 stating detailed acceleration measures, the related additional cost and effect on the CRITICAL PATH resulting from such acceleration measures.
  3. In case the progress of the WORK is behind the planned progress as detailed in the CONTRACT NETWORK SCHEDULE and is not caused by an EXCUSABLE DELAY as per art. 11, or in case of CONTRACTOR’S delay as per art. 12, COMPANY shall be entitled to instruct CONTRACTOR to recover and mitigate the delayed progress at CONTRACTOR’S risk and cost.
  4. If CONTRACTOR receives an instruction as per art. 13.3, CONTRACTOR shall submit a VARIATION ORDER REQUEST as per art. 14.3 stating detailed recovery measures and the effect on the CRITICAL PATH resulting from such recovery measures.
  5. If the recovery measures proposed by CONTRACTOR subject to art. 13.4 do not demonstrate that a recovery of the CONTRACT NETWORK SCHEDULE will be achieved in accordance with the MILESTONES set up in EXHIBIT C – CONTRACT MILESTONES, COMPANY shall be entitled to instruct CONTRACTOR to revise, WITHOUT UNDUE DELAY, its proposed recovery measures with regard to the MILESTONES set up in EXHIBIT C – CONTRACT MILESTONES.
  6. In case CONTRACTOR’s revised recovery measures do not demonstrate that a recovery of the CONTRACT NETWORK SCHEDULE will be achieved in accordance with the MILESTONES set up in EXHIBIT C – CONTRACT MILESTONES or the approved recovery measures are not achieved, then COMPANY is entitled at the risk and cost of CONTRACTOR to recover the delayed part of the WORK by itself or a THIRD-PARTY. CONTRACTOR shall furthermore indemnify COMPANY for the extra cost of supervision of COMPANY.

1. VARIATION TO THE WORK

# Right to Vary the Work

* 1. COMPANY has the right to instruct CONTRACTOR in writing to perform a specific piece of WORK or to order any other variation to the WORK. Variations to the WORK may include a change in character, quality, kind or execution of the WORK or any part thereof, as well as changes to the MILESTONES as per EXHIBIT C – CONTRACT MILESTONES and / or EXHIBIT G – COMPANY PROVIDED ITEMS.
  2. Variation(s) in the estimated BILL OF QUANTITY as per EXHIBIT A – SCOPE OF WORK are subject to final remeasurement and do not need a formal VARIATION ORDER as pre-condition for the invoicing.
  3. When COMPANY, or subject to art. 14.9 CONTRACTOR, requires a variation to the WORK, CONTRACTOR shall WITHOUT UNDUE DELAY prepare and submit a VARIATION ORDER REQUEST in the format as described in EXHIBIT D – ADMINISTRATION REQUIREMENTS to COMPANY. The VARIATION ORDER REQUEST shall contain:
     1. a detailed description of the variation to the WORK, and
     2. a statement of the contractual and / or other legal basis of the variation to the WORK, and
     3. all CONTEMPORARY RECORDS on which the CONTRACTOR relies, if applicable, and
     4. detailed schedule for the execution of the variation to the WORK showing the required resources and the impacts on MILESTONES if any, and the effect on the CONTRACT NETWORK SCHEDULE, and
     5. the effect on the CONTRACT SUM, if any, with an explanation of how the variation is calculated in accordance with art. 15.2.
  4. COMPANY will issue a VARIATION ORDER subject to the receipt of a detailed VARIATION ORDER REQUEST as per art. 14.3. If any of the items as per art. 14.3 is not considered in the VARIATION ORDER REQUEST or remains unclear and / or insufficient, COMPANY will return it to CONTRACTOR for revision. CONTRACTOR shall revise and resubmit the VARIATION ORDER REQUEST within 21 (twenty-one) DAYS.
  5. If CONTRACTOR does not submit a revised VARIATION ORDER REQUEST within 21 (twenty-one) DAYS after COMPANY has returned it for revision, such VARIATION ORDER REQUEST shall be deemed withdrawn by CONTRACTOR and void.
  6. If the event or circumstance giving rise to the VARIATION ORDER REQUEST has a continuing effect, then CONTRACTOR shall submit its VARIATION ORDER REQUEST including the following:
     1. a detailed description of the variation to the WORK, and
     2. a statement of the contractual and / or other legal basis of the variation to the WORK, and
     3. all CONTEMPORARY RECORDS on which the CONTRACTOR relies, and
     4. estimated schedule for the execution of the variation to the WORK and the estimated effect on the CONTRACT NETWORK SCHEDULE and / or the CONTRACT SUM.
  7. If CONTRACTOR does not submit a VARIATION ORDER REQUEST in accordance with the requirements of art. 14.3.1 to 14.3.5 within 21 (twenty-one) DAYS upon CONTRACTOR became aware (or should have become aware) of the event or circumstance giving rise to the VARIATION ORDER REQUEST, CONTRACTOR has forfeited its rights for adjustment of the CONTRACT SCHEDULE and / or the CONTRACT SUM.
  8. CONTRACTOR shall submit a revised VARIATION ORDER REQUEST as per art. 14.6 detailing the final schedule for the execution of the variation to the WORK and the effect on the CONTRACT SCHEDULE and / or the CONTRACT SUM as soon as the continuing effect can be conclusively assessed.
  9. CONTRACTOR may propose a variation to the WORK according to the provisions in art. 6.1, art. 11.2, art. 13.2, art 18.3 and art. 34.6.

# Effects of a Variation to the Work

* 1. All of CONTRACTOR'S obligations under the CONTRACT also apply to variations to the WORK.
  2. Unless otherwise agreed between the PARTIES, the price for variations to the WORK shall be determined according to the following principles:
     1. if rates for variation WORK which are specifically described in EXHIBIT B - COMPENSATION, and which state the conditions for application of the rates with respect to the time for the WORK, its sequence, access to the WORK and the extent of the variation WORK, then such rates shall apply to such variation WORK.
     2. if EXHIBIT B - COMPENSATION contains rates for WORK of the same type as the variation WORK, then such rates shall apply, provided that the variation WORK can be executed under circumstances which are not considerably different from those that would apply for WORK of the same type under the CONTRACT.
     3. if EXHIBIT B - COMPENSATION, contains rates for WORK which is comparable to the variation WORK and the circumstances under which the variation WORK will be executed are not considerably different from those that would apply for comparable WORK under the CONTRACT, then suitable rates for the variation WORK shall be established which reflect the level of pricing prescribed for the above-mentioned rates in EXHIBIT B - COMPENSATION by interpolation / extrapolation.
     4. if EXHIBIT B - COMPENSATION, contains rates for WORK which is of the same type or comparable to the variation WORK in question, but the circumstances for executing the variation WORK are considerably different from those applicable to such WORK, the rates or interpolated / extrapolated rates shall be used as a basis, but shall be adjusted to reflect the changed circumstances for their application.
  3. COMPANY shall in any event, at its own discretion, be allowed to demand that any variations be performed on either lump sum basis, DAYWORK basis or by applying UNIT RATES, or adjusted rates as per art. 15.2. CONTRACTOR shall be obligated to carry out the variation, regardless of the choice of basis of the VARIATION ORDER (Lump sum, DAYWORK, UNIT RATES or adjusted rates).
  4. CONTRACTOR shall demonstrate the effects of a variation to the WORK on the CONTRACT SCHEDULE with the CONTRACT NETWORK SCHEDULE. The effect on the CONTRACT SCHEDULE shall be agreed in the individual VARIATION ORDER.
  5. Effects that are not possible to be agreed on in the individual VARIATION ORDER shall be requested collectively by CONTRACTOR after the expiry of each 2 (two) months. Such requests shall cover every effect of the variations to the WORK prescribed over the relevant 2 (two) months period. The request shall contain an analysis of the CONTRACT NETWORK SCHEDULE consequences.
  6. A request containing such analysis must be submitted no later than 14 (fourteen) DAYS after the expiry of the 2 (two) months period that the analysis concerns. CONTRACTOR cannot subsequently request that VARIATION ORDERS that have been agreed or are comprised by the analysis as mentioned shall have effects on the CONTRACT SCHEDULE beyond what has been agreed or stated in the analysis. COMPANY must give notification of its decision WITHOUT UNDUE DELAY after receipt of the claim.

# Issue of Variation Orders

* 1. All variation(s) to the WORK shall be made by means of a VARIATION ORDER issued by COMPANY in accordance with the provisions of this article.
  2. COMPANY'S VARIATION ORDERS shall be in writing and clearly specify the variation to the WORK, effects to CONTRACT SCHEDULE and / or CONTRACT SUM, if any.

# Consequences of Variation Orders

* 1. On receipt of a VARIATION ORDER, CONTRACTOR shall promptly implement it.
  2. If the PARTIES disagree as to an effect on the CONTRACT SUM or as to an effect on the CONTRACT SCHEDULE of a VARIATION ORDER, the view of both PARTIES shall be recorded on the respective VARIATION ORDER. In such case of disagreement, the provision of art. 40.2 shall apply.
  3. CONTRACTOR hereby acknowledges and agrees, that for the purpose of this CONTRACT, CONTRACTOR shall continue and shall not suspend, slow down or delay its performance of the WORK in case of a disagreement according to art. 17.2. CONTRACTOR explicitly waives any right it might have at LAW in this regard.

# Suspension

* 1. COMPANY may suspend the performance of the WORK, or parts thereof, by giving a notice to CONTRACTOR.
  2. The notice shall specify the date of the suspension and the expected date for resumption of the WORK. Furthermore, it shall state any support functions which shall be maintained while the WORK is suspended. CONTRACTOR shall resume the WORK after a further notice by COMPANY.
  3. COMPANY shall compensate CONTRACTOR for reasonable documented cost incurred by CONTRACTOR caused by the suspension of the WORK including such cost as are necessary for resuming the WORK.
  4. The PARTIES shall agree to an adjustment of the CONTRACT SCHEDULE and / or the CONTRACT SUM reflecting the consequences of the suspension of the WORK.
  5. If the WORK or parts thereof have been suspended continuously for a period exceeding 180 (one hundred eighty) DAYS, then CONTRACTOR shall have the right to terminate the CONTRACT in accordance with the provisions of art. 27.2.1 to 27.2.3.

1. COMPLETION OF WORKS AND PAYMENT

# Completion of Works

* 1. When the WORKS, or any part thereof, has been performed and has been satisfactorily passed the inspection and test as required under the CONTRACT, CONTRACTOR shall give notice to COMPANY. COMPANY and CONTRACTOR shall jointly inspect the WORK, or the respective part thereof, and record the successful completion in a DELIVERY PROTOCOL.
  2. COMPLETION OF WORKS occurs when the DELIVERY PROTOCOL for the WORK, or all DELIVERY PROTOCOLS for all parts of the WORK have been issued. The COMPLETION OF WORKS CERTIFICATE will be issued by COMPANY accordingly.

# Payment

COMPANY shall pay the CONTRACT SUM to CONTRACTOR in accordance with the provisions stated in EXHIBIT B - COMPENSATION.

# Security for Fulfilment of the Contract

* 1. Within 30 (thirty) DAYS of the EFFECTIVE DATE, CONTRACTOR shall, at its own cost, provide a parent company guarantee and a performance guarantee as per EXHIBIT J – GUARANTEES. This guarantee shall be provided to COMPANY prior to submission of the first invoice in accordance with the provisions of EXHIBIT B – COMPENSATION. The performance guarantee amount shall be 10% (ten percent) of the initial CONTRACT SUM.

In the event that the CONTRACT is concluded with a joint venture then a parent company guarantee shall be submitted by any partner which is a subsidiary of or is more than 50% (fifty per cent) owned by another company, corporation, firm or partnership.

In the event that CONTRACTOR is a partnership where each partner owns an equal share of the partnership then CONTRACTOR shall submit a separate company guarantee on behalf of each partner signed by a duly authorised representative of the partner.

* 1. CONTRACTOR shall automatically increase the guarantee amount if the CONTRACT SUM is increased by XX % (XX percent).
  2. This guarantee shall be valid for its full amount until the COMPLETION OF WORKS CERTIFICATE is issued, and thereafter it shall be valid for half of its amount until the expiry of the MECHANICAL WARRANTY PERIOD. Alternatively, the performance guarantee may be returned to CONTRACTOR after the COMPLETION OF WORKS CERTIFICATE is issued but only after it is replaced by a corresponding guarantee for half of the value of the performance guarantee and covering the MECHANICAL WARRANTY PERIOD.
  3. If the COMPLETION OF WORKS CERTIFICATE is not issued within the expiry limits stated in CONTRACTOR'S guarantee, then CONTRACTOR, shall at its own cost ensure the extension of its validity, so that it is always valid for the amount required according to these provisions.

# Title, Care and Custody, Risk of Loss

* 1. Title to materials supplied by CONTRACTOR shall pass to COMPANY upon arrival on SITE or when paid for by COMPANY, whichever occurs earlier. Title, care and custody of the WORK and risk of loss or damage to the WORK shall pass from CONTRACTOR to COMPANY upon issuance of the DELIVERY PROTOCOL(S) in accordance with art. 19.1.
  2. As soon as COMPANY PROVIDED ITEMS arrive on SITE, CONTRACTOR shall inspect them, notify COMPANY in case of any missing parts and / or defects and mark them with an identification number and COMPANY'S name, and as far as possible keep them separate from other items. They shall remain under the care and custody of CONTRACTOR until issuance of the DELIVERY PROTOCOL(S) in accordance with art. 19.1.
  3. COMPANY shall have the right to decide at its sole discretion how such loss or damage to the COMPANY PROVIDED ITEMS shall be remedied at CONTRACTOR’S cost.

# Liens

* 1. CONTRACTOR shall not claim, nor cause the creation of a lien or similar claim by CONTRACTOR GROUP or a THIRD-PARTY on the WORK, project, COMPANY’s or CLIENT’s property.
  2. If a lien or similar claim arises or CONTRACTOR becomes aware of such lien or claim, CONTRACTOR shall promptly notify COMPANY thereof and take all necessary steps to discharge the lien at its sole cost.
  3. COMPANY shall have the right to withhold, deduct, set-off or otherwise recover from CONTRACTOR any sum to fully indemnify COMPANY against any losses and costs incurred to COMPANY under such lien or claim.
  4. After the issue of the COMPLETION OF WORKS CERTIFICATE, and when all pending matters resulting from the WORK are finalised and agreed upon, excluding warranty WORK, CONTRACTOR shall issue to COMPANY a release of liens and claims statement.
  5. Goods and / or materials supplied by CONTRACTOR and to be incorporated into the WORK shall be free of liens.

1. WARRANTIES

# Warranties and Representations

* 1. CONTRACTOR acknowledges that COMPANY is relying on CONTRACTOR’S skills, knowledge and expertise in performing the WORK in accordance with the CONTRACT. CONTRACTOR represents and warrants with respect to the WORK performed by CONTRACTOR GROUP that:
     1. it shall perform the WORK in a professional, efficient and diligent manner using qualified personnel in accordance with the CONTRACT;
     2. it shall retain during the entire course of WORK the necessary qualified personnel who are experienced, ready and willing to perform the WORK in accordance with the terms and conditions of the CONTRACT;
     3. it shall perform the WORK in an environmental sound manner, in compliance with the CONTRACT and all communicated COMPANY standards and policies giving priority to safety to protect life and health;
     4. the WORK shall be fit for the intended purpose;
     5. it shall cooperate with CLIENT, COMPANY and other contractors and organise its WORKS in a manner to ensure that CONTRACTOR does not hinder other activities to be carried out simultaneously on SITE;
     6. the WORK and all deliverables arising out of the WORK shall be free of deficiencies, comply with all applicable LAWS and do not infringe the intellectual property of any THIRD-PARTY.

# Mechanical Warranty

* 1. Notwithstanding other warranties and representations of CONTRACTOR under the CONTRACT, CONTRACTOR warrants that the WORK shall be free from defects including latent defects in material or workmanship.
  2. The MECHANICAL WARRANTY PERIOD shall be 24 (twenty-four) months from issuance of the COMPLETION OF WORKS CERTIFICATE as per art. 19.2, however latest until <DATE>.
  3. If a defect arises during the MECHANICAL WARRANTY PERIOD, COMPANY shall notify CONTRACTOR of such defect and CONTRACTOR shall notify COMPANY which measures it intends to apply and the timeframe for such rectification. Unless otherwise instructed by COMPANY, CONTRACTOR shall then at its own cost remedy such defect within the period instructed by COMPANY.
  4. COMPANY shall be entitled to rectify a defect or to have a defect rectified by a THIRD-PARTY, in case:
     1. CONTRACTOR is not willing to or able to rectify the defect, or
     2. CONTRACTOR failed to remedy the defect within the instructed time period under art. 25.3, or
     3. the operational safety of the PLANT is at risk, or
     4. a substantial damage would otherwise occur.
  5. In any of the cases mentioned in art. 25.4, CONTRACTOR shall pay to COMPANY all cost incurred to COMPANY in relation to the rectification.
  6. If, in spite of repeated repairs, the same type of defect continues to re-occur or if other parts of the WORK are likely to be also affected by the defect, then CONTRACTOR shall at its cost remedy the underlying cause of the defect, including defects in the said other parts, at its own cost and by suitable means to be agreed with COMPANY.

1. TERMINATION

# Termination for Cause

* 1. COMPANY shall be entitled to terminate the CONTRACT with immediate effect by notifying CONTRACTOR when:
     1. COMPANY has become entitled to be paid maximum LIQUIDATED DAMAGES in accordance with art. 12.2, or
     2. CONTRACTOR is in material breach of the CONTRACT and has not eliminated such breach within an adequate time as requested by COMPANY or has conclusively refused to eliminate such breach after being notified of it or of such elimination is not reasonably acceptable to COMPANY, or
     3. CONTRACTOR becomes insolvent or cannot fulfil its payment obligation any longer, or
     4. CONTRACTOR become as DENIED PARTY, or
     5. COMPANY has repeatedly informed CONTRACTOR in writing that employee(s) belonging to CONTRACTOR GROUP has (have) violated COMPANY'S safety regulations on SITE and CONTRACTOR does not take reasonable steps to prevent further violation of these regulations.
  2. Upon termination of the CONTRACT, COMPANY is entitled to take over from CONTRACTOR the WORK and COMPANY PROVIDED ITEMS. CONTRACTOR shall upon notice by COMPANY assign all SUBCONTRACTS to COMPANY as requested. A DELIVERY PROTOCOL shall be concluded.
  3. CONTRACTOR is entitled to be paid for the WORK performed until the date of termination. COMPANY shall be entitled to set-off all claims accrued prior to the date of termination.
  4. COMPANY is entitled to take over any equipment and material ordered by CONTRACTOR whether or not already delivered. CONTRACTOR is then entitled for payment of the related material rate as per the BILL OF QUANTITY, if not already paid under art. 26.3.

# Termination for Convenience

* 1. COMPANY may at any time by notice to CONTRACTOR terminate the CONTRACT for convenience.
  2. Following such termination, COMPANY shall pay:
     1. the unpaid balance due to CONTRACTOR for that part of the WORK already performed, and
     2. all costs incurred by CONTRACTOR in connection with purchases ordered by CONTRACTOR prior to receipt of the notice of termination and provided that such costs are not covered by payment under art. 27.2.1, and
     3. all reasonable and documented cost incurred by CONTRACTOR in connection with the termination as requested by the COMPANY, and
     4. 2% (two per cent) as termination fee of the value of the WORK not to be performed due to the termination.
  3. Upon termination of the CONTRACT, COMPANY is entitled to take over from CONTRACTOR the WORK and COMPANY PROVIDED ITEMS. A DELIVERY PROTOCOL shall be concluded.
  4. COMPANY shall be entitled to set-off all claims accrued prior to the date of termination.

1. LIABILITY AND INSURANCE

# Contractor’s Liability and Indemnities

* 1. CONTRACTOR shall
     1. be liable to COMPANY GROUP for all LOSSES whatsoever which COMPANY GROUP may suffer, pay, incur; and, in addition
     2. indemnify and hold harmless COMPANY GROUP against all LOSSES whatsoever which COMPANY GROUP may suffer, sustain, pay or incur

that are in any way directly or indirectly attributable to acts or omissions of CONTRACTOR GROUP arising out of or incidental to the performance or non-performance of the CONTRACT or the WORK.

* 1. CONTRACTOR shall
     1. be liable to COMPANY GROUP for all LOSSES whatsoever which COMPANY GROUP may suffer, pay or incur; and, in addition
     2. indemnify and hold harmless COMPANY GROUP against all LOSSES whatsoever which COMPANY GROUP may suffer, sustain, pay or incur

arising out of claims, demands and / or cause of action asserted by a THIRD-PARTY as a result of acts, omissions, errors, negligence or fault of CONTRACTOR GROUP.

# Limitation of Liability

* 1. Subject to art. 29.2, CONTRACTOR’S total liability under the CONTRACT shall not exceed the CONTRACT SUM.
  2. COMPANY and CONTRACTOR agree that the above limitation of CONTRACTOR’S liability shall not apply in case of:
     1. gross negligence or wilful misconduct of CONTRACTOR, and / or
     2. THIRD-PARTY claims, demands, and courses of action as per art. 28.2, and / or
     3. the cost for any defect rectification as per art. 25, and / or
     4. the cost of any penalties, fines, or other levies imposed on COMPANY by governmental authorities for actual or perceived violations of LAW by CONTRACTOR, and / or
     5. the cost of holding COMPANY harmless from CONTRACTOR’S infringement of patents held by THIRD-PARTIES, and / or
     6. any amount recoverable under any of CONTRACTOR’S insurances, and / or
     7. any damages to property including COMPANY PROVIDED ITEMS as per art. 22.3, real or personal attributable to acts or omissions of CONTRACTOR GROUP.

# Consequential Damages

* 1. Neither PARTY shall be liable to the other PARTY for any consequential, special, or indirect damages, loss of anticipated profits, loss of production, loss of product, loss of revenue, loss of business opportunity and loss of contracts.
  2. The exception in art. 30.1 shall not apply and CONTRACTOR shall be liable in case of gross negligence or wilful misconduct of CONTRACTOR.

# Insurance

* 1. The requirements listed in this art. 31 and in EXHIBIT I – INSURANCES, CONTRACTOR’S insurances, are minimum insurance coverages required to be taken out and maintained by CONTRACTOR under this CONTRACT. By requiring such minimum coverages, COMPANY shall not be deemed or construed to have assessed the risk that might be applicable to CONTRACTOR under the CONTRACT and / or by LAW. CONTRACTOR shall assess its own risk and, if CONTRACTOR deems appropriate, maintain higher limits and / or broader coverage.
  2. CONTRACTOR’S Construction/Erection All Risks Insurance shall include CONTRACTOR GROUP (including CONTRACTOR’S REPRESENTATIVE), COMPANY GROUP (including COMPANY’S REPRESENTATIVE), CLIENT and their personnel as additional insureds. All CONTRACTOR’S other insurances, except for Worker’s Compensation and Employers’ Liability Insurance, shall include CONTRACTOR’S AFFILIATED COMPANIES, COMPANY (including COMPANY’S REPRESENTATIVE), COMPANY’S AFFILIATED COMPANIES, CLIENT and their personnel as additional insureds. CONTRACTOR’S insurances shall be primary without any contribution of any other policies of the additional insureds. All CONTRACTOR’S insurances shall contain insurer’s waiver of subrogation against CONTRACTOR GROUP (including CONTRACTOR’S REPRESENTATIVE), COMPANY GROUP (including COMPANY’S REPRESENTATIVE), CLIENT, their personnel and their insurers. The CONTRACTOR’S Third-Party Liability Insurance shall contain a cross liability clause.
  3. CONTRACTOR shall comply with all obligations, warranties, requirements and the like of any insurances, shall manage, maintain and provide all documents at its own cost and expenses in a timely manner and meet all requirements of the insurers in connection with the settlement of claims. It shall be the responsibility of CONTRACTOR to notify its insurers of any change in the nature and extent of the WORKS and to ensure the adequacy of the insurance coverage at all times throughout the duration of the CONTRACT.
  4. If requested by COMPANY, CONTRACTOR shall furnish to COMPANY insurance certificates issued by its insurers. The acceptance of insurance certificates by COMPANY shall not be interpreted to mean that COMPANY is assuming any responsibility for the correctness of the insurance policies to which the insurance certificates relate. COMPANY shall have no obligation to examine the insurance certificates or to advise CONTRACTOR in the event CONTRACTOR’S insurance is not in compliance herewith. COMPANY’S acceptance of insurance certificates and / or non-request of insurance certificates shall in no way whatsoever imply that COMPANY has waived its insurance requirements under this CONTRACT.
  5. CONTRACTOR shall ensure that all SUBCONTRACTORS take out and maintain minimum insurance coverage pursuant to this art. 31 and EXHIBIT I – INSURANCES, CONTRACTOR’S insurances, and adequate to the activities performed by SUBCONTRACTORS. CONTRACTOR shall not require SUBCONTRACTORS to carry insurance which would duplicate insurance carried by CONTRACTOR. If requested by COMPANY, CONTRACTOR shall have SUBCONTRACTORS furnish the same evidence of insurance required of CONTRACTOR under art. 31.4.
  6. CONTRACTOR and SUBCONTRACTORS shall not commence the shipment of any goods or commence WORK until all of the insurances required of CONTRACTOR and SUBCONTRACTORS are in full force and effect.
  7. CONTRACTOR’S insurances shall be maintained in force and effect throughout the duration of the CONTRACT including any extensions and the geographical scope shall be worldwide. It shall be the responsibility of CONTRACTOR to ensure that CONTRACTOR’S insurances comply with applicable LAWS. All insurances shall be obtained and maintained with reputable and financially sound insurers lawfully authorized to do business in the jurisdiction(s) where the WORK is performed.
  8. The requirements contained herein shall not limit or waive CONTRACTOR’S liabilities, obligations or responsibilities under this CONTRACT and / or LAW. Should any loss or damage occur for which CONTRACTOR is responsible, CONTRACTOR shall be liable for the full amount of the loss or damage, including the amount in excess of any insurance limits and / or coverage and including the amount of any deductible and the amount not recovered or recoverable under insurances.

1. PROPRIETARY RIGHTS

# Intellectual Property Rights

* 1. All information provided to CONTRACTOR by COMPANY in connection with the CONTRACT shall be and remain the intellectual property of COMPANY, CLIENT or licensors.
  2. Nothing in this CONTRACT shall be construed to grant CONTRACTOR any rights or license at any time under patents, trade secrets, copyrights, trademarks or other intellectual property rights.

# Confidential Information

* 1. The PARTIES agree that all information disclosed by one PARTY to the other in connection with the CONTRACT shall only be used for the purpose of performing the CONTRACT and shall be treated as strictly confidential and shall not be disclosed to any THIRD-PARTY without the other PARTY'S written permission consent.
  2. Art. 33.1 shall not apply to information which is:
     1. already in the possession of the receiving PARTY and without obligations to confidentiality, or
     2. or becomes part of the public domain other than through a fault of COMPANY Group or CONTRACTOR GROUP, or
     3. subsequently disclosed to the receiving PARTY by THIRD-PARTIES having the right to disclose the same without any restriction of use or obligation of confidentiality, or
     4. lawfully required to be disclosed in order to comply with mandatory laws, regulations or court orders.
  3. Each PARTY may disclose information to a THIRD-PARTY, to the extent necessary for the performance of the WORK, provided such THIRD-PARTY has signed a written confidentiality agreement.
  4. CONTRACTOR shall not publish information or photos concerning the WORK or the CONTRACT without COMPANY'S written approval, which shall not be unreasonably withheld.
  5. The taking of photographs on the SITE requires COMPANY’S prior written approval.
  6. The provisions of this article shall not prevent a PARTY from disclosing confidential information to authorities or to a THIRD-PARTY to the extent necessary, according to the applicable LAW.
  7. COMPANY shall be entitled to disclose information obtained by CONTRACTOR to the COMPANY GROUP and to CLIENT.
  8. CONTRACTOR’S confidentiality obligations shall survive expiry or termination of the CONTRACT and shall be binding for a period of 15 (fifteen years from the expiration or termination of the CONTRACT.

1. FORCE MAJEURE AND DENIED PARTY STATUS

# Effects of Force Majeure

* 1. Neither of the PARTIES shall be considered in breach of an obligation under the CONTRACT to the extent the PARTY can prove that fulfilment of the obligation has been prevented by FORCE MAJEURE. It is not excluded that new and non-foreseeable consequences arising after the EFFECTIVE DATE of ongoing events on the EFFECTIVE DATE constitute FORCE MAJEURE themselves.
  2. The PARTIES acknowledge and agree that the following occurrences shall in no event be deemed as FORCE MAJEURE:
     1. breakdown or shortage in materials, equipment or WORKING EQUIPMENT used to perform the WORK
     2. difficult weather conditions, unless such weather conditions are proven to be substantially more difficult than conditions which could be normally encountered at the place concerned
     3. local strike or labour conflict among CONTRACTOR'S or any SUBCONTRACTOR'S employees
     4. insolvency with a SUBCONTRACTOR or in the event a SUBCONTRACTOR stops its payments,
     5. shortage of labour.
  3. The PARTY invoking FORCE MAJEURE shall notify the other PARTY of the FORCE MAJEURE event and any of its consequences WITHOUT UNDUE DELAY from the occurrence of the FORCE MAJEURE event. The affected PARTY shall make all reasonable efforts to mitigate and reduce to a minimum the effects of the FORCE MAJEURE.
  4. In the case of FORCE MAJEURE, each PARTY shall cover its own costs resulting from FORCE MAJEURE and any of its consequences.
  5. CONTRACTOR shall at all times use all reasonable endeavours to minimize any delay in the performance of the WORK as a result of FORCE MAJEURE.
  6. Within 14 (fourteen) DAYS after the FORCE MAJEURE event and any of its consequences have ceased, CONTRACTOR shall present to COMPANY its proposed adjustment of the CONTRACT SCHEDULE in the form of a VARIATION ORDER REQUEST. Any adjustments to the CONTRACT SCHEDULE shall be made only with due regard to the delay caused to CONTRACTOR by the FORCE MAJEURE situation.
  7. If a FORCE MAJEURE event and any of its consequences lasts without interruption for 180 (one hundred eighty) DAYS or more, both PARTIES shall have the right to terminate the CONTRACT in accordance with the provisions of art. 27.2.1 to 27.2.3.

# Denied Party Status and Embargo

* 1. CONTRACTOR warrants and represents that, at the time of EFFECTIVE DATE itself is not a DENIED PARTY.
  2. Further CONTRACTOR warrants and represents that it will not cause COMPANY to directly or indirectly deal with a DENIED PARTY at any time.
  3. COMPANY may suspend or terminate the performance of any or all portion(s) of this CONTRACT by notice in writing to CONTRACTOR, if:
     1. CONTRACTOR becomes a DENIED PARTY, and / or
     2. CLIENT becomes a DENIED PARTY, and / or
     3. an EMBARGO, directly or indirectly affecting the performance of this CONTRACT, is imposed or re-imposed.
  4. Without prejudice to COMPANY’S rights under art. 28 and to the extent permitted by EMBARGO and / or other laws, PARTIES may mutually evaluate if a continuation of the CONTRACT in a different setup is lawfully possible.

1. OTHER PROVISIONS

# Assignment of the Contract

COMPANY may assign CONTRACT including all its rights and obligations thereunder to any of its AFFILIATED COMPANIES or to CLIENT without additional consent from CONTRACTOR. CONTRACTOR shall not assign CONTRACT or any part thereof without COMPANY'S prior written approval, which approval shall not relieve CONTRACTOR of any of its obligations under CONTRACT. Any assignment not made in accordance with this article shall be void.

# Entire Agreement, Amendments

* 1. This CONTRACT contains the entire understanding of the PARTIES with respect to the subject matter hereof and substitutes and merges any previous agreements, be it written or oral, among the PARTIES hereto concerning the subject matter hereof.
  2. This CONTRACT, including this clause, may only be amended, modified, waived, rescinded or terminated by written agreement between the PARTIES.

# No Waiver

No act, delay or omission on a PARTY'S part in exercising any right or remedy shall operate as a waiver of such or any other right or remedy. No single or partial waiver by a PARTY of any provision of this CONTRACT, or of any breach or default by the other PARTY, or of any right or remedy, shall operate as a waiver of any other provision, breach, default, right or remedy or of such provision, breach, default, right or remedy on a future occasion.

# Notices

* 1. All notices, claims, (site) instructions and other notification to be given in accordance with the provisions of the CONTRACT shall be submitted in writing to the relevant PARTY'S representative under art. 3 with such address as given in EXHIBIT D – ADMINISTRATION REQUIREMENTS, or as changed by notice.
  2. The date of a notice shall be the date it is received by the representative of the PARTY it is addressed to.
  3. COMPANY may either give notice by official e-mails, letters or by minutes of meetings signed by or confirmed in writing.

# Governing Law and Arbitration

* 1. This CONTRACT shall be governed and construed in accordance with Swiss law.
  2. The PARTIES shall use their best endeavours to settle all disputes, controversies or claims arising out of, or in relation to this CONTRACT amicably. If no settlement can be reached within 30 (thirty) DAYS the dispute, controversy or claim shall be submitted to the PARTIES Steering Committee, which shall consist of each PARTY’S appointed representative(s). Any dispute, controversy or claim arising out of, or in relation to this CONTRACT, including the validity, invalidity, breach, or termination thereof, which cannot be settled by the Steering Committee, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules.
  3. The number of arbitrators shall be 3 (three).
  4. The seat of the arbitration shall be Zurich, Switzerland.
  5. The arbitral proceedings shall be conducted in English language.

# Code of Business Integrity

COMPANY’S Code of Business Integrity, which can be found under [https://www.linde.com/-/media/linde/merger/documents/corporate-governance / code-of-business-integrity](https://www.linde.com/-/media/linde/merger/documents/corporate-governance%20/%20code-of-business-integrity), is a guide to understand the standards of conduct that COMPANY sees as fundamental to honour its commitment to perform with integrity. It helps COMPANY to achieve compliance by establishing a common standard of behaviour required of all employees across the organization during all of its business operations. It also speaks of COMPANY'S values and principles – safety, integrity, sustainability and respect. COMPANY will seek to influence and encourage all its business partners to adopt these standards. COMPANY requires CONTRACTOR to comply with all applicable legal requirements and to act in a manner that is consistent with COMPANY'S Code of Business Integrity.

# Corporate Responsibility

* 1. CONTRACTOR shall comply with the requirements of the ‘Code of Conduct for Suppliers of the Linde Group', which can be found under: <https://www.linde-engineering.com/de/services/procurement/expectations-to-suppliers/code-of-conduct-for-suppliers/index.html> (hereinafter referred to as the 'Supplier Code of Conduct').
  2. CONTRACTOR shall demonstrate compliance with the requirements of the ‘Supplier Code of Conduct’ at the request and to the satisfaction of COMPANY, e.g. by providing data or conducting self-assessments.
  3. If COMPANY has reason to believe that CONTRACTOR may be in material breach of the requirements laid out in the Supplier Code of Conduct, COMPANY or a THIRD-PARTY appointed by COMPANY may conduct inspections at CONTRACTOR’s premises to verify CONTRACTOR’s compliance with the requirements of the Supplier Code of Conduct. COMPANY shall use all reasonable efforts to ensure that all inspections will be conducted in accordance with any applicable data protection law and shall neither unreasonably interfere with CONTRACTOR’s business activities nor violate any of CONTRACTOR’s confidentiality agreements with THIRD-PARTIES. CONTRACTOR shall reasonably cooperate with any inspections conducted. Each PARTY shall bear its own cost in connection with such inspection.
  4. In addition to any other rights and remedies COMPANY shall also have the right to terminate this CONTRACT in accordance with art. 26 without any liability whatsoever, if CONTRACTOR is in material breach of the Supplier Code of Conduct or fails to remedy any breach, after written notification about the breach by COMPANY.
  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.

# Partial Invalidity

If, contrary to expectation, any term or provision of this CONTRACT is declared to be invalid by the board of arbitrators, the other clauses shall not be affected thereby. The PARTIES to this CONTRACT shall endeavour to replace the invalid terms by valid provisions which correspond best to the original economic and general intent.

# Independent Contractor

* 1. Under the CONTRACT, CONTRACTOR remains an independent contractor with the authority and responsibility to supervise, manage, control and direct the day to day performance of the WORK. CONTRACTOR shall have no authority to make statements, representations or commitments of any kind which may be binding on COMPANY.
  2. CONTRACTOR agrees that it is not an agent of COMPANY and none of CONTRACTOR’s GROUP shall be deemed an employee, servant or agent of COMPANY.
  3. The PARTIES expressly disclaim any intent to form a joint venture or partnership between them for any purpose whatsoever.
  4. In case of danger to the safety and health of personnel, COMPANY may however direct CONTRACTOR to stop the WORK.