

Play to win by the rules.  
Business Partner Compliance Guide.  
Guidelines for the use of third-party  
intermediaries, consultants and other persons.

LeadIng.



THE LINDE GROUP



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# Foreword

Linde AG and the companies it directly or indirectly owns or controls (“**Linde**”) frequently retain third parties to support and develop business with existing or prospective customers (“**Customers**”) – for example, intermediaries, agents, sponsors, consultants and others (“**Business Partners**”). Business Partners render services and supplement Linde’s internal capabilities with additional expertise, such as specific technical or commercial knowledge, personal relationships or knowledge of local practices (“**Services**”). In certain parts of the world, involving Business Partners is essential and may even be formally required.

Hiring Business Partners is a normal and necessary part of business and, done properly, is wholly permissible. But depending on the business area and circumstances, third party business relationships may occasionally be misused to conceal illegal payments or transactions, particularly in cases of corruption. Therefore, special care shall be taken throughout Linde to ensure that commissions, fees or other compensation, as well as disbursements and reimbursement of expenses (“**Payment**”), are only paid for legal activities and not to support illegal conduct. Further, when negotiating agreements with Business Partners (“**Agreements**”), their performance as well as the related Payments must be transparent, both for Linde’s management and – as the case may be – for public authorities.

The guidelines set forth in this document (“Guide”) are designed to prevent violations of the Linde Code of Ethics and relevant anti-corruption laws. Observing the Guide will also help to avoid any appearance of wrongdoing and thus minimise the risk of criminal investigations against Linde, its employees (including independent contractors and temporary employees), directors and officers (“Linde Staff”). This Guide shall help Linde to win and conduct its business cleanly and according to law.

At Linde, we win business by legal means – whether on our own or through Business Partners. We would rather forego a business opportunity than obtain it illegally. Our reputation and long-term success are far too valuable.

Please review this Guide carefully and follow it strictly.

Munich, June 2011



Professor Dr  
Wolfgang Reitzle



Dr Aldo Belloni



Georg Denoke



Sanjiv Lamba



J. Kent Masters

# 1.

## Objectives and scope of this Guide

This Guide is part of Compliance at Linde. It supplements the Linde Code of Ethics and provides additional guidance with regard to the hiring of Business Partners.

The Guide applies whenever somebody at Linde seeks to retain a Business Partner's Services, that is, where Linde retains intermediaries, agents, sponsors, consultants and others to supplement Linde's internal capabilities in areas requiring specific technical or commercial knowledge, personal relationships or knowledge of local practices. This Guide applies regardless of the title or function of such Business Partner, the legal form of Linde's relationship with the Business Partner and the form of Payment provided to the Business Partner.

The procedures set out in this Guide also apply whenever an existing Agreement with a Business Partner is renewed (including any automatic renewal pursuant to an Agreement's terms), amended or performed after the Guide's effective date.

This Guide becomes effective as of 20 June 2011 and replaces and supersedes all existing policies with regard to Business Partners. It does not, however, affect policies that are based on this Guide and that establish more restrictive or more detailed standards.

This Guide is mandatory for all Linde Staff.

# 2.

## Legal sanctions

It is of the utmost importance that this Guide is thoroughly implemented and followed throughout Linde. Linde Staff shall not deviate from this Guide.

Unlawful Agreements may lead to criminal penalties (fines and/or imprisonment) against Linde and/or Linde Staff. Possible sanctions include: (i) exclusion from participating in public or private bids; (ii) exclusion from or cancellation of credit insurance; and (iii) seizure of income generated in connection with unlawful Agreements.

Linde (or the relevant employer) reserves the right to discipline employees or staff who violate this Guide.

# 3.

## Implementation, administration and enforcement of this Guide

It is the responsibility of the respective Linde Business Unit Head (i.e. Division, RBU, GBU, BA, GSF Head, as applicable) (“Responsible Person”) to:

- (i) Conduct and document a due diligence of the prospective Business Partner *before* the Business Partner commences work and *before* an Agreement is concluded; and
- (ii) Obtain approval *before* an Agreement is concluded from:
  - a) the Responsible Person, if the estimated aggregate Payment to the Business Partner
    - aa) for the Engineering Division, does not exceed EUR 0.5 million
    - bb) for all other Divisions/Business Units, does not exceed EUR 0.1 million
  - b) the responsible member of the Executive Board, if the estimated aggregate Payment to the Business Partner
    - aa) for the Engineering Division, ranges from EUR 0.5 million to EUR 2 million
    - bb) for all other Divisions/Business Units, ranges from EUR 0.1 m to EUR 1 million; or
  - c) the full Executive Board, if the estimated aggregate Payment to the Business Partner
    - aa) for the Engineering Division, exceeds EUR 2 million
    - bb) for all other Divisions/Business Units, exceeds EUR 1 million



To avoid doubt: All Payment amounts concerning the same business matter must be aggregated. Above amounts apply to EUR or the respective local currency equivalent. Any attempt to circumvent the aforementioned thresholds (for example by subdividing Payments) is prohibited; and

- (iii) Ensure that the Agreement and its performance comply with this Guide; and
- (iv) Ensure that the Business Partner shall not be paid *before* an Agreement is concluded and only in compliance with the requirements defined in Section 6 of this Guide

The Responsible Person may delegate his/her obligations under this Guide but he/she remains responsible for ensuring that any delegee fully complies with this Guide. In case of doubt the Responsible Person should consult with Legal Services, Compliance, Internal Audit or Finance & Controlling, as necessary.

If the Responsible Person reasonably suspects that a Business Partner has violated this Guide, the Responsible Person must consult immediately with Legal Services.

# 4.

## Selecting a Business Partner

The potential Business Partner shall be evaluated based on relevant information and thorough research. Therefore, the Responsible Person shall ensure that the following due diligence steps are performed *before* the Business Partner commences work and *before* an Agreement with the Business Partner is concluded:

- (i) Completion of the Due Diligence Checklist provided in **Schedule 1**. If meaningful information about a Business Partner is unavailable, Linde shall not deal with such Business Partner
- (ii) Where a question on the “**Red Flag**” List in the Due Diligence Checklist is answered “yes”, Linde shall not deal with the proposed Business Partner unless advice has been sought from Legal Services and, on that basis, the Responsible Person is satisfied that this Guide has been complied with and that supporting documentation exists
- (iii) Where a question of the “**Orange Flag**” List in the Due Diligence Checklist is answered “yes”, Linde shall not deal with the proposed Business Partner unless the Responsible Person is satisfied that this Guide will be complied with and that supporting documentation exists. In case of doubt, Legal Services should be consulted

# 5.

## Services

Services shall be necessary and have a valid business purpose for Linde. *Before* the Business Partner commences work and *before* an Agreement is concluded, the Responsible Person shall ensure that Services are described in detail.

The Responsible Person shall further ensure that Linde:

- (i) Only hires Business Partners that provide lawful, real and valuable Services for Linde; and
- (ii) Uses all available means to terminate existing contractual relationships where there is reason to believe that the Business Partner engages in illegal activities

Activities that are illegal and prohibited worldwide include, but are not limited to, directly or indirectly offering, giving, receiving or soliciting something of value for the purpose of influencing the action of an official or employee of a public or quasi-public body or an authority or of an international organisation or an employee of a private business enterprise when fulfilling his or her duties (“**Bribery**”).

Once the Business Partner has finished performing the Services, the Responsible Person shall ensure that written reports, working papers, meeting minutes, receipts for expenses or other documentation exists in the English language establishing that the Services were in fact rendered (“**Evidence**”).

# 6.

## Payment

The Business Partner should be adequately compensated for the contracted Services, without providing motivation or means for the Business Partner to act illegally.

### a. Payment structure

The appropriate Payment structure depends on the individual circumstances. For example, while a success Payment may provide a strong incentive to achieve the expected results, it may also encourage corrupt practices. On the other hand, while a fixed Payment arrangement might decrease the risk of corrupt practices, it might also provide insufficient incentive.

Thus, the Responsible Person should consider, where possible, using a Payment structure that combines a fixed Payment, to cover the Business Partner's basic expenses on an ongoing basis, with a success Payment.

For Services other than sales support but in general support of the business (for example, advising and assisting in formalities with local authorities), the Responsible Person should consider, where possible, a Payment structure with a fixed Payment based on the average estimated hours spent for the Services, or a combination of a (lower) fixed Payment plus a time-based remuneration.

### b. Payment amount

In principle, Payment shall adequately reflect:

- (i) The expected results;
- (ii) The Business Partner's expected expenditures (time, costs), including (where Services consist of sales support) provision for cost in pursuing projects that do not result in a business deal; and
- (iii) A reasonable profit for the Business Partner.

Excessively high Payments might provoke or be a sign of illicit activities.

Therefore, *before* the Business Partner commences work and *before* an Agreement is concluded, the Responsible Person shall ensure that the intended Payment is reasonable in relation to the nature and value of the Services and in light of what is customary in the particular market. Reference points to determine whether a Payment is reasonable include, for example:

- (i) Information from local chambers of commerce
- (ii) Opinions of trusted advisors with local experience, such as law firms or accountancy firms

As a general rule, if the Payment is agreed as a percentage of the value of the business between Linde and its Customer (“**Business Value**”), the percentage should decrease with an increasing Business Value.

### c. Release of Payment

The Responsible Person shall ensure that Payment to the Business Partner is not released before an Agreement is concluded and only in compliance with the requirements that follow.

A Business Partner should only receive an advance payment (“**Upfront Payment**”) before commencing Services if the Responsible Person has confirmed in writing the existence of:

- (i) The completed and signed Due Diligence Checklist provided in **Schedule 1**;
- (ii) A detailed description of the Services;
- (iii) An explanation why the Services have a justified business purpose and are necessary for Linde; and
- (iv) An explanation why the Upfront Payment is necessary.

The entire Payment owed under the Agreement (“**Total Payment**”) and/or partial Payment subject to certain conditions (“**Milestone Payment**”) to a Business Partner shall only be released if the Responsible Person has confirmed in writing the existence of:

- (i) The completed and signed Due Diligence Checklist provided in **Schedule 1**;
- (ii) A detailed description of the Services;
- (iii) An explanation why the Services have a justified business purpose and are necessary for Linde; and
- (iv) Evidence that the Services for which Total Payment or Milestone Payment is claimed were rendered.

If the Responsible Person reasonably suspects that the Business Partner violates the principles of this Guide, the Responsible Person must consult with Legal Services before releasing any Payment.

# 7.

## Written Agreement and documentation

Before a Business Partner is retained and commences Services, a written Agreement based on the Template Agreement provided as **Schedule 2** shall be executed and signed. Where substantial amendments are made to the Template Agreement (in particular to the Payment Clause (Section 4), the Confidentiality Clause (Section 5) and the Compliance Clause (Section 6)), the Responsible Person shall inform and seek guidance from Legal Services.

The Responsible Person shall ensure that the Agreement and any underlying documentation (such as the completed and signed Due Diligence Checklist) are filed in accordance with the applicable document retention policy of the relevant Linde company/entity.

# Schedule 1

## Business Partner Due Diligence Checklist

1. General information about the Business Partner and the Services
  - 1.1 Name of the Business Partner
  - 1.2 Business address, phone number, fax number, email address and website of the Business Partner
  - 1.3 Organisation of the Business Partner (for example sole proprietor, corporation) and parent companies, subsidiaries and affiliates (if any)
  - 1.4 Registration no. with commercial register, local chamber of commerce, or equivalent local tax office and registration no.
  - 1.5 Details of Business Partner's bank account to which Payment shall be made (including account number, BIC code, name and location of bank, name of account holder)
  - 1.6 Place of registration and business address of the Customer
  - 1.7 Estimated Business Value in EUR
  - 1.8 Estimated Payment in EUR
  - 1.9 Name and role of the Business Partner's staff members that are likely to become involved in the performance of the Services
  - 1.10 Documents and resources on which the due diligence is based (for example Internet, commercial and company registers, etc.). **Note:** These documents shall provide material information that is sufficient to complete this due diligence. If meaningful information about the Business Partner is unavailable, Linde shall not deal with the proposed Business Partner.
  - 1.11 Description of the Business Partner's experience and qualification
  - 1.12 Detailed description of the Services, including place(s) where the Services shall be performed
  - 1.13 Explanation why the Services have a justified business purpose and are necessary for Linde



## 2. “Red Flag” List

- 2.1 Does the estimated Payment exceed the equivalent of 5 percent of the estimated Business Value?
- 2.2 Does Linde retain more than one Business Partner for identical work in a transaction or matter?
- 2.3 Do the relevant tenders, invitations to bid, draft contracts or definite contracts with the Customer prohibit or regulate the hiring of Business Partners, or are they subject to a public bidding process?
- 2.4 Is the business address of the Business Partner in a different jurisdiction than the address of the bank at which he or she maintains the bank account?
- 2.5 Is the holder of the bank account to which Payment is to be effected different from the Business Partner?
- 2.6 Has the Business Partner requested Payment in cash, to anonymous accounts, to multiple accounts or recipients, or to accounts in known “tax havens” or comparable financial centres, such as Costa Rica, Guatemala, Liberia, Montserrat, Nauru, Niue, Panama, Uruguay or Vanuatu?
- 2.7 Are there any indications of criminal convictions or indictments regarding the Business Partner or its directors and/or officers (if yes, please specify)?
- 2.8 Will the Business Partner be working in the defence sector or sectors involving public concessions (if yes, please specify)?
- 2.9 Are there any indications of personal, family, contractual or other relationships between directors, officers or employees of the Business Partner and (a) government officials or (b) directors, officers, employees or any other representative, including the owner, of the Customer or their family members (if yes, please specify)?

- 2.10 Are there any indications of any direct or indirect shareholding of government officials or directors, officers or employees of the Customer or their family members in the Business Partner or vice versa (if yes, please specify)?
- 2.11 Are there any indications that a director, officer or employee of the Customer is identical with the Business Partner (if yes, please specify)?
- 2.12 Did a government official or a member of his or her family recommend retaining the Business Partner (if yes, please specify)?
- 2.13 Are there any indications that the Business Partner works for or has business relationships to the Customer at the same time (if yes, please specify)?
- 2.14 Are there any indications that the Business Partner has been debarred, suspended, proposed for debarment or suspension or otherwise been declared ineligible from working with government authorities (if yes, please specify)?
- 2.15 Are there any indications which give reasonable grounds to suspect that the Business Partner might engage in illegal behaviour, such as Bribery (if yes, please specify)?
- 2.16 Is the Business Partner's sole business address a post box or a "c/o" address? Does the Business Partner have no or no substantial business operations at this address (if yes, please specify)?

**Note:** Where one or more of the questions 2.1 through 2.16 were answered with "yes", there is a **high risk** of compliance issues. In that case, Linde shall not deal with the proposed Business Partner unless advice has been sought from Legal Services and, on that basis, the Responsible Person is satisfied that this Guide is complied with and has ensured documentation of the underlying considerations.

### 3. “Orange Flag” List

- 3.1 Are there any indications of doubts regarding the Business Partner’s creditworthiness or reputation (if yes, please specify)?
- 3.2 Did the Customer recommend the Business Partner (if yes, please specify)?
- 3.3 Is the Customer a public body (national and local governments as well as companies majority-owned by public entities)?
- 3.4 Are there any inconsistencies in the Business’ Partners responses or the information gathered during the due diligence?
- 3.5 Does the Business Partner require an Upfront Payment?
- 3.6 Has the Business Partner requested Payment to accounts in known “tax havens” or comparable financial centres, such as Andorra, Anguilla, Antigua and Barbuda, Aruba, Bahamas, Bahrain, Belize, Bermuda, British Virgin Islands, Brunei, Cayman Islands, Chile, Cook Islands, Dominica, Gibraltar, Grenada, Liechtenstein, Luxembourg, Marshall Islands, Monaco, Netherlands Antilles, St Kitts and Nevis, St Lucia, St Vincent & Grenadines, Samoa, San Marino, Singapore, Switzerland, Turks and Caicos Islands?

**Note:** Where one or more of the questions 3.1 through 3.6 were answered with “yes”, there is a **substantial risk** of Compliance issues. In that case, Linde shall not deal with the proposed Business Partner unless the Responsible Person is satisfied that this Guide will be complied with and has ensured documentation of the underlying considerations. In case of doubt, Legal Services should be consulted.

Place and Date:

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Linde Staff involved in conducting this due diligence (full name(s) in capitals):

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Signature(s) (Linde Staff involved in conducting this due diligence):

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Responsible Person (full name in capitals):

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Signature (Responsible Person):

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# Schedule 2

## Template Agreement with a Business Partner

A modifiable version of this document can be found under:

[http://intranet2.linde.grp/gsf\\_legal/getpage.asp?article=/gsf\\_legal/articles/functional\\_expertise/Compliance/Publications.asp&nav=15](http://intranet2.linde.grp/gsf_legal/getpage.asp?article=/gsf_legal/articles/functional_expertise/Compliance/Publications.asp&nav=15)

**Date:**

---

**Business Partner:**

---

**Linde entity:**

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**Agreement for Business Support Services:**

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**Important note:**

- Agreement requires completion and adaptation to individual case
- Where substantial amendments are made to the Agreement (in particular to the Payment Clause (Section 4), the Confidentiality Clause (Section 5) and the Compliance Clause (Section 6)), the Responsible Person shall ensure that guidance is sought from Legal Services

# Agreement for Business Support Services

This AGREEMENT is made on \_\_\_\_\_ (date)

## BETWEEN

- 1) [name of Business Partner] a company incorporated in [country] (registered no.[    ]) whose registered office is at [address] (“Business Partner”)
- 2) [name of Linde party] a company incorporated in [country] (registered no.[    ]) whose registered office is at [address] (“Linde”)

## WHEREAS

- (A) Linde requires the assistance of the Business Partner in its efforts to pursue the Project described below.
- (B) The Business Partner has the requisite resources, experience and capability to provide the assistance Linde requires in the form of the Services described below.
- (C) Linde has agreed to engage the Business Partner to provide the Services, and the Business Partner is willing to provide the Services, on the terms and conditions contained herein.

IT IS AGREED as follows:

## 1. Definitions

- 1.1 The term “**Project**” refers to [Insert a description of the project, order, bid, etc. for which the Business Partner’s Services are required – typically Linde’s bid to supply a customer with gases or equipment for a specific purpose.]
- 1.2 The term “**Customer**” refers to [Insert name and address of Linde’s prospective Customer.]

## 2. Services

- 2.1 The Business Partner shall use its best efforts to provide the services that Linde shall require from time to time in relation to the Project (“**Services**”), including the following:

[Insert a detailed description of the services that will be provided by the Business Partner.]

- 2.2 At [weekly, monthly, quarterly] intervals and once the Business Partner has finished performance of the Services, the Business Partner shall provide Linde with written reports, working papers, meeting minutes, receipts for expenses or other documentation in English language that prove that the Services were rendered (“**Evidence**”) and shall keep Linde fully informed at all times on the status and progress of the Project.
- 2.3 The Business Partner shall keep accurate books and records of all payments, cost, disbursements and expenses related to the Project.

### 3. Conflict of interest

Neither the Business Partner nor any of its directors, officers or employees shall render Services during the term of this Agreement, for any person or entity that is in competition with Linde for the Project, including, without limitation, acting as an agent for or providing Project-related inquiries or tender documents to any such person or entity, or demanding or accepting a commission or fee from the same.<sup>1</sup>

### 4. Payment

4.1 Beginning on the effective date of this Agreement, and during the term hereof, Linde shall pay the Business Partner a monthly service fee of \_\_\_\_\_ (“Service Fee”) for the performance of the Services.<sup>2</sup>

4.2 If, as a result of the Business Partner’s Services, the Customer awards Linde the contract for the Project on the basis of Linde’s proposal during the term of this Agreement, then in addition to the Service Fee Linde shall pay the Business Partner a Success Fee in the amount of \_\_\_\_\_ (“Success Fee”). The Business Partner’s right to receive payment of the Success Fee shall accrue upon execution of a final contract between Linde and the Customer [for execution of the Project] [in connection with the Project] as set out in Linde’s proposal. The Success Fee shall not become due if Linde for whatever reason withdraws from the Project, even where there is no fault or failure on the part of the Business Partner.

<sup>1</sup> To be verified whether sufficient in individual case; if deemed necessary, consider additional post-contractual non-compete provision along the following lines: [“Neither the Business Partner nor any of its directors, officers or employees shall render Services for a period of one (1) year from the expiry or earlier termination of this Agreement, for any person or entity that is in competition with Linde [or specified companies of The Linde Group] [for the same or a similar Project] [in the jurisdiction in which the Services under this Agreement are rendered], including, without limitation, acting as an agent for or providing Project-related inquiries or tender documents to any such person or entity, or demanding or accepting a commission or fee from the same.”]

For breach of non-compete undertakings, consider contractual penalty or liquidated damages, as the case may be, along the following lines: [“The Business Partner shall pay a contractual penalty in the amount of EUR [•] for each and every breach or violation of the obligation arising under Section 3. In case of continued violation, every new month in which the violation continues to exist is considered a new violation. For the avoidance of doubt, the right of Linde to require the Business Partner to cease and desist from activities violating Section 3 and/or the right to claim damages in excess of the penalty agreed in Section 3 shall remain unaffected.”]



4.3 The Business Partner shall issue invoices to Linde as follows:

- a) For payment of the Service Fee, on the first day of each month during the term of this Agreement<sup>3</sup>; and
- b) For payment of the Success Fee, after the Business Partner's right to receive payment has accrued as stated in Section 4.2

Linde will make payment on invoices within 30 days from the receipt thereof.

4.4 All fees are understood to be exclusive of *[VAT] [or similar taxes on the sale of goods and services]*. All other taxes and duties shall be borne by the Business Partner.

4.5 The Business Partner's right to receive payment from Linde for performance of the Services shall be limited to the Service Fee and the Success Fee, which shall be deemed to be due and sufficient consideration for the same.

4.6 Except for written agreement to the contrary, payments owed by Linde to the Business Partner shall become due only after the Business Partner has provided Linde with Evidence regarding the Services for which payment is claimed.

4.7 Linde shall not make payments in cash, to anonymous accounts, to multiple accounts or recipients, to accounts in tax havens, to accounts in any country other than that of the Business Partner's registered business address or to accounts in the name of anyone other than the Business Partner.

4.8 If the Business Partner materially breaches its obligations under Section 6 or if Linde has reason to believe there is such a material breach, Linde shall not make any payment under this Agreement to the Business Partner. Upon Linde's first written demand, the Business Partner shall return any payment it has received from Linde.

<sup>2</sup> Service Fee provision to be applied as the case may be.

<sup>3</sup> Service Fee provision to be applied as the case may be.

## 5. Confidentiality

- 5.1 The Business Partner acknowledges, agrees and undertakes that any and all information concerning Linde's business constitutes confidential and proprietary information ("**Confidential Information**") belonging to Linde, and the Business Partner shall not duplicate or disclose any Confidential Information to any person other than its employees and advisors having a need to know such information in order to carry out the Services and use the Confidential Information only for the Services. The Business Partner shall take all necessary steps to protect the Confidential Information from disclosure.
- 5.2 The Business Partner acknowledges that if the Business Partner breaches its obligations under Section 5.1, Linde will suffer irreparable harm that cannot be adequately compensated by the award of damages, and that Linde may therefore approach a court or other forum to seek an injunction restraining such breach, without prejudice to any other remedies which may be available to it under applicable law.<sup>4</sup>
- 5.3 Upon the termination of this Agreement, the Business Partner shall promptly, at Linde's request, return or destroy all Confidential Information in its possession.

<sup>4</sup> Consider contractual penalty or liquidated damages as the case may be.

## 6. Compliance

- 6.1 The Business Partner hereby confirms that it has received a copy of the Linde Code of Ethics and that it has read and understands the rules stated therein. The Business Partner further confirms that in preparing any contractual relationship between Linde and the Customer as well as in signing and carrying out any such agreement, the Business Partner, its directors, officers, employees and representatives are and will at all times be acting in full compliance with the rules of the Linde Code of Ethics and all applicable laws and regulations.
- 6.2 The Business Partner represents and warrants that:
- a) Neither it nor its directors, officers, employees, owners or shareholders (nor their immediate family members) are officials, directors, officers or representatives of the Customer or of any entity (whether governmental, quasi-governmental, publicly or privately owned or controlled) involved in (or with influence over) awarding orders for the Project (“**Decision Maker**”);
  - b) It has not given or promised any payment or other item of value, either directly or indirectly, to any Decision Maker or to a third party for the purpose of influencing an act or decision of any Decision Maker to direct business for the Project to Linde, nor for any other form of bribery or illegal purpose;
  - c) Neither the Business Partner nor any of its directors, officers, employees, owners or shareholders is presently indicted for bribery before a court of law or has been convicted of bribery by a court of law within the past five (5) years; and
  - d) No sanctions under non-criminal law and comparable to a court conviction have been imposed on the Business Partner or any of its directors, officers, employees, owners or shareholders by reason of bribery during the past five (5) years.

- 6.3 The Business Partner shall not give or promise any payment or other thing of value, either directly or indirectly, to any Decision Maker or to a third party for the purpose of influencing an act or decision of any Decision Maker to direct business for the Project to Linde, nor for any other form of bribery or illegal purpose.
- 6.4 The Business Partner shall explicitly confirm compliance with the provisions of Section 6 by signing and submitting a declaration of the same together with each of its invoices for the payment for the first and the last instalment of the Success Fee described in Section 4.2.
- 6.5 As soon as the Business Partner becomes aware of a breach of section 6.1, 6.2 or 6.3, or has reason to believe there is such a breach, the Business Partner shall promptly notify Linde in writing and provide reasonable details.
- 6.6 The Business Partner acknowledges that Linde may be required to disclose the Agreement(s) between the Business Partner and Linde. The Business Partner hereby expressly agrees to such disclosure.
- 6.7 *[Linde shall have the right to audit, or have audited, the relevant parts of the Business Partner's books and accounts and to obtain copies of relevant documents, including the Business Partner's relevant tax filings. The Business Partner agrees to reasonably cooperate in any audit conducted and to bear any own expenses in connection with such audit. In case the Business Partner is found to breach this Agreement as a result of the audit, it will also bear Linde's expenses.]*<sup>5</sup>

<sup>5</sup> Audit provision to be applied as the case may be.

## 7. Term

- 7.1 This Agreement shall become effective upon signature by both parties hereto.
- 7.2 This Agreement shall be valid for the Project only and shall, as the case may be, expire without notice upon completion of Linde's contract for the Project and after both parties have duly fulfilled their obligations hereunder, or on the date when the Customer awards the contract for the Project to a party other than Linde, or on [insert intended expiry date], if Customer does not award a contract for the Project within this period, unless extended by written agreement.
- 7.3 Notwithstanding Section 7.2,
- a) Either party may terminate this Agreement with three (3) months' written notice
  - b) This Agreement terminates automatically if the Business Partner violates any provision of this Agreement other than Section 6, or fails to meet its obligations hereunder, and has failed to remedy the violation within thirty (30) days upon written notice of default by Linde
  - c) Linde may terminate this Agreement with immediate effect by written notice to the Business Partner, if the Business Partner breached its obligations under Section 6 or if Linde has reason to believe there is such a breach
- 7.4 Any termination of this Agreement shall be without prejudice to any other rights and liabilities of the parties under this Agreement.

## 8. Intellectual property

Any and all presentations, reports and other documentation and material prepared by the Business Partner and received by Linde and any and all information, concepts, ideas and other results of whatever nature, including any and all intellectual property rights with respect thereto, which in any way relate to the Services or the work otherwise performed by the Business Partner for Linde, shall be and remain the exclusive property of Linde and shall not be distributed or disseminated and used by the Business Partner except for the purpose of providing the Services.

## 9. Subcontracting and assignment

9.1 The Business Partner shall not hire a third party to perform any of the Services without:

- a) Linde's prior written approval; and
- b) Causing such third party to agree to provisions substantially identical to Sections 3, 5 and 6 of this Agreement.

9.2 The rights and obligations of the Business Partner arising out of this Agreement shall not be assigned or transferred to any third party in whole or in part without the prior written consent of Linde.

## 10. General

### 10.1 Severance

Should any provision of this Agreement prove to be invalid, the validity of the other provisions shall not be affected thereby. In such case, the parties shall replace the invalid provisions with valid provisions that most closely reflect the parties' original intent. Any changes or additions to this Agreement shall be made in writing.

### 10.2 Limits on authority

The Business Partner shall have no authority to bind Linde in any way, and may not conclude contracts, incur liabilities, collect payments or assume obligations on Linde's behalf, nor purport that it is able to do so, unless specifically authorised in writing by an authorised Linde representative.

### 10.3 Governing law, jurisdiction [and dispute resolution]

- a) This Agreement shall be governed by the laws of [insert jurisdiction in which the registered office of the relevant Linde entity is located], and the civil courts having jurisdiction over Linde's registered office as set out in this Agreement shall have exclusive jurisdiction for any disputes arising out of or in connection with this Agreement.
- b) [Insert other dispute resolution provisions as required.]

#### 10.4 Relationship

- a) The parties acknowledge that they have entered into this Agreement on a principal-to-principal basis and that the Business Partner is an independent contractor. Nothing in this Agreement shall be interpreted or construed as creating or establishing a partnership, whether incorporated or not, or a relationship of employer and employee between the Business Partner and Linde.
- b) The Business Partner hereby expressly acknowledges that all persons utilised by it for the provision of the Services hereunder shall remain its employees or advisors and that the Business Partner shall remain solely responsible for payment of all salaries and dues to such employees or advisors under applicable law. Linde shall not be liable for making payment of any amounts to any person utilised by the Business Partner for the performance of any Services hereunder.

#### 10.5 Indemnity

The Business Partner shall indemnify, defend and hold Linde harmless from and against any damages, claims, penalties, fines or costs paid or incurred by Linde, or any of its directors, officers and employees, as a result of or relating to the Business Partner's breach of this Agreement.

#### 10.6 Survival

The provisions of Sections 5, 7.4, 8, 9.2 and 10.5 shall survive termination of this Agreement.<sup>6</sup>

<sup>6</sup> Consider reference to non-compete provision and/or other provisions surviving contract termination, as the case may be.



In witness whereof this Agreement has been duly executed

**Linde**

Name:

---

Name:

---

Title:

---

Title:

---

Place, Date:

---

Place, Date:

---

Signature:

---

Signature:

---

**Business Partner**

Name:

---

Name:

---

Title:

---

Title:

---

Place, Date:

---

Place, Date:

---

Signature:

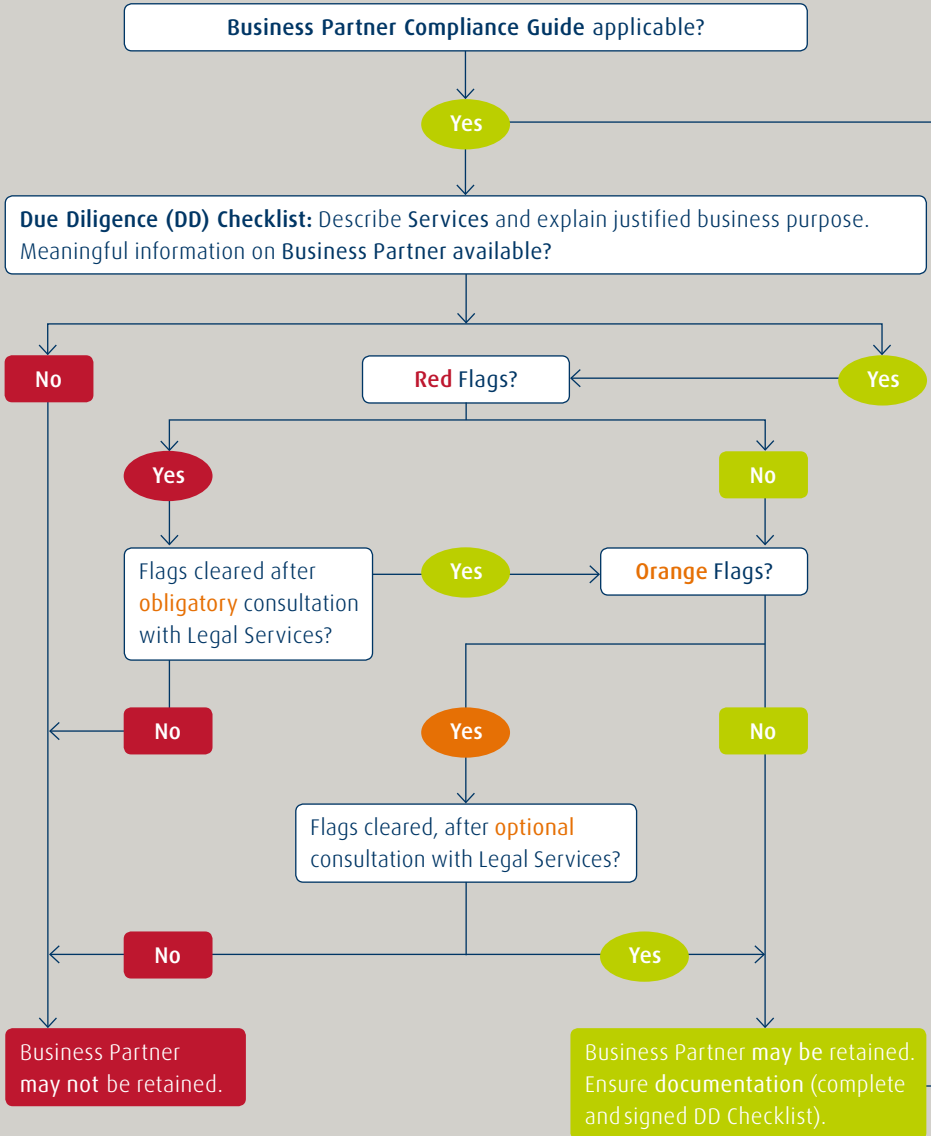
---

Signature:

---

# Schedule 3

## Graphic overview



```
graph LR; Start(( )) --> Check[Check]; Check --> Q[More restrictive/detailed policies available?]; Q --> Steps[Take further steps to ensure Compliance with Guide:]; Steps --> End(( ))
```

Check

More restrictive/detailed policies available?

**Take further steps** to ensure Compliance with Guide:

1. Determine appropriate **Payment** amount and structure.
2. **Only now:** Conclude **written Agreement** before Business Partner commences Services. **Obligatory** consultation with Legal Services where substantial amendments are made to the Template Agreement.
3. Ensure **documentation**.
4. **If agreed:** Release of **Upfront Payment** if **documentation** is ensured (including explanation for necessity of Upfront Payment) and **compliance obligations** have not been violated (otherwise: **obligatory** consultation with Legal Services).
5. Ensure that **performance** of Agreement complies with the Guide.
6. Ensure that **Services** have actually been rendered. Request **Evidence** from Business Partner and confirm existence in writing.
7. **Only now:** Release of **Milestone Payment** or **Total Payment** if **documentation** is ensured and **compliance obligations** have not been violated (otherwise: **obligatory** consultation with Legal Services).

**Note:** Legal Sanctions may apply if not respected.

This flowchart shall help with the understanding of the Guide. It does not replace its thorough reading. Capitalised terms have the meaning defined in the Guide.





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