

General Terms and Conditions Linde Kryotechnik AG, Switzerland

1 General Provisions

1.1 The contract shall be concluded upon receipt of a written acceptance of order of Supplier.

Offers without a deadline for acceptance are not binding.

1.2 These General Terms of Delivery shall apply when declared applicable in the offer or the acceptance of order. Terms of Purchaser are only valid when explicitly accepted by Supplier in writing.

1.3 Paragraph 1.2. shall also apply to all other provisions attached to the offer or the acceptance of order and when declared applicable therein. In case of a conflict, such provisions shall prevail over these General Terms of Delivery.

1.4 All agreements and relevant declarations of the parties are only valid in writing. However, tacit acceptance of amendments to these General Terms of Delivery are possible if Purchaser does not object to a written notification of new General Terms of Delivery by Supplier within 30 days.

2 Drawings and technical Documentation

2.1 Brochures and catalogues are not binding unless agreed otherwise. Information in Supplier's technical documentation is only binding if expressly warranted.

2.2 All drawings and technical documentation remain the exclusive property of the respective party. Both parties shall respect these exclusive rights and shall without the prior written consent of the other party not make such documentation - partly or in whole - available to any third party or use it for any other purpose than for which it has been received.

3 Provisions of the Country of Destination and Safety Devices

3.1 Purchaser shall in due course prior to placing the order inform Supplier of any provisions and regulations of the country of destination affecting delivery, service, operation of the delivery item or which apply to health and safety prevention which need to be complied with.

3.2 Purchaser is responsible for the safety of Supplier's personnel at the place of installation. He has, at his own expense, to carry out all the accident prevention measures required according to Swiss law. Purchaser shall provide any necessary assistance should Supplier's personnel suffer an accident or become ill.

3.3 Supplier is entitled to inspect the work conditions of his personnel on the worksite. In case safety measures are deemed to be insufficient, Purchaser shall immediately remedy such deficiencies. If the safety of Supplier's personnel is not guaranteed, Supplier shall under full compensation of Supplier by Purchaser be entitled to refuse or stop any work and withdraw his personnel until safety is guaranteed. Purchaser shall be responsible for any consequences resulting from delayed completion of the works due to unsafe work conditions at the worksite.

3.4 Supplier shall also be entitled to stop any work and withdraw his personnel should Supplier be considerably hindered in carrying out the work due to reasons beyond the control of Supplier.

3.5 Safety devices will be delivered to the extent agreed upon.

4 Prices

4.1 All prices are ex factory, without packaging, in Swiss francs without any deductions unless agreed otherwise in writing.

Purchaser shall bear all additional costs such as packaging, cargo, insurance, permits for export, transit, import and the like, etc.

Supplier reserves the right to adjust the prices if a sliding-scale price is agreed upon.

4.2 In addition, there shall be a reasonable price adjustment if the delivery deadline is extended due to reasons mentioned in paragraph 8.2., if the nature or the scope of the agreed delivery or the service changes or if the documentation provided by Purchaser does not correspond with the actual circumstances or is incomplete.

5 Terms of Payment

5.1 Payments shall be made by Purchaser according to the agreed terms of payments at Supplier's registered address without deductions of any kind (discount, expenses, taxes, fees, custom duties, etc.).

5.2 The payments shall also be effected at the dates agreed in case transport, delivery, erection, commissioning or acceptance of the delivery or service are delayed or are made impossible for reasons beyond Supplier's control or if non-essential parts are missing or if rework becomes necessary, provided the latter does not affect the use of the delivery.

5.3 If, for whatever reason, Purchaser fails to effect payment or provide security on the agreed date(s) or if, for reasons occurring after the conclusion of the contract, Supplier has reason to expect not receiving Purchaser's payments in its entirety or on due date, Supplier shall be entitled - without affecting his legal rights - to stop further fulfilment of the contract and hold back shipments ready for delivery until new terms of payment and delivery are agreed upon and/or Purchaser has provided sufficient security. If such an agreement cannot be reached in due course or if Purchaser does not provide sufficient security, Supplier shall be entitled to withdraw from the contract under full liability of Purchaser.

5.4 If Purchaser fails to keep the agreed payment deadlines, he shall be in default without further reminder or notice and be liable to pay interest from the due date. The rate shall be based on the prevailing interest rates at Purchaser's registered address and shall be at least 4 % higher than the bank rate of the Swiss National Bank. Further claims for damages remain reserved.

6 Retention of Title

The shipment remains the property of Supplier until the receipt of all payments according to the contract.

Purchaser shall assist in all measures that need to be taken to protect the property of Supplier. He shall, at his own expense, comply with all formalities necessary for the creation and maintenance of the retention of title.

While the retention of title exists, Purchaser shall maintain and insure the delivered objects at his own expense. He shall take all necessary measures to assure that Supplier's retention of title is neither compromised nor annulled.

7 Delivery Time

7.1 The deadline for the delivery begins as soon as the contract has been concluded, all formalities such as import, export, transit and payment permits have been complied with, all payments and securities due at the time of placing the order have been made and provided and all essential technical matters have been sorted out. The deadline or the delivery date respectively shall be deemed duly observed if Purchaser is notified that the delivery is ready for shipment on the delivery date.

7.2 A deadline shall be reasonably extended

a) if instructions required by Supplier to fulfil the contract are not provided in due course or if Purchaser subsequently changes instructions resulting in delayed delivery or service.

b) in case of circumstances beyond Supplier's control - irrespective of whether they affect Supplier, Purchaser or third parties - such as illnesses, mobilisation, war, rioting, considerable business breakdown, accidents, strikes, working to rule, late or incorrect deliveries of raw and other materials, the rejection of important components, local or state official actions or omissions, natural incidents;

c) if Purchaser or third parties are behind with the works to be carried out by them or if Purchaser does not comply with his contractual obligations, in particular with regard to the terms of payment.

7.3 Purchaser shall be entitled to claim a compensation for damages resulting from a late delivery to the extent to which it can be proven that the delay is the responsibility of Supplier and that the damage results from the delay. Purchaser shall not be entitled to claim for damages if Supplier makes a substitute delivery. The compensation is limited and shall amount to 0.5 % per completed week up to a maximum of 5 % calculated on the sales price (ex factory without packaging) of the delayed delivery. There shall be no compensation for damages resulting from delay up to 2 weeks.

Once the maximum amount of compensation is reached, Purchaser shall set an additional reasonable deadline for remedy in writing. If the deadline is not met for reasons Supplier is responsible for, Purchaser is entitled to decline acceptance of the delayed delivery, provided that a fulfilment of the contract in a reasonable period of time is doubtful. In case Supplier does not meet the extended deadline for reasons in his responsibility, Purchaser shall be entitled to withdraw from the contract and reclaim payments already made in exchange for shipments already carried out, provided such delay leads to an intolerable economic situation for Purchaser.

7.4 Any claims and rights relating to delayed delivery or service other than those specified under paragraphs 7.1. to 7.3. are excluded. This does not apply to unlawful intent or gross negligence of Supplier.

8 Packaging

The packaging is charged separately and is not taken back by Supplier unless agreed otherwise. In the latter case, the packaging shall be returned by Purchaser to the point of departure at his expense.

9 Delivery

Delivery is ex factory (Incoterms 2010) at Pfungen or some other place indicated by Supplier.

10 Inspection and Acceptance of Delivery and Service

10.1 Any defects as specified and notified according to paragraphs 11.1. to 11.3. shall be remedied by Supplier as soon as possible. Purchaser shall give Supplier the opportunity to do so.

10.2 Acceptance is deemed to have been effected if the agreed inspection cannot take place on the scheduled date for reasons beyond the control of Supplier or if Purchaser declines acceptance without being entitled to do so or if Purchaser refuses to sign an acceptance report in accordance with the facts or as soon as Purchaser starts to use the delivery or service of Supplier or if the delivery is ready for use, needing only minor reworks.

10.3 Any claims and rights relating to defects of deliveries or services other than those specified under paragraph 11 are excluded.

11 Warranty, Liability for Defects

11.1 The warranty period is 12 months commencing with delivery or, if agreed in writing, with the acceptance of the delivery, the completion of the service or, if Supplier has also assumed responsibility for the supervision of the erection, with the completion of the erection. The warranty expires no later than 18 months from the date the delivery is notified ready for shipment.

For replaced or repaired parts, the warranty period is 6 months starting with the replacement, completion of the repair or acceptance respectively. It ends no later than 12 months after the end of the warranty period as specified in the previous paragraph.

No warranty is given if Purchaser or third parties make modifications or repairs or, in case of a defect, if Purchaser does not immediately take suitable measures to reduce the possible damage and give Supplier the chance to remedy the defect.

11.2 Upon written notification of Purchaser, any defective or useless parts of the delivery detected during the warranty period shall be either repaired or replaced by Supplier (at his own option), provided that such defects are due to defective material or design and construction or negligent service. Replaced parts become the property of Supplier.

Supplier shall bear all costs resulting from the repair or replacement of the defect parts in his facilities; should the repair not be possible in the facilities of Supplier or only with unreasonable efforts, Supplier shall bear all adequate costs resulting from the repair of a delivery or the replacement of defect parts outside of his facilities. All other costs shall be borne by Purchaser.

11.3 No representations and warranties are given for the delivery or the services other than those expressly stated in the confirmation of order or the agreed specifications. Such warranty shall expire at the end of the warranty period according to paragraph 11.1. However, in case an acceptance inspection is agreed, the warranty shall be deemed to have been met if the characteristics in question are verified on the occasion of such inspection.

Purchaser shall be entitled to immediate repair by Supplier in case the warranted characteristics are not or only partly met. Purchaser shall grant Supplier the necessary time and opportunity to do so.

Should the repair not or only partly be successful, Purchaser shall be entitled to an agreed compensation or, if no such compensation was agreed upon, to an adequate price reduction. Purchaser shall be entitled to decline acceptance of the defective part of the delivery or service in case the defects are too severe to be remedied in due course and in case the deliveries or services cannot be used or can only be used to a very limited extent for the purpose indicated. Purchaser shall be entitled to rescind this contract in case a partial acceptance of the delivery by Purchaser cannot reasonably be expected from him from an economic point of view. In such case, Supplier shall only be obliged to return the amounts paid to him by Purchaser to that date.

11.4 No warranty shall be given and Supplier shall not be liable for damages that are not due to defective material or design and construction or negligent rendering of deliveries or services such as wear and tear, insufficient maintenance, violation of operation guidelines, excessive use, inadequate rolling-stock, chemical or electrolytic effects, construction or erection work not carried out by Supplier and other reasons beyond the control of Supplier.

11.5 The services rendered by subcontractors chosen by Purchaser shall be warranted by Supplier only to the extent of the warranty given by such subcontractor to Supplier.

11.6 Any claims and rights of Purchaser other than those specified under paragraphs 11.1. to 11.5. for defective material, design and construction or rendered services as well as to the lacking of or failure to meet warranted characteristics or possible other warranties are excluded.

11.7 For claims of Purchaser relating to insufficient counseling and the like or to a violation of any secondary obligations, Supplier shall be liable only for unlawful intent or gross negligence.

12 Exclusion of other Liabilities of Supplier

12.1 Any liability for breach of contract including its legal consequences as well as any claims of Purchaser - arising from whatever cause - other than those specified in these General Conditions are excluded. Especially, all claims for damages, reduction of the contractual contract price, cancellation of the contract or withdrawal from the contract not expressly stated herein is excluded. Also, all claims of Purchaser relating to damages other than relative to the delivered item such as loss of production, loss of effectivity, loss of orders, loss of profit as well as any other direct or indirect damage are excluded. This does not apply to unlawful intent or gross negligence of Supplier unless auxiliary persons of Supplier are responsible.

12.2 This limitation of liability shall be valid to the extent it does not conflict with strict statutory provisions.

13 Place of Jurisdiction and applicable Law

13.1 The place of jurisdiction for both Purchaser and Supplier shall be Pfungen (Canton of Zurich, Switzerland), whereby the Commercial Court of the Canton of Zurich shall be the competent venue. However, Supplier shall also be entitled to sue Purchaser before the court having jurisdiction over the place of business of the latter.

13.2 The contract shall be governed by Swiss law under the exclusion of the Vienna Convention on the International Sale of Goods ("CISG").