

# Linde Material Handling (UK) Ltd – TERMS AND CONDITION OF PURCHASE (A KION GROUP COMPANY)

**DEFINITIONS.** In these Conditions where the context permits:-

the “Company” means Linde Material Handling (UK) Limited;

“Contract” means a contract for the purchase by the Company from the Supplier of Goods brought into being in accordance with clause 4 of these Conditions and shall incorporate that clause and all other terms of these Conditions; “Delivery Schedule” means the schedule (if any) issued by the Company to the Supplier indicating times for delivery of Goods provided always that the Company shall not be bound to accept delivery of or pay for Goods itemised on any Delivery Schedule where the Company notified the Supplier two months in advance of the due date for delivery of such Goods that such Goods are no longer required by the Company;

“Goods” means any goods, materials or services which from time to time the Company offers to purchase; “Purchase Order” means a written order for the purchase by the Company of Goods and shall incorporate these Conditions; the “Supplier” means a person, firm, company or other legal entity to which the Company agrees to sell the Company and “these Conditions” means these conditions of purchase as may be amended by the Company from time to time and which shall apply to all Contracts for acquisition by the Company of Goods.

## 2. INTERPRETATION

2.1 The relevant Purchase Order (which shall incorporate these Conditions) shall constitute the entire Contract between the Company and the Supplier in respect of Goods. No variations or additions to or waiver of these Conditions shall be effective unless agreed in writing by a duly authorised representative of the Company.

2.2 The Goods shall be sold and supplied by the Supplier to the Company on these Conditions which supersede and cancel any previous terms and conditions contained in or on any standard letter, estimate, quotation, offer or other similar document issued by the Supplier (whatever their respective dates) unless it is specifically agreed to the contrary in writing by a duly authorised representative of the Company.

2.3 For the avoidance of doubt any standard terms and conditions of the Supplier are specifically excluded by the parties and the Supplier specifically waives any provisions which may be deemed to be incorporated despite the stated intention of the parties.

## 3. PURCHASE ORDER

No Goods shall be supplied to the Company unless they are the subject of a Purchase Order.

## 4. ACCEPTANCE

A Purchase Order constitutes an offer on the part of the Company to purchase Goods upon the terms and conditions and at the price stated in the Purchase Order. A binding Contract between the Supplier and the Company shall be constituted upon the receipt by the Company of an acknowledgement of the Purchase Order provided always that the Company shall be entitled at its option to treat the Supplier as having accepted the Purchase Order if within 14 days after receipt of the Purchase Order the Supplier has not expressly rejected it in writing or, if within such period, the Supplier shall have taken any steps whether of manufacture, delivery or otherwise which in the Companies opinion implies acceptance of the Purchase Order.

4.1 The KION Group Code of Compliance implemented within KION Group and its brands is an expression of the legal and ethical standards embodied in the excellence KION strives for throughout all of its businesses, and which KION and its brands expect in return from its business partners. The KION Group Code of Compliance (the “KGGC”) together with its KION Compliance Principles for Independent Partners in KION’s Sales & Service Organisation emphasises the commitment to compliance with the law, sets forth basic standards of legal and ethical behaviour, and forms an integral part of this Agreement. By entering into this agreement, the contracting party accepts and agrees to comply with the KION Compliance Principles for Independent Partners for the duration of the Agreement.

4.2 The contract party undertakes and guarantees not to use the fees paid to it under this Agreement for the payment of any bribes or to receive, give or take any commissions, payments, kickbacks, lavish or extensive entertainment or gifts or other things of value, exceeding acceptable thresholds in accordance with all laws applicable to the performance of the Agreement to or from any employee or agent of customers in connection with any purchase orders or any other service performed by the them on behalf of KION as part of this Agreement and acknowledges that the giving or receiving of any such payments, gifts, entertainment or other things of value is strictly in violation of KION’s corporate policy and may result in the cancellation of this Agreement and will lead to claims for any and all damages arising thereof. The contract party shall notify KION’s management of any such solicitation by their employees.

## 5. SPECIFICATION

All Goods specified must be in accordance with the Purchase Order and fit and sufficient for the use to which the Company intends to put them. In the absence of a specific reference to specification or sample all Goods shall be the best of their kind and of first class workmanship and must conform with any applicable standard specification and all statutory requirements which apply to the Goods being supplied (both in their supplied form and for the use to which they are to be put) as may be published before supply of the Goods.

## 6. SUBCONTRACTING AND ASSIGNMENT

The Supplier shall not assign or sub-contract to any third party any part or the whole of its obligations under the Contract except with the prior written consent of a duly authorised representative of the Company. Where the Company consents to any assignment or sub-contract the rights contained in these Conditions must be reserved on behalf of the Company and a copy of such assignment or sub-contract must be delivered to the Company within seven days after its effect. In any event the Supplier shall not be relieved of any obligation under the Contract.

## 7. JIGS AND TOOLS

Where the Company has paid all or part of the costs of any jigs, fixtures, tools, patterns, equipment or special tackle such items shall be used exclusively for the production of Goods for the Company. Such items will be maintained by the Supplier at its expense and replaced by the Supplier at its expense when in the reasonable opinion of the Company replacement is necessary.

8. All jigs, fixtures, tools, patterns, equipment, special tackle, drawings and specifications together with any patent, registered or unregistered design, design right, copyright or other intellectual property rights provided by the Company shall:

- remain the exclusive property of the Company at all times;
- not be used or copied for any purpose other than the completion of the Purchase Order in respect of which they were provided;
- be returned to the Company immediately together with all copies (in whatever form), if requested by the Company;
- not be disclosed to any third party or be used for the Suppliers own benefit or for the benefit of any third party; and
- be properly maintained, securely stored and comprehensively insured by the Supplier against all risks whilst they are in the Suppliers charge or the charge of any party being his agent and the Supplier will have the Companies name endorsed on any policy of insurance effected pursuant to this sub-clause.

## 9. EXCLUSIVITY OF SUPPLY AND COPYRIGHT

The Supplier acknowledges that the design copyright and all other intellectual property rights in any Goods manufactured by the Supplier for the Company and all or any drawings, prototypes and material provided to the Supplier by the Company are the exclusive property of the Company and the Supplier shall not divulge any information relating to them to any third party. The Supplier shall not supply any Goods manufactured to the Companies design or in which the Company owns the copyright, design rights or any other intellectual rights to any person other than the Company.

## 10. INSPECTION AND PROGRESS

(a) Before delivering the Goods the Supplier shall carefully inspect and test them for compliance with the Purchase Order and statutory requirements. If requested by the Company the Supplier shall give the Company reasonable notice of the making of such inspection and test and shall allow a representative of the Company to be present. The Supplier shall keep a proper record of all such inspections and tests and on request supply the Company with copies of such records.

(b) The Supplier shall permit the Company or its duly authorised representatives or agents to enter any premises during normal business hours where Goods are developed, designed, manufactured, produced, performed, processed, packaged or stored in order to inspect Goods or any part of the Goods at any time before despatch but it is expressly provided that such inspection shall not relieve the Supplier from any responsibility or liability which the Supplier might otherwise have in respect of the Goods. The Companies inspector may adopt any reasonable means to satisfy himself that the correct materials are or have actually been used and he shall have the power to reject any part of the Goods which does not conform to the Purchase Order or law. If any work is so rejected the Supplier shall immediately execute it, afresh, to the reasonable satisfaction of the Company in accordance with these Conditions.

11. If Goods delivered by the Supplier are in any respect defective, do not accord with samples or specifications, or are not in accordance with the Purchase Order or the requirements of law then without prejudice to the Companies rights to cancel the Purchase Order or part of it and to purchase replacements or alternatives elsewhere, the Company shall be entitled at its option to require the Supplier immediately to repair such Goods or replace them free of charge or grant the Company full credit in respect of the same. All additional costs and extra expenditure (including as liquidated damages a sum equal to the excess (if any) over the Contract price of any expenditure reasonably incurred by the Company in obtaining other goods in place of the rejected Goods) thus incurred shall be paid by the Supplier without prejudice to any claim of the Company in respect of other loss or damage including consequential damage. Where rejected goods or materials are returned to the Supplier for repair or rectification they shall be forwarded at the Suppliers risk and expense. If the Supplier fails immediately to take such steps the Company may (but shall not be bound to) treat such failure as a repudiation of the Contract on the part of the Supplier.

12. Without prejudice to the generality of clause 11 the Supplier agrees that if, during the period either (a) of 12 months from the date upon which a product sold by the Company or its dealer is fully installed (by which expression is meant such product has been delivered, tested by the Company and is in use by the Companies customer) or, (b) of any guarantee or warranty granted by the Company, the whole or any part of any Goods or such of any Goods as are incorporated in or used in the manufacture or repair of such product requires to be repaired or replaced or has contributed materially to such product having to be repaired or replaced as a result, in the opinion of the Company, to the Goods being defective in any respect the Supplier shall:

- replace or at the option of the Company repair the Goods free of charge (including transportation costs, if necessary of the whole product); and
- indemnify the Company against any liability, costs, claims and demands (including liability in respect of consequential loss) arising directly as a result of the Goods being defective.

## 13. DELIVERY AND PERFORMANCE

Time is of the essence of a Contract and delivery and performance shall be at the Suppliers own risk and expense and shall be in accordance with the dates specified in the Purchase Order and/or Delivery Schedule where applicable. Any date for delivery of the Goods agreed or implied between the Company and the Supplier shall be part of the Contract as an essential condition and if delivery is delayed the Company shall have the absolute right to terminate the Contract without prejudice to its right to bring proceedings in respect of any breach of any of these Conditions or any other conditions of a Contract by the Supplier. Unless otherwise agreed in writing by an authorised representative of the Company, delivery by the Supplier shall be during the Companies normal business hours.

14. The Supplier shall pack, mark and despatch the Goods in such a manner as to reach their destination in good condition in accordance with the Companies instructions, and shall advise the Company in writing immediately upon despatch of the Goods. The Company shall not be under any obligation to accept delivery of the Goods or any consignments of the Goods unless they are accompanied by a delivery note quoting in full the Purchase Order number and all boxes, packing crates, drums or other containers shall be indelibly marked with any Purchase Order number. The Supplier shall promptly inform the Company in writing of any circumstances which may delay or prevent the completion of any Purchase Order. The Company shall not be under any obligation to accept delivery of and pay for any Goods other than the Goods specified in the Purchase Order. If the Goods are to be delivered by instalments the Purchase Order shall be treated as a single contract and not severable.

15. The Company shall not be bound to accept delivery of Goods before the time specified in the Purchase Order and/or Delivery Schedule. In the event that Goods are delivered before the time specified in the Purchase Order and/or Delivery Schedule, then the Company may, at its option make a charge for storing Goods or return Goods to the Supplier at the Suppliers expense and risk but in any event of early delivery the time of payment will be calculated by reference to the date for delivery specified in the Purchase Order and/or Delivery Schedule.

16. Without prejudice to any other rights of the Company if the Supplier fails to deliver the Goods by the date specified in the Purchase Order and/or Delivery Schedule or as extended under this clause (whether or not such failure is attributable to industrial disputes or other causes beyond the control of the Supplier) the Company may either grant to the Supplier such extension or extensions of time as the Company considers reasonable (time being of the essence of the Contract as so extended) or rescind the Contract. If the Company grants the Supplier an extension of time then the Goods shall be delivered at the Suppliers expense by such express service as the Company shall reasonably require. If the Company rescinds the Contract the following provisions shall apply:

- the Company shall return to the Supplier at the Suppliers risk and expense any Goods already delivered which by reason of the non-delivery of the balance are not reasonably capable of use by the Company in the ordinary course of business;
- the Supplier shall immediately refund to the Company any money paid by the Company for or in respect of undelivered or returned Goods;
- the Supplier shall pay to the Company a sum equal to the excess (if any) over the Contract price of expenditure reasonably incurred by the Company in buying other goods in place of or instead of the Goods;
- the Company shall be under no other liability to the Supplier for or in respect of rescission of the Contract pursuant to the provisions of these Conditions.

17. Where the Purchase Order is marked or expressed to be subject to schedule requirements, delivery schedules will be published periodically and will specify delivery requirements in future months. Unless otherwise agreed in writing by a duly authorised representative of the Company the Supplier will only be liable to take delivery of and pay for the Goods on delivery dates specified within a two month period commencing at the publication date of the schedule. Any quantities shown later than that period are published by the Company in good faith but the Company will not be bound to accept delivery of Goods on such delivery dates and accepts no liability for the information thus provided.

## 18. PACKING CASES ETC.

Unless specified in the Purchase Order no payment will be made for cases, containers or packing materials of any kind. Where required by the Supplier, empty packages will be made available to be collected or otherwise returned after delivery at the Suppliers risk and expense. If the Company requires the Supplier to remove its packing cases from the Companies premises, it shall do so within 14 days after being instructed to do so, otherwise the Company shall not be liable for their safe keeping and may, at its discretion dispose of them and may also at its discretion, charge the Supplier for storage or disposal of them.

## 19. TERMINATION

If the Supplier commits any material breach of any term or condition of any Contract (whether express or implied) the Company shall have the right exercisable by notice in writing to terminate the Contract at once notwithstanding any previous waiver or perceived waiver of this right. The Company may by notice in writing terminate the Contract with immediate effect if the Supplier becomes bankrupt or makes any composition for the benefit of creditors or being a company goes into liquidation either voluntarily or compulsorily, or a petition in bankruptcy or liquidation or other insolvency proceedings is presented, or a receiver is appointed of all or any part of its assets or the Company in good faith considers that any matter referred to in this clause is imminent in relation to the Supplier and notifies the Supplier accordingly. Any termination shall be without prejudice to any rights of either party arising prior to the date of termination.

## 20. PAYMENT

The prices quoted by the Supplier to the Company for the Goods and stated or referred to on the front of the Purchase Order are inclusive of packaging, packing, carriage, insurance, delivery and/or other costs but do not include VAT or any other tax in relation to the supply of the Goods (which shall be determined as at the date of despatch and shall be payable by the Company against receipt of the Suppliers VAT invoice) and such prices shall for the avoidance of doubt form part of the Contract and can only be subsequently varied if the prior written consent of a duly authorised representative of the Company has been obtained PROVIDED THAT the Company shall (in addition to any other remedies to which it may be entitled) have the right to terminate the Contract on receipt of any notice purporting to vary the price of the Goods without incurring any liability to the Supplier for such termination.

21. The Company shall be entitled to any discount for prompt payments or volume of purchases generally granted by the Supplier whether or not shown on its own standard terms or conditions of sale or price list.

22. Terms of payment, unless otherwise agreed in writing by a duly authorised representative of the Company on or before the date of the Purchase Order, shall be as follows:

(a) the cash price of the Goods shall be payable on the date which falls 60 days after the close of the month on which the Company receives an invoice from the Supplier or the close of the month in which the Supplier delivers the Goods to the Company in accordance with the terms of the Purchase Order which ever is later (the Date of Payment);

23. Unless otherwise agreed in writing by the Company, the Company shall at its sole discretion be entitled to make payment in any or all of pounds Sterling, the national currency of the Supplier and/or in the euro.

## 24. PROPERTY

The property and risk in Goods shall vest in and pass to the Company upon delivery of the Goods in the manner and at the time and place stated in the Purchase Order and/or Delivery Schedule subject to any right of the Company to reject or return the Goods. If Goods or any part of the Goods are rejected the property and risk in such Goods shall revert to the Supplier at the time when written notice of rejection is despatched to the Supplier. The Supplier is responsible for the safe delivery of the Goods to the Companies delivery address and the Supplier will repair or replace free of charge all Goods damaged or lost in transit. Upon delivery the Goods shall not be subject to any option, charge, lien, encumbrance or other adverse right and neither the Supplier nor any third party shall be entitled to retain title to the Goods or to have any equitable or other rights over the Goods.

## 25. INDEMNITY

25.1 The Supplier agrees to indemnify and hold harmless the Company from and against any liability, claim, cost, demand, loss or damage to which the Company is or would otherwise be subject or suffers or would otherwise suffer (and in particular and without prejudice to the generality of the foregoing in respect of any loss of profits, incidental expenses or any other consequential loss) arising (whether directly or indirectly) from:

- any breach of any express or implied term, warranty or condition given by the Supplier in relation to the Goods;
- breach of any express or implied term, warranty or condition of the Contract;
- the supply of any Goods to the Company by the Supplier; or the use or storage or onward supply of any Goods by the Company; or the onward communication by the Company of any representation or advice concerning any Goods given by the Supplier to the Company in relation to such Goods whether before or after their supply to the Company;
- any injury or damage or loss suffered by or to any of the employees of the Supplier or of any sub-contractor or agent of the Supplier whatsoever and howsoever arising, whether upon the premises of the Company or otherwise, except in respect of liability for death or personal injury resulting from the negligence of the Company;
- the presence and/or use of any packing materials (including empty cases) or items belonging to the Supplier or its agents or contractors whether on the premises of the Company or otherwise;
- any negligent or tortious act or nuisance on the part of the Supplier or its servants whilst on the Companies premises or at any place where the Company or its servants are carrying out work; and
- any injury, damage or loss to any person, firm or company or damage to any property caused by or resulting from the Goods whether from an inherent vice, by reason of negligent design, production or otherwise howsoever. 25.2 The Supplier shall maintain insurance cover in respect of all liabilities set out in this clause including indemnifying the Company as principal.

## 26. PATENTS

The Supplier warrants that it is not aware that any Goods or part or parts of any Goods infringe any patents, registered or unregistered designs and/or copyright and/or other intellectual property rights and undertakes to indemnify the Company and keep it indemnified in respect of any actions, claims, proceedings, damages, loss of profit, expenses or costs suffered or incurred by the Company arising from any of the Goods or part or parts of the Goods infringing or any allegation that the Goods or part or parts of any Goods infringe any patent or registered or unregistered design or copyright and/or other intellectual property rights.

## 27. INFORMATION

All information of whatever nature supplied or communicated to the Supplier in connection with the Purchase Order whether before or after the Purchase Order shall remain the Companies property and shall be regarded as secret and confidential, and shall not without the prior written consent of a duly authorised representative of the Company be published or disclosed to any third party or used by the Supplier except for the purpose of implementing the Contract. This obligation of confidentiality shall remain in force notwithstanding completion of the Contract.

## 28. LAW AND ARBITRATION

Every Purchase Order, Contract and these Conditions are in addition to the rights of the Company at common law and under statute for the time being in force.

29. All materials concerning every Contract or arising from the Purchase Order/Delivery Schedule are to be construed according to the law of England (including English conflict of laws) and the Supplier hereby submits to the jurisdiction of the English courts.

30. Any dispute in relation to the Contract shall be referred to a single arbitrator appointed by agreement between the Company and the Supplier, or in default of agreement by the President for the time being of the Institution of Mechanical Engineers. The submission shall be deemed to be a submission to arbitration under the Arbitration 1996 or other arbitration acts for the time being in force.

## 31. TECHNICAL ILLUSTRATIONS

The Supplier will provide the Company with sufficient accurate details in relation to the Goods to enable the Company to produce detailed text and illustrations for inclusion in the Companies “Operator and Spare Parts Manuals”. The Supplier will make such details available in sufficient time to enable the Company to comply with the Health and Safety at Work Act and any similar legislation or regulations.

## 32. TEST CERTIFICATES

Where required the Supplier will provide the Company with a statutory “Test Certificate” or other formal documentation required by law. Where such documentation is not required by law the Supplier will guarantee conformity with all relevant statutory provisions and the Purchase Order and/or the Contract in respect of all Goods supplied.

## 33. FORCE MAJEURE

Where either party to a Contract is unable to perform its obligations under these Conditions for reasons beyond its control (including, but without prejudice to the generality of the foregoing, fire, flood, earthquake, tempest, storm, act of God, strike, lock-out, civil commotion or unrest) then (subject to Condition 16) the party or parties so unable to perform shall not be treated as being in breach of a Contract save that if such a situation shall subsist for longer than a period of 28 days then the other party shall be entitled to terminate the Contract without incurring any liability by reason of such termination.

## 34. NOTICES

Any notice to be given in accordance with these Conditions shall be given by facsimile, telex or first class registered post (but not by e-mail) and shall be deemed to arrive in the case of first class registered post two working days after posting and in the case of facsimile and telex in the normal course of transmission.