



General After-Sales Terms & Conditions for Services and Spare Parts Linde Kryotechnik AG, Switzerland

§ 1 General Provisions

1. These general after-sales terms & conditions shall apply to the sales of equipment, components, material and machinery (the "Goods"), and provision of engineering, consulting, supervision of erection, remote control and hotline services with regard to the Goods (the "Services"), as applicable. The general purchase conditions of the Buyer, changes or additions to these general sales conditions, guarantees, warranties and agreements shall bind the Seller only to the extent that they are confirmed in writing by the Seller in the contract documents pertaining to the respective sale (the "Contract").
2. The agreed trade terms shall be construed according to the ICC INCOTERMS valid at the date of formation of the Contract.

§ 2 Information and Confidentiality

1. Data contained in catalogues and price lists as well as all documents pertaining to Seller's offer such as, but not limited to, drawings, descriptions, weights and measurements, are given for approximate guidance only. They shall only be binding to the extent expressly provided for in the Contract. Descriptions and performance criteria of the Goods are expected values unless expressly qualified as guaranteed values in the Contract.
2. All drawings, technical documents and technical information related to the Goods, or their fabrication, or to Services, submitted by either party to the other prior or subsequent to the formation of the Contract and any intellectual property and inventions included in such (the "Confidential Information") shall remain the exclusive property of the submitting party. Confidential Information shall not be used without the prior written consent of the submitting party, nor be copied, reproduced, transmitted or communicated to any third party, except for the performance of the Contract and the erection, operation, or maintenance of the Goods, in which case the third party shall be bound to confidentiality obligations not less stringent than stated herein. Confidential Information shall not be communicated to any third party who is a competitor of Seller without Seller's approval, and shall not be used if the contract is terminated due to reasons other than Seller's default. The confidentiality obligations herein survive termination of the Contract.
3. The Buyer warrants and represents that Buyer itself is not a Denied Party, and that Buyer will not cause Seller to directly or indirectly deal with a Denied Party at any time, and especially that Buyer will (i) not disclose the Confidential Information to a Denied Party or (ii) sell the Goods to a Denied Party. "Denied Party" shall mean a party, (i) to whom Seller cannot sell, (ii) to whom Seller cannot provide directly or indirectly an economic resources, and/or (iii) with whom Seller cannot otherwise deal with, according to a trade regulation. A party, who is directly or indirectly majority-owned and/or otherwise directly or indirectly controlled by a Denied Party, shall itself also be considered as a Denied Party.

§ 3 Scope of Supply

The scope of supply of Goods and Services shall be as stated in the Contract. If the Seller has submitted a written offer with a time limit and the Buyer has awarded the order within that time limit, the scope of supply shall be as stated in the offer. A change in law after order confirmation shall allow for a reasonable adjustment of price and schedule. Buyer warrants that the Goods and Services, provided by Seller, shall only be used for the plant, purpose and/or end use specified in the Contract. If, and to the extent, the scope of supply includes Goods or Services which are subject to prior authorization of the competent export control authorities, Seller's obligation to deliver such Goods and Services shall come into force in this respect only with granting of such export authorization.

§ 4 Price, Payment, Tax

1. Except as otherwise provided in the Contract, the price basis shall be FCA. Any taxes, duties, customs duties, or other charges arising outside Seller's country as well as value added tax, if applicable, shall be for the account of Buyer.
2. Except as otherwise provided in the Contract, the price shall be paid to the Seller without any deduction as follows:
 - a. 50% as down payment upon receipt of Seller's order confirmation;
 - b. 50% upon FCA delivery or against warehouse receipt in case the pick-up of Goods is delayed by Buyer.
3. The Buyer shall not be entitled to withhold or set off payments due to the Seller in respect of counterclaims disputed by the Seller.
4. If the Buyer fails to pay by the due date, the Seller shall be entitled to interest from the day on which payment was due. The rate of interest shall be 5 % above the base rate applicable in Switzerland. In any case of late payment the Seller may, after having notified the Buyer in writing, suspend the performance of the Contract until payment is received. If the Buyer fails to pay within three months from the due date, the Seller shall be entitled to terminate the Contract by written notice to the Buyer and to claim compensation for the loss incurred. The compensation shall not exceed the agreed purchase price.
5. The Buyer is obliged to provide the Seller with the export customs certification. Alternatively the Buyer is obliged to provide the Seller with a special confirmation of the freight forwarder, who should be based in the territory of Switzerland. If necessary the Seller will provide a special confirmation template of the freight forwarder upon Buyer's request.
6. In case the aforementioned documents are not made available, exemption from Swiss VAT for the supply of goods might not be granted. In case the Swiss tax authorities request Seller to pay Swiss VAT on the supply of Goods under this Contract the Buyer is obliged to pay the Swiss VAT in addition to the purchase price.

§ 5 Obligation of the Buyer

1. The Buyer shall undertake all that is deemed necessary in order for the Services to be commenced on time and rendered without hindrance or interruption. The Seller's personnel shall not be called upon until all preparatory work has been completed.
2. The Buyer has to ensure that all entry, exit, residence, work and any other official permits required by the Seller's personnel are obtained in due course. The Buyer has to ensure that all necessary permits required by the Seller for the import and export of tools, equipment and materials are obtained in due course.
3. The Buyer has to carry out all the construction and other preparatory work in ordinary workmanship manner at his expense and responsibility in accordance with the documentation supplied by the Seller, if any.
4. The Buyer has to ensure that the transport access route(s) to the erection site is/are usable and that the erection site itself is in a condition allowing erection work to commence. In addition, the Buyer is to arrange that access to the erection site is guaranteed without hindrance and all rights of way required have been assured.
5. The Buyer has to inform the Seller of any legal, official and other regulations applying to the erection work and plant operation.
6. In case of repair work or similar Services, the Buyer has to
 - a. Provide the Seller with the existing technical documentation of the item needing service.
 - b. Provide spare parts in due course and make them available to the Seller's personnel.
 - c. Arrange for transport of the item needing service in good time if required for maintenance or repair.
7. The Buyer has to insure the item needing service for damages at his own

expense.

8. The Buyer has, at his own expense, to carry out all the accident prevention measures required. In particular, he has to inform the Seller expressly when special consideration shall be taken with regard to work carried out by the Buyer and/or any other Seller. The Buyer also has to draw the attention of the Seller to any regulations which have to be complied with. The Seller shall be entitled to refuse or stop any work if the safety of the personnel is not guaranteed. The Buyer is to provide any necessary assistance should the Seller's personnel suffer an accident or become ill.
9. The materials and parts to be erected shall be stored in such a manner that they are protected from any damage or deterioration. Before erection work is commenced, the materials and parts shall be checked for completeness and damage by the Buyer in the presence of the Seller's personnel. Should any items be lost or damaged during storage, they shall be replaced or repaired at the Buyer's expense.
10. The Buyer shall provide heatable or air-conditioned lockable rooms, including suitable sanitary facilities, for the Seller's site personnel. In addition, the Buyer shall provide lockable dry rooms for the storage of materials and equipment. All these rooms shall be located in the immediate vicinity of the place of work.
11. The Buyer has to supply the following at his own expense in due course and in accordance with the Seller's instructions or erection program:
 - 11.1 Qualified skilled and unskilled workers such as fitters, welders, electricians, masons, painters, sheet metal workers etc. with the necessary tools and equipment. These workers have to comply with the Seller's working instructions but will nevertheless remain the Buyer's employees, subordinated and responsible to him.
 - 11.2 Suitable cranes and other lifting devices in good working order with attendant personnel, appropriate scaffolding as well as means of transport for personnel and materials, appropriate workshop equipment and measuring devices.
 - 11.3 Necessary consumable goods and installation materials, cleaning materials, lubricants and miscellaneous incidentals required during erection.
 - 11.4 Electrical energy and lighting including the necessary connections up to the place of erection, heating, compressed air, water, steam, fuels, etc.
 - 11.5 If required, means of communication such as telephone, internet access, etc.
12. After completion of the work, the tools and equipment supplied by the Seller shall be sent without delay to the place indicated by the Seller at the expense and risk of the Buyer.
13. Should the Buyer not or only partially fulfil his obligations, the Seller is entitled to remedy such deficiencies either himself or by means of third parties. The costs arising from such a procedure shall be paid by the Buyer. The Buyer shall also indemnify the Seller against his liability towards third parties.
14. Should the Seller's personnel encounter any danger or be considerably hindered in rendering the Services due to any reason beyond the control of the Seller; the Seller is allowed to withdraw the personnel from the work site. In such cases and also should personnel be retained after completion of the work, the corresponding hourly/daily rates are invoiced as waiting time, plus the travelling expenses and daily allowances.
15. The proper disposal of consumable goods and installation materials, cleaning materials, lubricants and replaced parts shall be the responsibility of the Buyer.

§ 6 Delivery Time

1. The delivery time shall start as from the confirmation of order, but not before the Buyer has submitted all documents, authorizations, import licenses or the like as applicable and the receipt by Seller of the down payment.
2. The agreed delivery time is met, if within that period the Goods have been delivered according to the agreed trade term or Seller has notified Buyer that the Goods are ready for delivery.
3. Should delay in delivery be caused by Force Majeure as per § 11.1, a reasonable extension of the delivery time shall be granted.
4. If delivery is delayed due to Seller's fault, the Buyer shall be entitled to demand liquidated damages for such delay. The liquidated damages shall be 0.5 % of the price of the delayed parts for each full week of delay, with a maximum liability of 5 % of the price of the delayed parts.
5. If the Buyer fails to accept delivery on due date, then Seller shall arrange

for the storage of the Goods at the risk and cost of the Buyer. In such case, the notification of storage shall substitute the event of FCA delivery with respect to the stipulations under the Contract. The fee for storage at Seller's premises shall be 0.5 % of the purchase price for each month of storage, plus necessary expenses.

§ 7 Passing of Risk and Taking Over, Acceptance

1. Except as otherwise provided in the Contract, the trade term FCA shall be applicable.
2. The risk for the Goods shall pass according to the agreed INCOTERMS. This shall apply also in the event of partial shipments or in the event that the Seller has to perform additional services, such as payment of freight or further shipment and erection.
3. If shipment is delayed due to circumstances attributable to the Buyer, the risk shall pass on the date on which the Goods are ready for delivery. The Seller shall arrange for such insurances at the cost of Buyer as requested by the Buyer.
4. Without prejudice to Buyer's rights under § 9, Buyer shall accept delivery of the Goods, even if the same show minor deficiencies which shall be documented in a punch list. Partial shipments shall be permitted.
5. Seller's scope of supply shall be accepted or, failing an express acceptance, be deemed accepted by Buyer, if no major defects are claimed in writing by Buyer within 2 weeks after date of delivery or end of services. If reasonably feasible, Seller may request that Buyer accepts part of the scope of supply and provides Seller with a partial acceptance certificate. Within one (1) week after Acceptance as aforesaid, an Acceptance certificate shall be issued to that effect by the Buyer.

§ 8 Reservation of Title

The Goods shall remain the property of the Seller until paid for in full to the extent that such retention of property is valid under the law of the area where the Goods are located. If retention of property is not valid under such law, the Seller reserves and may exercise any other rights related to the Goods as permitted by such law. The Buyer shall at the request of the Seller assist in taking any measures necessary to protect the Seller's title to the Goods or any such other rights in the country concerned. In these cases the Buyer shall not grant any pledge or lien or other right or transfer title in the Goods to any third party. In the event that the Goods are seized by any third party, or a pledge or lien is granted by court order to such third party, Buyer shall notify the Seller thereof immediately.

§ 9 Liability for Defects

1. Seller warrants that the Goods shall be free from defects, including latent and hidden defects, in design, material and workmanship for a period of 12 months from putting the Goods into operation, or 16 months from transfer for risk as per INCOTERMS, whichever first expires (the "Warranty Period").
2. If, during the Warranty Period, any part of the Goods proves defective, Seller shall at its option either repair or replace such defective part at its cost and expense on contractual delivery basis.
3. The Seller shall not be liable for normal wear and tear, or for defects or damages caused by circumstances out of Seller's control such as but not limited to: faulty or negligent erection, start-up, operation, treatment, maintenance, civil works, or external influences, except if due to Seller's fault, materials supplied by the Buyer or designs provided by the Buyer, deviations from the conditions for location or operation stipulated in the Contract or to be reasonably expected.
4. The Buyer shall grant to the Seller the necessary time and opportunity to effect any repair or replacement. The Buyer shall only be entitled to remedy any defects at the Seller's cost in cases of imminent danger seriously affecting the operational safety or to avoid excessive damages, in which cases the Seller must be notified immediately, or in the event that the Seller has failed to remedy a defect within a reasonable period notified in writing by the Buyer.
5. To the extent that the notification of defect is justified, the Seller shall bear all direct costs necessary for the repair or replacement of the Goods, including delivery according to the agreed trade term, and, to the extent this can reasonably be expected from the Seller, the reasonable cost of providing Seller's specialists. All other costs shall be borne by the Buyer, such as but not limited to costs for dismantling and reassembling of equipment other than the Goods, cranes and tackles and transport and travel cost between the place of delivery and the location of the Goods.
6. For replaced or repaired Goods, the Warranty Period shall be extended to

12 months from the date of such repair or replacement. However, the Warranty Period so extended shall at the latest expire 12 months after the original Warranty Period has expired.

7. If due to Seller's fault the Goods are defective or cannot be used as intended by the Contract due to failures or errors in Services, advice or consulting carried out before or after formation of the Contract, or in other contractual services such as operation or maintenance instructions or manuals, the provisions of § 9 shall apply accordingly, to the exclusion of any further claims.
8. Claims under this § 9 must reach the Seller within the Warranty Period, and shall be deemed waived if notified thereafter.
9. The rights and remedies stipulated in this § 9 shall be Buyer's sole rights and remedies for defects in the Goods or Services.

§ 10 Patent Indemnity

1. In the event that the Goods, or Services, or any part thereof when properly used by the Buyer are subject to intellectual property rights of a third party, the Seller shall at its option either make available to the Buyer the rights in question, or modify the Goods, or Services, at its own cost so as to make it not infringing, or defend the Buyer from such suit or action against the Buyer for infringement of third party intellectual property rights, always provided, however, that
 - a. the Buyer shall have given to the Seller prompt and timely notice of any such alleged infringement, suit or action, and shall provide reasonable support to the Seller in defending against such suit or action, or shall make the Goods available for modification, respectively;
 - b. the Buyer does not admit the alleged infringement, settle or compromise any such suit or action without Seller's prior written consent and that the defence shall be under the direction of the Seller;
 - c. the infringement is not due to an instruction of the Buyer, and not due to any unauthorized modification, expansion, or use of the Goods or Services.
2. The remedies in this § 10 are Buyer's sole remedies for infringement and misappropriation of third party intellectual property rights.
3. In case Seller is requested to perform work regarding an existing facility containing equipment not delivered by Seller, Buyer warrants that Seller is permitted to work on such equipment and will hold Seller harmless from third party claims regarding the violation of intellectual property rights.

§ 11 Force Majeure

1. Neither party shall be liable to the other party for its failure or delay in performing its obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by any circumstance not under the party's reasonable control ("Force Majeure"). Force Majeure events include circumstances beyond the control of the effected party, such as, without limitation, industrial disputes, strikes, fire, storm, earthquake, flood, accidents, shipwreck, war (whether declared or not), insurrection, acts of terrorism, kidnapping and other criminal assaults against the parties' personnel, transport accidents, seizure, embargo, trade regulations, government action, restrictions in the use of power, epidemics, and Force Majeure events occurring at the parties' suppliers or subcontractors.
2. The party claiming to be affected by a Force Majeure event shall without delay notify the other party in writing of the occurrence and on the termination of such circumstance.
3. If a Force Majeure event prevents or delays the fulfillment of Buyer's obligations, Buyer shall compensate the Seller for expenses incurred in securing and protecting the Goods and interest on delayed payments.
4. Either party shall be entitled to terminate the Contract by notice in writing to the other party if performance of the Contract is suspended under this clause for more than six (6) months.

§ 12 Limitation of Liability

1. Seller's liability under the Contract, including liability for damage to Buyer's, and Buyer's affiliates', property, shall be limited to twenty percent (20 %) of the purchase price, excluding however, Seller's obligation to deliver the Goods and to complete the Services and to rectify any defect or replace any Goods, all in accordance with the Contract.
2. Seller provides at its own expense a third party liability insurance covering damages caused by Seller to Buyer and third parties outside the Scope of Supply. Seller's aggregate and cumulative liability shall be limited to the extent of its third party liability insurance up to the following amounts:
Bodily injury: max. CHF 500'000
Max. applicable to each person: CHF 250'000
Damage to tangible assets including property damages caused by Seller to Buyer and third parties outside Seller's scope of supply: CHF 500'000
3. Buyer shall indemnify and hold Seller harmless against all further claims.
4. THE REMEDIES OF BUYER AS SET FORTH HEREIN AND IN THE CONTRACT ARE EXCLUSIVE. THERE ARE NO EXPRESS WARRANTIES, REPRESENTATIONS OR GUARANTEES BY SELLER OTHER THAN THOSE SET FORTH IN THE CONTRACT, AND NO WARRANTIES OR GUARANTEES BY SELLER (OTHER THAN WARRANTY OF TITLE) SHALL BE IMPLIED OR SHALL ARISE OR BE CREATED BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE.
5. ANYTHING IN THE CONTRACT TO THE CONTRARY NOTWITHSTANDING, IN NO EVENT SHALL SELLER BE LIABLE TO THE BUYER, WHETHER BY REASON OF ANY BREACH OF THE CONTRACT OR OF STATUTORY DUTY OR IN TORT, (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR STRICT LIABILITY FOR LOSS OF PRODUCTION, LOSS OF PROFITS, LOSS OF USE, LOSS OF CONTRACTS, ADDITIONAL PRODUCTION COST, OR FOR ANY FINANCIAL OR ECONOMIC LOSS OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY DESCRIPTION.

§ 13 Arbitration, Applicable Law, Compliance with Law

All disputes arising out of or in connection with the Contract shall be finally and conclusively settled by arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce by one or more arbitrators nominated in accordance with the said rules. The arbitration shall be held in Zurich, Switzerland in the English or German language. The Contract shall be governed by and construed in accordance with Swiss law, to the exclusion of its rules for the conflict of laws and the Vienna UNCITRAL law.

Seller shall be exempted to fulfil its obligations if and to the extent that the performance of such obligation is in violation of, or otherwise inconsistent with, any legislative or regulatory provision or regulation.

§ 14 Voidness in Part

Should any provision in these conditions or in the Contract prove to be void, ineffective or inoperable, the validity of the remaining provisions shall not be affected. The Buyer and the Seller shall be obliged, however, in such a case to replace the respective provision by a valid and operable provision which meets as closely as possible the purpose of the original provision.

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