

# GENERAL TERMS OF PROCUREMENT

## AGA Region Europe North

### 1. INTRODUCTION

These General Terms of Procurement (hereinafter called the "Terms") shall apply between AGA in Sweden, Norway, Finland, Denmark, Estonia, Latvia, Lithuania and Iceland and/or any of such AGA company's directly or indirectly controlled affiliates (hereinafter called "AGA") and a supplier (hereinafter called the "Supplier") concerning supply and purchase of goods, equipment and/or services, unless otherwise agreed in writing between AGA and the Supplier. To the extent to which the Supplier's terms deviate from these Terms, the Supplier's terms shall not apply without written approval from an authorised officer within AGA. Acceptance of or payment for goods or equipment (hereinafter called the Goods) or services shall not constitute approval of the Supplier's terms, which shall thus be deemed to be inapplicable.

Herein "Agreement" shall mean any order(s), head agreement(s), purchase agreement(s) or, if no such order(s) or agreement(s) exist, the Supplier's offer and AGA's acceptance thereof.

### 2. TERMS OF DELIVERY

- 2.1 Goods and services shall be delivered at the place specified in the order. The terms of the delivery shall be DDP in accordance with INCOTERMS 2000. Where the order also specifies the weight of the delivery, the weight as measured by AGA's scales shall be decisive. Title of the goods shall pass to AGA on delivery of the goods. Any retention of title expressed by the Supplier shall not apply.
- 2.2 If the Supplier fails to deliver the goods or services on time, AGA shall be entitled to a penalty corresponding to 2,5% of the aggregate purchase price per each commenced new week of delay. AGA shall always be entitled to rescind the agreement after a delay of four (4) weeks, and shall in such case be entitled to a 10% penalty as well as full compensation for any damages suffered by AGA.
- 2.3 The Supplier shall immediately advise AGA if delivery cannot be made on time. The Supplier shall seek to the greatest possible extent to deliver on the originally agreed date, or on an earlier or later date as agreed with AGA. Any additional costs incurred as a result of the originally agreed or altered delivery date shall be borne by the Supplier.

- 2.4 All goods shall be accompanied by the requisite despatch documents (including export permits, certificates of origin and other required permits) and a delivery note specifying the goods and AGA's order number and other information which AGA may require. All fees and duties, including import and/or export duties, shall be paid by the Supplier before delivery to AGA. AGA shall be given every assistance by the Supplier in obtaining the documents which AGA may require.
- 2.5 The Goods shall be properly packed to protect the same. The Supplier shall always comply with AGA's packaging and marking instructions, if any. It is the Supplier's responsibility to comply with all relevant legislation relating to packaging, safety and markings of Goods. If recycling is a statutory requirement in the country where the Goods are to be delivered or used, the Supplier shall guarantee that the packaging can be reused or recycled within the public waste system. On request from AGA, the Supplier shall collect the packaging without charge and recycle or reuse the packaging as required by law. All packaging, protection and marking costs shall be considered as included in the Supplier's offered price for the Goods.
- 2.6 AGA reserves the right to check the goods and/or the production process at reasonable times on prior notice. Checking before or after delivery or approval by AGA of specifications, drawings, samples or other descriptions of the Goods prepared by the Supplier shall not eliminate AGA's right to reject defective Goods at a later time or to make a claim concerning defective Goods.

### **3. PRICES AND TERMS OF PAYMENT**

- 3.1 Unless otherwise specified, agreed prices shall be fixed and include all delivery and packaging costs. If the terms of payment are not specified on the order, payment shall be made within forty-five (45) days of invoicing. Invoicing may not occur before delivery of the goods or services.
- 3.2 All invoices shall be sent to AGA after delivery and shall specify AGA's order number, any serial number, date of order, the Goods or services delivered, the date of delivery and other information, which AGA may require. VAT and any other duties shall be specified separately.

## **4. GUARANTEES**

- 4.1 The Supplier guarantees that on delivery, the Goods and services
- (a) comply with the specifications in the “Agreement” and all other specifications given by AGA in connection with the “Agreement”,
  - (b) comply with applicable legal requirements, including permits and registration, in the jurisdiction in which the delivery is made, and any others specified by AGA, as well as current EU regulations and directives,
  - (c) are free of faults and/or defects and are suitable for the purpose which AGA has explicitly or implicitly advised to the Supplier,
  - (d) do not contain foreign objects, pollutants or unpleasant odours, and
  - (e) comply with all relevant standards, including AGA’s technical and safety standards.
- 4.2 If AGA accepts delayed, incomplete or defective delivery or has made payment, AGA has not thereby waived the right to claim the provisions on breach of contract. Any duty to inspect deliveries which follows from current legislation shall not apply.
- 4.3 In the event of breach of point 4.1 above, AGA may demand immediate replacement delivery (exchange) without payment, or remediation. In especially urgent cases where the Supplier cannot meet AGA’s reasonable requests, AGA shall have the right to remedy defects and/or repair the defect at the Supplier’s expense. Such remediation/repair shall not affect the Supplier’s responsibility hereunder.
- 4.4 The guarantees given by the supplier in point 4.1 may be claimed for a period of twenty-four (24) months from delivery of the Goods and for a period of thirty (30) months from delivery of services unless otherwise agreed in writing.

## **5. LIABILITY AND INSURANCE**

- 5.1 The Supplier shall hold AGA harmless for losses, costs, claims for compensation, or liability consequent upon breach of these terms, including product liability and claims for compensation consequent upon personal injury or death.
- 5.2 The Supplier shall be liable for loss or injury caused by the Supplier in connection with the performance of the Supplier’s obligations.

5.3 The Supplier shall maintain product liability insurance or other insurance cover, which AGA reasonably requests when submitting the order. If the Supplier fails to maintain insurance cover as specified above, AGA may take out insurance at the Supplier's expense. The Supplier shall show the insurance policy to AGA on request.

## **6. INTANGIBLE RIGHTS/THIRD PARTY RIGHTS**

6.1 "Rights" shall be understood to mean patent rights and copyrights, trademarks and pattern rights (registered or not), utility models and other intangible rights.

6.2 The Supplier guarantees that no Rights (including third party Rights) are infringed by the Supplier's delivery of Goods or services or by the use of such Goods or services. The Supplier shall immediately indemnify AGA on request against all claims that the use or possession of Goods or services supplied by or on behalf of the Supplier infringe third party Rights. This indemnification shall cover all costs which AGA may incur in connection with claims made by a third party.

6.3 All products, samples, documents and information supplied by AGA to the Supplier as well as AGA's Rights shall remain AGA's property. The Supplier's use thereof shall only be permitted within the framework of the purpose of the order or other agreement between the parties.

## **7. CONFIDENTIALITY**

7.1 Both parties declare that all information concerning the other party's business or an affiliated company's business (including factual information and terms in an order) which has not been published – with the exception of publication consequent upon the Supplier's breach of the terms – shall be confidential. The parties shall not pass on confidential information to a third party or use confidential information unless done in connection with the performance of this agreement.

7.2 Each party shall be responsible for unauthorised disclosure by its employees or representatives, and shall take all reasonable precautions to prevent disclosure.

7.3 At no time (before, during or after the performance of an agreement) may the Supplier use AGA's or AGA group's name, trademarks or trade names, or otherwise make reference to the company for marketing or other purposes without AGA's prior written consent.

## **8. CORPORATE RESPONSIBILITY**

- 8.1 Supplier shall comply with the requirements of the 'Code of Conduct for Suppliers of the Linde Group', a copy of which has been provided to the Supplier and which may be found at [www.aga.com/CodeofConduct](http://www.aga.com/CodeofConduct) (hereinafter referred to as the 'Supplier Code of Conduct').
- 8.2 Supplier shall demonstrate compliance with the requirements of the 'Supplier Code of Conduct' at the request and to the satisfaction of AGA, e.g. by providing data or conducting self-assessments.
- 8.3 If AGA has reason to believe that Supplier may be in material breach of the requirements laid out in the Supplier Code of Conduct, AGA or a third party appointed by AGA may conduct inspections at Supplier's premises in order to verify Supplier's compliance with the requirements of the Supplier Code of Conduct. AGA 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 Supplier's business activities nor violate any of Supplier's confidentiality agreements with third parties. Supplier shall reasonably cooperate with any inspections conducted. Each party shall bear its own expenses in connection with such inspection.
- 8.4 In addition to any other rights and remedies AGA shall also have the right to terminate this agreement and any purchase order issued hereunder without any liability whatsoever, if Supplier is in material breach of the Supplier Code of Conduct or fails to remedy any breach, after written notification about the breach by AGA.
- 8.5 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.

## **9. TERMINATION**

- 9.1 Either party may terminate an Agreement in writing with immediate effect
- (a) in the event of a material breach of these Terms by the other party which is not remedied within fourteen (14) days of a request to do so, or
  - (b) if the other party becomes insolvent or a petition for suspension of payments or bankruptcy is submitted by or against the other party.

- 9.2 AGA may terminate an Agreement if there is a change in the Supplier's ownership, control or management, which has a material influence on AGA's interests. The Supplier shall immediately advise AGA in the event of changes in the Supplier's ownership or control.
- 9.3 Termination of an Agreement for whatever reason shall not affect the provisions in these Terms in general, which shall continue in effect after termination of such Agreement.

## **10. GENERAL**

- 10.1 The Supplier shall be an independent business entity in relation to AGA and nothing herein shall be construed as creating a partnership or company between the parties.
- 10.2 The Supplier shall keep and, at AGA's request, present all documentation on the Goods or services which were delivered which may reasonably be requested by AGA, including documents required to trace the Goods or parts thereof, for at least five (5) years after delivery, and ensure that its suppliers do the same. The Supplier shall cooperate with AGA if a product is to be withdrawn from the market.
- 10.3 AGA may assign any Agreement to any of its affiliates at any time, advising the Supplier of the assignment. Assignment of an Agreement or subcontracting it shall not otherwise be permitted without the other party's written consent.
- 10.4 AGA shall have the right to offset claims made by any of its affiliates against the Supplier's claims.
- 10.5 Any change in the terms of any Agreement shall only be valid if it is made in writing and signed by AGA. This provision shall also apply to changes in or renunciation of claims concerning written requirements.
- 10.6 If any provision in these terms is declared to be invalid, this shall not affect the other provisions. The parties shall together replace the invalid provision with a new provision, which shall as far as possible serve the same financial purpose as the invalid provision.
- 10.7 Agreements shall be governed by the applicable law in the country in which the Goods or services are to be supplied under the Agreement in question. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.