

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-Q**

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2018

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

LINDE PLC

(Exact name of registrant as specified in its charter)

Ireland

(State or other jurisdiction of incorporation)

001-38730

(Commission File Number)

98-1448883

(IRS Employer Identification No.)

The Priestley Center, 10 Priestley Road, Surrey Research Park,
Guildford, Surrey GU2 7XY United Kingdom

(Address of principal executive offices)

+44 1483 242200

Registrant's Telephone Number, Including Area Code

N/A

(Former name, former address and former fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class: Registered on:
Ordinary shares (€ 0.001 nominal value per share) New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

At October 31, 2018, 551,054,569 ordinary shares of € 0.001 nominal value per share of the Registrant were outstanding.

INTRODUCTORY NOTE

On October 31, 2018, Praxair, Inc., a Delaware corporation (“Praxair”), and Linde Aktiengesellschaft, a stock corporation incorporated under the laws of Germany (“Linde AG”), combined under Linde plc, a public limited company incorporated under the laws of Ireland (the “Company”), as contemplated by the business combination agreement, dated June 1, 2017, as amended on August 10, 2017 (the “Business Combination Agreement”), by and among the Company, Praxair, Linde AG, Zamalight Holdco LLC and Zamalight Subco, Inc. (the “Business Combination”). Pursuant to the Business Combination Agreement, (i) Praxair became an indirect wholly-owned subsidiary of the Company through the merger of Zamalight Subco, Inc., an indirect wholly-owned Delaware subsidiary of the Company with and into Praxair (the “Merger”), and (ii) Linde AG became an indirect subsidiary of the Company through an exchange offer by the Company for each issued and outstanding bearer share of Linde AG (the “Exchange Offer”). On October 31, 2018, the Company filed a Current Report on Form 8-K with the Securities and Exchange Commission (“SEC”) that established the Company as the successor issuer to Praxair under the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

This Quarterly Report on Form 10-Q relates to the Company's quarter ended September 30, 2018, which was prior to the completion of the Business Combination. For information on Praxair's results of operations and financial condition for its quarter ended and as of September 30, 2018, please refer to Praxair's Quarterly Report on Form 10-Q filed on November 9, 2018. The first periodic report of the Company that will include information about Praxair's results of operations and financial condition, consolidated with Linde AG's results of operations and financial condition as of the acquisition date, will be the Company's Annual Report on Form 10-K for its fiscal year ending December 31, 2018.

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LINDE PLC AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(In USD)
(UNAUDITED)

	September 30, 2018	December 31, 2017
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	\$ 104,942	\$ 84,862
Other assets	8,824,609	9,129,562
NON-CURRENT ASSETS	—	—
TOTAL ASSETS	<u>\$ 8,929,551</u>	<u>\$ 9,214,424</u>
SHAREHOLDER'S EQUITY AND LIABILITIES		
CURRENT LIABILITIES		
Accrued liabilities	\$ 6,164,855	\$ 1,644,799
Related party debt (Note 7)	13,916,212	9,501,470
NON CURRENT LIABILITIES		
CAPITAL AND RESERVES		
Share Capital (A ordinary shares of €1.00 each, authorized and issued shares - 25,000 shares)	26,827	26,827
Additional paid-in capital	26,827	26,827
Accumulated other comprehensive income	132,535	(42,828)
Receivable from shareholders	(58,020)	(60,025)
Retained earnings	(11,279,685)	(1,882,646)
TOTAL SHAREHOLDER'S EQUITY	<u>(11,151,516)</u>	<u>(1,931,845)</u>
EQUITY AND LIABILITIES	<u>\$ 8,929,551</u>	<u>\$ 9,214,424</u>

The accompanying notes are an integral part of these financial statements.

LINDE PLC AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME AND OTHER COMPREHENSIVE INCOME
(In USD)
(UNAUDITED)

	Quarter ended September 30, 2018	Quarter ended September 30, 2017
Other expenses	\$ 4,553,926	\$ 290,825
Operating loss	(4,553,926)	(290,825)
Net finance costs	—	—
Loss before tax	(4,553,926)	(290,825)
Income tax	—	—
Loss for the period	(4,553,926)	(290,825)
Other comprehensive income (loss)		
Other comprehensive income (loss) for the period, net of tax	62,798	(18,622)
Total comprehensive loss for the period	\$ (4,491,128)	\$ (309,447)
Loss per share - basic and diluted	\$ (182.16)	\$ (11.63)

The accompanying notes are an integral part of these financial statements.

LINDE PLC AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME AND OTHER COMPREHENSIVE INCOME
(In USD)
(UNAUDITED)

	Nine Months ended September 30, 2018	April 18, 2017 - September 30, 2017
Other expenses	\$ 9,397,039	\$ 753,465
Operating loss	(9,397,039)	(753,465)
Net finance costs	—	—
Loss before tax	(9,397,039)	(753,465)
Income tax	—	—
Loss for the period	(9,397,039)	(753,465)
Other comprehensive income (loss)		
Other comprehensive income (loss) for the period, net of tax	175,363	(16,116)
Total comprehensive loss for the period	\$ (9,221,676)	\$ (769,581)
Loss per share - basic and diluted	\$ (375.88)	\$ (30.14)

The accompanying notes are an integral part of these financial statements.

LINDE PLC AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOW
(In USD)
(UNAUDITED)

	Nine months ended September 30, 2018	April 18, 2017 - September 30, 2017
OPERATIONS		
Net loss	\$ (9,397,039)	\$ (753,465)
Working capital:		
Other assets	—	119,140
Accrued liabilities	4,607,234	599,527
Net cash provided by (used for) operating activities	(4,789,805)	(34,798)
INVESTING		
Net cash used for investing activities	—	—
FINANCING		
Related party debt	4,812,761	118,140
Net cash provided by (used for) financing	4,812,761	118,140
Effect of exchange rate changes on cash	(2,876)	—
Change in cash and cash equivalents	20,080	83,342
Cash and cash equivalents, beginning-of-period	84,862	—
Cash and cash equivalents, end-of-period	\$ 104,942	\$ 83,342

The accompanying notes are an integral part of these financial statements.

LINDE PLC AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF EQUITY
(In USD)
(UNAUDITED)

	Share capital	Additional Paid in Capital	Accumulated other comprehensive income (loss)	Accumulated deficit	Receivables from shareholders	Total equity
Issue of share capital on incorporation - April 18, 2017	\$ 26,827	\$ 26,827	\$ —	\$ —	\$ (53,654)	\$ —
Loss for the period	—	—	—	(462,640)	—	(462,640)
Total comprehensive loss for the period	—	—	2,506	—	(2,506)	—
June 30, 2017	26,827	26,827	2,506	(462,640)	(56,160)	(462,640)
Loss for the period	—	—	—	(290,825)	—	(290,825)
Total comprehensive loss for the period	—	—	(18,622)	—	(2,910)	(21,532)
September 30, 2017	\$ 26,827	\$ 26,827	\$ (16,116)	\$ (753,465)	\$ (59,070)	\$ (774,997)

	Share capital	Additional Paid in Capital	Accumulated other comprehensive income (loss)	Accumulated deficit	Receivables from shareholders	Total equity
December 31, 2017	\$ 26,827	\$ 26,827	\$ (42,828)	\$ (1,882,646)	\$ (60,025)	\$ (1,931,845)
Loss for the period	—	—	—	(4,843,113)	—	(4,843,113)
Total comprehensive loss for the period	—	—	112,566	—	1,605	114,171
June 30, 2018	26,827	26,827	69,738	(6,725,759)	(58,420)	(6,660,787)
Loss for the period	—	—	—	(4,553,926)	—	(4,553,926)
Total comprehensive loss for the period	—	—	62,797	—	400	63,197
September 30, 2018	\$ 26,827	\$ 26,827	\$ 132,535	\$ (11,279,685)	\$ (58,020)	\$ (11,151,516)

The accompanying notes are an integral part of these financial statements.

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1. Organization

Linde plc ("Linde plc" or the "Company") was incorporated as a public limited company under the laws of Ireland on April 18, 2017.

The Company is registered in Ireland under the registration number 602527 and with its registered office located at c/o Ten Earlsfort Terrace, Dublin 2, D02 T380 Ireland and principal executive offices at The Priestley Centre, 10 Priestley Road, The Surrey Research Park, Guildford, Surrey GU2 7XY, United Kingdom. The Company was formed on April 18, 2017; accordingly, the financial statements as of that date only comprise the balance sheet ("opening balance sheet").

The Business Combination

The Company was formed in accordance with the requirements of the business combination agreement, dated as of June 1, 2017, as amended (the "Business Combination Agreement"), pursuant to which, among other things, Praxair, Inc., a Delaware corporation ("Praxair"), and Linde Aktiengesellschaft, a stock corporation incorporated under the laws of Germany ("Linde AG"), agreed to combine their respective businesses through an all-stock transaction, and become subsidiaries of the Company.

On October 31, 2018, Praxair and Linde AG combined under the Company, as contemplated by the Business Combination Agreement (the "Business Combination"). Pursuant to the Business Combination Agreement, (i) Praxair became an indirect wholly-owned subsidiary of the Company through the merger of Zamalight Subco, Inc., an indirect wholly-owned Delaware subsidiary of the Company with and into Praxair (the "Merger"), and (ii) Linde AG became an indirect subsidiary of the Company through an exchange offer by the Company for each issued and outstanding bearer share of Linde AG (the "Exchange Offer").

In the Merger, each issued and outstanding share of common stock of Praxair, par value \$0.01 per share (the "Praxair Shares"), was converted into the right to receive one ordinary share, nominal value €0.001 per share, of Linde plc (the "Linde plc Shares"). Each issued and outstanding ordinary bearer share, without par value, of Linde AG (the "Linde AG Shares") that was validly tendered in the Exchange Offer was exchanged for 1.540 Linde plc Shares.

The issuance of Linde plc Shares in connection with the Business Combination, as described above, was registered under the Securities Act of 1933, as amended, pursuant to a registration statement on Form S-4 (the "Registration Statement") (File No. 333-218485), which was declared effective by the Securities and Exchange Commission (the "SEC") on August 14, 2017.

Prior to the completion of the Business Combination, the Company was wholly owned and controlled by Enceladus Holding Limited, a private company limited by shares formed under the laws of Ireland, which held 25,000 A ordinary shares of €1.00 each in the capital of the Company. In accordance with the terms of the Company's Amended and Restated Memorandum and Articles of Association, immediately following the issuance of Linde plc Shares pursuant to the Exchange Offer, the 25,000 A ordinary shares of the Company were automatically converted and re-designated into deferred shares that do not carry voting or dividend rights, and were subsequently acquired and cancelled by the Company for nil consideration prior to the effective time of the Merger.

As of September 30, 2018, the Company had not conducted any material activities other than those incidental to its formation and the matters contemplated by the Business Combination Agreement.

For the quarterly period ended September 30, 2018, to the extent that the Company did not have sufficient funds available to satisfy its obligations, Praxair financed any out of pocket expenses incurred by the Company in connection with the Business Combination Agreement and the transactions contemplated by the Business Combination Agreement (see Note 6).

Pursuant to Rule 12g-3(a) under the Exchange Act, as of October 31, 2018, Linde plc is the successor issuer to Praxair, the Linde plc Shares are deemed to be registered under Section 12(b) of the Exchange Act, and the Company is subject to the informational requirements of the Exchange Act and the rules and regulations promulgated thereunder. The Linde plc Shares trade on the New York Stock Exchange ("NYSE") and the Frankfurt Stock Exchange ("FSE") under the ticker symbol "LIN".

The business combination will be accounted for using the acquisition method of accounting under ASC 805, with Praxair representing the accounting acquirer under this guidance. Due to the recent timing of the acquisition subsequent to the end of the third quarter of 2018, the initial accounting, including the allocation of purchase price and supplemental pro forma information, is incomplete as of the filing date and, therefore, related disclosures are not included herein.

Divestitures

On July 5, 2018, Praxair entered into a sale and purchase agreement to sell the majority of its businesses in Europe to Taiyo Nippon Sanso Corporation, an affiliate of Mitsubishi Chemical Holdings Corporation (the “Praxair Europe SPA”). The Praxair Europe SPA was entered into as part of the commitments in connection with the merger control review of the Business Combination by the European Commission. The assets to be sold include Praxair’s industrial gases businesses in Belgium, Denmark, France, Germany, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom with approximately 2,500 employees. The businesses generated annual sales of approximately € 1.3 billion in 2017. The purchase price for this transaction is € 5.0 billion in cash consideration and is subject to customary adjustments at closing. Under the Praxair Europe SPA, Linde plc has given an independent guarantee as of the completion of the Business Combination for the full, due and timely performance and observance of all obligations of Praxair and its local subsidiaries holding shares in the companies operating the businesses to be sold. The Praxair Europe SPA contains representations, warranties and covenants that are customary for a transaction of this nature.

Following the closing of the Praxair Europe SPA and the closing of another agreement dated December 5, 2017 (the “SIAD SPA”) under which Praxair agreed to sell its participation in its Italian joint venture Società Italiana Acetilene e Derivati S.p.A. (“SIAD”) to its joint venture partner Flow Fin S.p.A. (“Flow Fin”) in exchange for Flow Fin’s participation in another Italian joint venture, Rivoira S.p.A., and a net purchase price of approximately € 90 million payable by Praxair to Flow Fin, Praxair will have minor remaining operations in Europe which will be outside of the industrial gases business and mainly related to coatings.

On July 16, 2018, Linde AG entered into an agreement, which was amended on September 22, 2018 and October 19, 2018, with a consortium comprising companies of the German industrial gases manufacturer Messer Group and CVC Capital Partners Fund VII to sell the majority of Linde AG and its subsidiaries’ (together, “The Linde Group”) industrial gases business in North America and certain industrial gases business activities in South America (the agreement, as amended, the “Americas SPA”). In 2017, the businesses of The Linde Group to be sold generated annual sales of €1.5 billion and EBITDA of €350 million. The purchase price of €3.0 billion is subject to fixed deductions for certain items relating to liabilities of the sold businesses and customary adjustments for cash, financial debt, and working capital at closing. Under the Americas SPA, Linde plc has given an independent guarantee to MG Industries GmbH, a purchaser entity that is part of the Messer Group, as of the completion of the Business Combination for the full, due and timely performance of any obligation of Linde AG and Praxair under the Americas SPA. The Americas SPA contains representations, warranties and covenants (including sufficiency of assets in light of the carve-out) that can be considered customary for a transaction of this nature.

In the course of the merger control proceedings in the United States, Linde plc, Praxair and Linde AG entered into an agreement with the U.S. Federal Trade Commission dated October 1, 2018 which provides for the divestitures under the Americas SPA and provides for certain additional divestiture commitments in the United States. Under the agreement, Linde plc, Praxair and Linde AG will (i) continue to operate The Linde Group and Praxair as independent, ongoing, economically viable, competitive businesses held separate, distinct, and apart from each other’s operations; (ii) not coordinate any aspect of the operations of The Linde Group and Praxair, including the marketing or sale of any products; and (iii) maintain separate financial ledgers, books, and records that report on a periodic basis, consistent with past practices, the assets, liabilities, expenses, revenues, and income of each, until certain divestitures have been completed. Linde AG is required to complete such divestitures by January 29, 2019.

In addition, in connection with the merger control proceedings in China, India and South Korea, Praxair and Linde AG have made certain divestiture commitments to the relevant antitrust authorities to divest certain assets in the those jurisdictions.

2. Accounting Policies

Basis of Preparation

The financial statements present the consolidated results and financial position of the Company and its subsidiaries for the period from incorporation (being April 18, 2017 to September 30, 2017) and the quarter ended September 30, 2017 and the quarter and nine months ended September 30, 2018.

These financial statements have been prepared in compliance with US GAAP.

The following new accounting standards in the United States issued by the Financial Accounting Standards Board (“FASB”) were either adopted in 2018 or will be implemented in future periods. The Company will evaluate, when applicable, the impacts of adopting the below standards on future periods:

Accounting Standards Implemented in 2018

- **Revenue Recognition** – In May 2014, the FASB issued updated guidance on the reporting and disclosure of revenue. The new guidance requires the evaluation of contracts with customers to determine the recognition of revenue when or as the entity satisfies a performance obligation, and requires expanded disclosures. Effective January 1, 2018, Linde plc has adopted this guidance using the modified retrospective transition method.
- **Classification of Certain Cash Receipts and Cash Payments** – In August 2016, the FASB issued updated guidance on the classification of certain cash receipts and cash payments within the statement of cash flows. The update provides accounting guidance for specific cash flow issues with the objective of reducing diversity in practice. The adoption of this guidance did not have a material impact on the financial statements.
- **Intra-Entity Asset Transfers** – In October 2016, the FASB issued updated guidance for income tax accounting of intra-entity transfers of assets other than inventory. The update requires an entity to recognize the income tax consequences of an intra-entity transfer of an asset other than inventory in the period when the transfer occurs. The adoption of this guidance did not have a material impact on the financial statements.
- **Pension Costs** - In March 2017, the FASB issued updated guidance on the presentation of net periodic pension cost and net periodic postretirement benefit cost. The new guidance requires the service cost component be reported in the same line item or items as other compensation costs arising from services rendered by employees during the period. The other components of net benefit cost are required to be presented in the income statement separately from the service cost component and not included within operating profit. This guidance was adopted in the first quarter 2018.

Accounting Standards to be Implemented

- **Leases** - In February 2016, the FASB issued updated guidance on the accounting and financial statement presentation of leases. The new guidance requires lessees to recognize a right-of-use asset and lease liability for all leases, except those that meet certain scope exceptions, and would require expanded quantitative and qualitative disclosures. This guidance will be effective beginning in the first quarter 2019 and requires companies to transition using a modified retrospective approach.
- **Credit Losses on Financial Instruments** - In June 2016, the FASB issued an update on the measurement of credit losses. The guidance introduces a new accounting model for expected credit losses on financial instruments, including trade receivables, based on estimates of current expected credit losses. This guidance will be effective beginning in the first quarter 2020, with early adoption permitted beginning in the first quarter 2019 and requires companies to apply the change in accounting on a prospective basis.
- **Simplifying the Test for Goodwill Impairment** - In January 2017, the FASB issued updated guidance on the measurement of goodwill. The new guidance eliminates the requirement to calculate the implied fair value of goodwill to measure a goodwill impairment charge. The guidance will be effective beginning in the first quarter 2020 with early adoption permitted.
- **Derivatives and Hedging** - In August 2017, the FASB issued updated guidance on accounting for hedging activities. The new guidance changes both the designation and measurement for qualifying hedging relationships and the presentation of hedge results. This guidance will be effective beginning in the first quarter 2019, with early adoption optional.
- **Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income** – In February 2018, the FASB issued updated guidance which allows a reclassification from accumulated other comprehensive income to retained earnings for stranded tax effects resulting from the Tax Cuts and Jobs Act. This new guidance will be effective beginning in the first quarter 2019 on a retrospective basis, with early adoption optional.

Going Concern

The financial statements have been prepared on a going concern basis, taking account of the facilities available under the cash management agreement (see Note 6).

Currency

Items included in these consolidated financial statements are measured using the currency of the primary economic environment in which the entity operates ('the functional currency'). The financial information is presented in USD. The US Dollar/Euro exchange rate at December 31, 2017 was 0.8330 and at September 30, 2018 was 0.8618 .

Consolidation and Subsidiaries

Subsidiaries are all entities (including structured entities) over which the Company and its group has control. The group controls an entity when the group is exposed to, or has rights to, variable returns from its involvement with the entity and has the ability to affect those returns through its power to direct the activities of the entity. Subsidiaries are fully consolidated from the date on which control is transferred to the group. They are deconsolidated from the date that control ceases.

The acquisition method of accounting is used to account for business combinations by the group.

Intercompany transactions, balances and unrealized gains on transactions between group companies are eliminated. Unrealized losses are also eliminated unless the transaction provides evidence of an impairment of the transferred asset.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash at banks or other highly liquid securities with original maturities of three months or less.

Other Receivables

Other receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Other receivables are stated at the lower of amortized cost or recoverable amount. If collection of the amounts is expected in one year or less they are classified as current assets.

Other Provisions

The Company accrues liabilities for non-income tax contingencies when management believes that a loss is probable and the amounts can be reasonably estimated, while contingent gains are recognized only when realized. If new information becomes available or losses are sustained in excess of recorded amounts, adjustments are charged against income at that time. Management does not anticipate that in the aggregate such losses would have a material adverse effect on the Company's opening balance sheet or liquidity.

Share Capital

According to article 3 of the Amended and Restated Memorandum of Association and Articles of Association, the authorized share capital of the Company is € 1,775,000 divided into 1,750,000,000 ordinary shares of € 0.001 each and 25,000 A ordinary shares of € 1.00 each.

As of December 31, 2017 and September 30, 2018, 25,000 A ordinary shares had been issued and 12,500 shares were held by Enceladus Holding Limited wholly owned by Praxair, Inc.'s Irish legal counsel Arthur Cox, and 12,500 shares were held by Cumberland Corporate Services Limited wholly owned by Linde AG's Irish legal counsel William Fry, the Company's shareholders. Furthermore, an additional € 25,000 was committed to be paid by the two shareholders.

In connection with the completion of the Business Combination and in accordance with the terms of the Company's Amended and Restated Memorandum and Articles of Association, immediately following the issuance of Linde plc Shares pursuant to the Exchange Offer, the 25,000 A ordinary shares of the Company were automatically converted and re-designated into deferred shares that do not carry voting or dividend rights, and were subsequently acquired and cancelled by the Company for nil consideration prior to the effective time of the Merger.

Ordinary shares are classified as equity. Incremental costs directly attributable to the issue of new shares are capitalized and upon the closing of the associated equity transaction are reclassified to equity as a deduction, net of tax, from the proceeds.

As at September 30, 2018, the Company was not subject to any capital requirements.

Income Taxes

The income tax expense or credit for the period is the tax payable on the current period's taxable income based on the applicable income tax rate for each jurisdiction adjusted by changes in deferred tax assets and liabilities attributable to temporary differences and to unused tax losses.

Deferred tax assets are recognized only if it is probable that future taxable amounts will be available to utilize those temporary differences and losses. No deferred tax has been recognized as at September 30, 2018, as the Company has recently been incorporated and therefore does not have any history of income.

3. Receivables from Shareholders

This relates to a receivable from the two shareholders and comprises two checks of € 25,000 each which are being held on behalf of the Company by Praxair, Inc.'s Irish legal counsel Arthur Cox. Due to the short-term nature of the current receivables, their carrying amount is considered to be the same as their fair value.

5. Other Assets

Other assets of \$ 8,824,609 and \$ 9,129,562 at September 30, 2018 and December 31, 2017, respectively, relate to the costs to issue equity securities (primarily SEC registration fee). The change in the period is due to currency translation impacts.

6. Accrued Liabilities

Accrued liabilities for the amount of \$ 6,164,855 and \$ 1,644,799 at September 30, 2018 and December 31, 2017, respectively, consist of expenses incurred in connection with the Business Combination and mainly relate to fees for accounting and advisory services.

7. Related Parties

Related parties are the members of the executive bodies of the Company and those companies as described in Note 1.

On July 24, 2017 the Company entered into a cash management agreement with Praxair International Finance UC to finance the Company's working capital obligations. The total available amount under the facility is € 30,000,000 . The cash management agreement is Euro denominated and has a variable interest rate of one month EUR LIBOR plus a 0% spread. The cash management agreement terminated on the business day immediately following the closing date of the business combination (see Note 1).

At September 30, 2018 and December 31, 2017, \$13,916,212 and \$9,501,470 , respectively, was outstanding under this facility as follows:

	September 30, 2018	December 31, 2017
SEC registration fee*	\$ 8,824,610	\$ 9,129,562
Incorporation of Linde Intermediate Holding AG	58,020	60,025
Incorporation of Linde Holding GmbH	58,020	60,025
BaFin registration fee*	116,040	120,050
Cultural assessment	1,198,586	—
Consulting fees	2,890,330	—
All other	770,606	131,808
	<u>\$ 13,916,212</u>	<u>\$ 9,501,470</u>

* Paid directly to the SEC and BaFin by Praxair International Finance UC on behalf of Linde plc and treated as a non-cash transaction in the Consolidated Statement of Cash Flows.

8. Loss per share

	Quarter Ended September 30, 2018	Quarter Ended September 30, 2017	Nine Months Ended September 30, 2018	April 18, 2017 to September 30, 2017
Loss from continuing operations attributable to the owners of the company	\$ (4,553,926)	\$ (290,825)	\$ (9,397,039)	\$ (753,465)
Weighted average number of ordinary shares in issue	25,000	25,000	25,000	25,000
Loss per share - basic and diluted	\$ (182.16)	\$ (11.63)	\$ (375.88)	\$ (30.14)

9. Events After the Balance Sheet Date

On November 1, 2018, Linde Intermediate Holding AG ("Linde Intermediate Holding"), a wholly-owned indirect subsidiary of the Company, requested that Linde AG convene an extraordinary shareholders' meeting. At the meeting, Linde AG shareholders will vote on the mandatory transfer (the "Squeeze Out") to Linde Intermediate Holding of each issued and outstanding Linde AG Share held by Linde AG shareholders that did not tender their shares in the Company's previously completed exchange offer for Linde AG Shares. In exchange for the Linde AG Shares transferred in the Squeeze Out, Linde Intermediate Holding will pay an adequate cash compensation to the remaining Linde AG shareholders (the "Cash

Compensation”). On November 1, 2018, Linde Intermediate Holding confirmed that the Cash Compensation it will pay upon completion of the Squeeze Out will be €188.24 for each Linde AG Share.

The aggregate Cash Compensation payable to the approximately 8% remaining shareholders of Linde AG is expected to be approximately €2.8 billion (approximately \$3.2 billion based on the Euro/U.S.\$ exchange rate of 1.1312 at October 31, 2018). In connection with the completion of the Squeeze-Out, Linde AG will also merge with and into Linde Intermediate Holding, with Linde Intermediate Holding surviving the merger, and Linde Intermediate Holding will be renamed Linde Aktiengesellschaft.

The completion of the Squeeze-Out remains subject to (i) an affirmative vote of the majority of the Linde AG Shares voted at an extraordinary shareholders’ meeting of Linde AG (including the Linde AG Shares held by Linde Intermediate Holding), approving the Squeeze-Out, and (ii) the registration of the shareholders’ resolution approving the Squeeze-Out and the merger with the German commercial registers (*Handelsregistereintragung*) at the registered offices of Linde Intermediate Holding and Linde AG, respectively. As Linde Intermediate Holding owns approximately 92% of the Linde AG Shares and intends to vote in favor of the Squeeze-Out at the extraordinary shareholders’ meeting, the condition set forth in clause (i) above is expected to be satisfied on the date of the meeting.

The extraordinary shareholders’ meeting of Linde AG will be held on December 12, 2018, unless postponed or suspended. At the time of the registration with the commercial registers, the Squeeze-Out will become effective and all Linde AG Shares that Linde Intermediate Holding does not already own will be transferred to it by operation of German law and thereafter cancelled.

For further events subsequent to the balance sheet date, refer to Note 1.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

As of September 30, 2018, Linde plc had not conducted any material activities other than those incidental to its formation and the matters contemplated by the Business Combination Agreement.

On October 31, 2018, Linde plc became the successor issuer to Praxair, Inc. in connection with the business combination. See Note 1 to the condensed consolidated financial statements.

Results of Operations

On July 24, 2017 the Company entered into a cash management agreement with Praxair International Finance UC to finance the Company’s working capital obligations. The total available amount under the facility is € 30,000,000 . The cash management agreement is Euro denominated and has a variable interest rate of one month EUR LIBOR plus a 0% spread. As of September 30, 2018 and December 31, 2017, \$13,916,212 and \$9,501,470 was outstanding under this facility, respectively, primarily related to SEC registration fees paid by Praxair International Finance UC on behalf of Linde plc. The cash management agreement terminated on the business day immediately following the closing date of the business combination (see Note 1 to the condensed consolidated financial statements).

In addition, Linde plc has incurred expenses of \$4,553,926 and \$9,397,039 for the quarter and nine months ended September 30, 2018, respectively (\$290,825 for the third quarter 2017 and \$753,465 for the period from inception to September 30, 2017) primarily related to accounting and advisory services incurred in connection with the Business Combination.

Forward-looking Statements

This document contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are based on management’s reasonable expectations and assumptions as of the date the statements are made but involve risks and uncertainties. These risks and uncertainties include, without limitation: regulatory or other limitations imposed as a result of the business combination that could reduce anticipated benefits of the transaction; the ability to successfully integrate the Praxair and Linde businesses; the risk that the combined company may be unable to achieve expected synergies or that it may take longer or be more costly than expected to achieve those synergies; the performance of stock markets generally; developments in worldwide and national economies and other international events and circumstances; changes in foreign currencies and in interest rates; the cost and availability of electric power, natural gas and other raw materials; the ability to achieve price increases to offset cost increases; catastrophic events including natural disasters, epidemics and acts of war and terrorism; the ability to attract, hire, and retain qualified personnel; the impact of changes in financial accounting standards; the impact of changes in pension plan liabilities; the impact of tax, environmental, healthcare and other legislation and government regulation in jurisdictions in which the company operates, including the impact of the U.S. Tax Cuts and Jobs Act of 2017; the cost and outcomes of investigations, litigation and regulatory proceedings; the impact of potential unusual or non-recurring items; continued timely development and market acceptance of new products and applications; the impact of competitive products and pricing; future financial and operating performance of major customers and industries served; the impact of information technology system failures, network disruptions and breaches in data security; and the effectiveness and speed of integrating new acquisitions into the business. These risks and uncertainties may cause actual future results or circumstances to differ materially from the GAAP or adjusted projections or estimates contained in the forward-looking statements.

The Company assumes no obligation to update or provide revisions to any forward-looking statement in response to changing circumstances. The above listed risks and uncertainties are further described under the heading “Risk Factors” in the Company’s European Listing Prospectus, published on October 24, 2018, which is incorporated by reference into Item 8.01 of Linde plc’s Current Report filed with the SEC on October 31, 2018, which should be reviewed carefully. Please consider the Company’s forward-looking statements in light of those risks.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

During the period covered by this report, Linde plc did not conduct any material activities and therefore did not incur any significant interest rate risk, foreign currency exchange rate risk, commodity price risk or other relevant market risks.

Item 4. Controls and Procedures

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- (a) Based on an evaluation of the effectiveness of Linde plc's disclosure controls and procedures, which was made under the supervision and with the participation of management, including Linde plc's principal executive officer and principal financial officer, the principal executive officer and principal financial officer have each concluded that, as of the end of the quarterly period covered by this report, such disclosure controls and procedures are effective in ensuring that information required to be disclosed by Linde plc in reports that it files under the Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and accumulated and communicated to management including Linde plc's principal executive officer and principal financial officer, to allow timely decisions regarding required disclosure.
- (b) There were no changes in Linde plc's internal control over financial reporting that occurred during the quarterly period covered by this report that have materially affected, or are reasonably likely to materially affect, Linde plc's internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

None.

Item 1A. Risk Factors

Please refer to the information under the heading “Risk Factors” in the Company’s European Listing Prospectus, published on October 24, 2018, which is incorporated by reference into Item 8.01 of the Company’s Current Report filed with the SEC on October 31, 2018.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

(a) Exhibits

- *2.1 [Sale and Purchase Agreement, dated July 5, 2018, by and among Praxair, Inc., Taiyo Nippon Sanso Corporation \(“Taiyo”\), and Linde plc, a public limited company incorporated under the laws of Ireland with respect to the sale of a majority of Praxair’s businesses in Europe to Taiyo in connection with the Business Combination Agreement dated as of June 1, 2017, as amended, to effect a combination of the businesses of Linde AG and Praxair, Inc., is filed herewith.](#)
- *2.2 [Sale and Purchase Agreement, dated July 16, 2018, by and among Linde AG, Praxair, Inc., MG Industries GmbH, Messer Canada Inc., MG Industries USA, Inc. \(the MG entities and Messer Canada, Inc. being collectively referred to as “Messer”\), and Linde plc, a public limited company incorporated under the laws of Ireland with respect to the sale of certain assets of Linde AG in the Americas and certain assets of Praxair, Inc. to Messer in connection with the Business Combination Agreement dated as of June 1, 2017, as amended, to effect a combination of the businesses of Linde AG and Praxair, Inc. is filed herewith.](#)
- *2.3 [First Amendment dated September 21, 2018 to the Sale and Purchase Agreement, dated July 16, 2018, by and among Linde AG, Praxair, Inc., MG Industries GmbH, Messer Canada Inc., MG Industries USA, Inc. \(the MG entities and Messer Canada, Inc. being collectively referred to as “Messer”\), and Linde plc, a public limited company incorporated under the laws of Ireland with respect to the sale of certain additional assets of Linde AG in the Americas to Messer in connection with the Business Combination Agreement dated as of June 1, 2017, as amended, to effect a combination of the businesses of Linde AG and Praxair, Inc. is filed herewith.](#)
- *2.4 [Second Amendment dated October 19, 2018 to the Sale and Purchase Agreement, dated July 16, 2018, as amended by the First Amendment thereto, by and among Linde AG, Praxair, Inc., MG Industries GmbH, Messer Canada Inc., MG Industries USA, Inc. \(the MG entities and Messer Canada, Inc. being collectively referred to as “Messer”\), and Linde plc, a public limited company incorporated under the laws of Ireland with respect to the sale of certain additional assets of Linde AG in the Americas to Messer in connection with the Business Combination Agreement dated as of June 1, 2017, as amended, to effect a combination of the businesses of Linde AG and Praxair, Inc. is filed herewith.](#)
- 31.01 [Rule 13a-14\(a\) Certification](#)
- 31.02 [Rule 13a-14\(a\) Certification](#)
- 32.01 [Section 1350 Certification \(such certifications are furnished for the information of the Commission and shall not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act\).](#)
- 32.02 [Section 1350 Certification \(such certifications are furnished for the information of the Commission and shall not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act\).](#)
- 101.INS XBRL Instance Document
- 101.SCH XBRL Taxonomy Extension Schema
- 101.CAL XBRL Taxonomy Extension Calculation Linkbase
- 101.LAB XBRL Taxonomy Extension Label Linkbase
- 101.PRE XBRL Taxonomy Extension Presentation Linkbase
- 101.DEF XBRL Taxonomy Extension Definition Linkbase

* Certain schedules or similar attachments have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Registrant agrees to furnish supplemental copies of any of the omitted schedules or attachments upon request by the SEC.

SIGNATURE

Linde plc and Subsidiaries

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Linde plc

(Registrant)

Date: November 9, 2018

By: /s/ Kelcey E. Hoyt

Kelcey E. Hoyt
Chief Accounting Officer
(On behalf of the Registrant
and as Chief Accounting Officer)

EXECUTION VERSION

EUROPE
SALE AND PURCHASE AGREEMENT
5 JULY, 2018

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Schedules and Annexes

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Annex A to Schedule 11	ISO Helium Containers

Sale and Purchase Agreement

between

1. **Praxair, Inc.** , a corporation organised under the laws of Delaware, USA, having its registered address at 10 Riverview Drive, Danbury, Connecticut, CT06810, United States of America,

- herein "**Praxair**" or "**Seller**" -

2. **Taiyo Nippon Sanso Corporation** , a corporation organised under the laws of Japan, having its registered address at 1-3-26 Koyama, Shinagawa-ku, Tokyo, 142-8558 Japan,

- herein "**Purchaser**" -

and

3. **Linde Public Limited Company** , a public limited company organised under the laws of Ireland, having its business address at The Priestley Centre, 10 Priestley Road, The Surrey Research Park, Guildford, Surrey GU2 7XY, United Kingdom,

- herein "**PLC**" -

- each of Praxair, Purchaser and PLC herein also referred to individually as a "**Party**" and collectively as "

Parties" -

RECITALS

(A) **Whereas** , *inter alia*, Linde, Praxair and PLC have entered into a business combination agreement as of 1 June 2017, as amended, to effect a strategic combination of the businesses of Linde and Praxair ("**BCA**" and the transactions contemplated by the BCA the "**Business Combination** ").

- (B) **WHEREAS** , in connection with the Business Combination, Praxair wishes to procure the sale and transfer of the DivestCos from Local Sellers to Purchaser and Purchaser wishes to acquire the DivestCos from the Local Sellers in each case in accordance with the terms and conditions of this sale and purchase agreement (" **Agreement** "). The transactions contemplated by this Agreement and the Transaction Documents are referred to as the " **Transaction** ".
- (C) **WHEREAS** , PLC is willing to guarantee as of the completion of the Business Combination the performance of any obligations which Praxair has under this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. **Definitions, Interpretation**

1. Definitions

In this Agreement, the following terms shall have the meaning ascribed to them in this clause 1.1. Where there is any inconsistency between the definitions set out in this clause 1.1 and the definitions set out in any other clause or Schedule, then, for the purposes of construing such other clause or Schedule, the definitions set out in such other clause shall prevail.

Accounting Firm has the meaning given in Schedule 4;

Accounts Relief means a Relief which has been taken into account in calculating Working Capital in the Closing Statement;

Acquisition Proposal means any inquiry, offer, proposal or indication of interest (other than this Agreement or any other inquiry, offer, proposal or indication of interest by Purchaser or any of its Affiliates) contemplating, relating to or otherwise involving any acquisition, sale, assignment or transfer of the DivestCo Shares and/or the Business;

Actual Tax Liability has the meaning given in the definition of Tax Liability under clause 1.1;

Adjustment Payment(s) has the meaning given in clause 6.3;

Affiliate means, in respect of any person, any other person directly or indirectly having Control over, or being under the Control of, or being under common Control with the first person;

Agreed Form means, in relation to a document, the form of that document as initialled on or prior to the date of this Agreement for the purpose of identification by or on behalf of Seller and Purchaser

(in each case with such amendments as may be agreed in writing by or on behalf of Seller and Purchaser);

Agreement has the meaning given in Recital (B);

Anti-Corruption Laws means applicable laws which prohibit the corrupt making of any offer, any payment or gift, any promise to pay or give, or any authorisation of the payment of any money or giving of anything of value to any official of any Governmental Entity made for the purposes of (i) influencing any act or decision of such official in his official capacity, (ii) inducing such official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage, in each case, to assist Target Companies or Controlled JVCos in obtaining or retaining business for or with, or directing business to, any person;

Appointment Date has the meaning given in Schedule 4;

Auditors means the auditors for the time being of the relevant Target Company;

BCA has the meaning given in Recital (A);

BCA Clearance Condition has the meaning given in clause 8.1(b);

BCA Commitments has the meaning given in clause 8.2(a);

Business Combination has the meaning given in Recital (A);

Business Day means a day, other than a Saturday or Sunday or public holiday in Tokyo, Japan, New York, NY, USA, Munich, Germany, or London, United Kingdom, on which banks are open in Tokyo, New York, NY, Munich and London for general commercial business;

Business has the meaning given in Schedule 1;

Business Intellectual Property has the meaning given in Schedule 7;

Cash means, in relation to each Target Company, the aggregate of its cash position all as identified by the line items so named in Schedule 2;

Claim means any claim by Purchaser under or in connection with this Agreement or any other Transaction Document (other than the Product Supply Agreements and the Transitional Services Agreements), excluding a Tax Claim;

Closing means closing of the sale and purchase of the DivestCo Shares in accordance with the provisions of this Agreement;

Closing Actions means the obligations of Seller and Purchaser pursuant to clause 10.3;

Closing Conditions has the meaning given in clause 8.1;

Closing Date has the meaning given in clause 10.1;

Closing Statement has the meaning given in clause 6.1;

Combined Carve Out Financial Statements means the carve out combined financial statements (balance sheet, p&l, comprehensive income, cash flow statement and notes) of the Business as of 31 December 2016 and 31 December 2017 and for the years-ended 31 December 2015, 31 December 2016 and 31 December 2017, which have been prepared under US-GAAP in force at the date of such financial statements and audited by PricewaterhouseCoopers, and as of and for the quarters ended 31 March 2017 and 31 March 2018 which have been reviewed by PricewaterhouseCoopers;

Confidentiality Agreement has the meaning given in clause 21.2(a);

Control means, in respect of another person, if a controlling person (a) owns, directly or indirectly, more than 50% of the share capital of the person, or (b) has the power to cast or control more than 50% of the maximum number of votes that may be cast at a general meeting of the person, or (c) otherwise possesses, directly or indirectly, the power to determine the composition of the majority of, or the outcome of decisions on financial or operating policies by, the board of directors or any other governing authority of the controlled person, and the terms " **Controlling** " and " **Controlled** " shall be construed accordingly;

Controlled JVCo means any JVCo Controlled by Seller or any other member of Seller's Group;

Costs means charges, costs (including reasonable legal costs) and expenses, in each case of any nature whatsoever;

Damages Payment has the meaning given in Schedule 8;

Data Protection Legislation means all international, European Union, national, state, federal, regional or local laws (including common law, statute law, civil and criminal law) which are in force and binding on the date of this Agreement, to the extent that they relate to personal data, personal

information, data protection and privacy in any jurisdiction, including Regulation (EU) 2016/679 (General Data Protection Regulation) and its predecessor legislation;

Data Room means the Planet VDR online data room hosted by the provider Merrill Corporation as at July 2, 2018, 4:19 pm British Summer Time, comprising the documents made available by Seller to Purchaser, the content of which is recorded on two identical and change-resistant USB flash drives prepared by Merrill Corporation and is listed in the data room index attached to the Disclosure Letter;

Deferred Taxes has the meaning ascribed to such term in ASC 740 "Income Taxes";

Designated Purchaser has the meaning given in clause 10.5;

Disclosed has the meaning given in Schedule 8;

Disclosure Letter means the letter from Seller to Purchaser executed and delivered immediately before the execution of this Agreement;

DivestCo Shares has the meaning given in clause 2.1;

DivestCo Subsidiaries has the meaning given in Schedule 1;

DivestCos has the meaning given in Schedule 1;

Employees means persons employed by the relevant Target Companies under a contract of employment on the date hereof together with those that join the Target Companies after the date hereof but prior to the Financial Closing Date, but excluding those that have ceased to be employed by any Target Company prior to the Financial Closing Date;

Enterprise Purchase Price has the meaning given in clause 4.1;

Environment means all or any of the following: air, water, soil, soil gas, land, biota, buildings and installations;

Environmental Laws means all applicable international, European Union, national, state, federal, regional or local laws (including common law, statute law, civil and criminal law) which are in force and binding as of the date hereof and relating to Environmental Matters;

Environmental Licence means any permit, licence, authorisation, consent, exemption, registration, certificate, notification or other approval required in relation to the occupation or use of any of the Properties or to the operations of any of the Target Companies by any Environmental Law;

Environmental Matters means any of the following :

- (a) pollution, contamination or protection of the Environment;
- (b) the production, generation, manufacture, processing, handling, presence, use (including as a building material), treatment, supply, sale, purchase, transport, disposal, release, spillage, discharge, leak, emission, leaching or migration of Hazardous Materials or waste;
- (c) exposure of any human or any other living organism to Hazardous Materials or waste or other matters relating to human health and safety;

Environmental Warranties means the Warranties contained in paragraph 1.14 of Schedule 7;

Environmental Warranty Claim means any Warranty Claim of Purchaser for breach of the Environmental Warranties;

Estimated Closing Statement has the meaning given in clause 6.2;

Exchange Rate means, with respect to a particular currency for a particular day, the rate of exchange for that currency into EUR on such date as published by [Reuters](#) in respect of that currency for such date;

Excess Recovery has the meaning given in Schedule 8;

Final Inter-Company Payment Amount has the meaning given in clause 5.4;

Final Purchase Price has the meaning given in clause 4.1;

Financial Closing Date has the meaning given in clause 10.1 provided that references to the Financial Closing Date shall be references to a moment in time not taking into account the economic effects of any Closing Actions;

Financial Debt means in relation to each Target Company the aggregate of its borrowings and non-trading indebtedness position, all as identified by the line items so named in Schedule 2;

Fundamental Warranty Claim means any Warranty Claim of Purchaser for breach of any of the Fundamental Warranties;

Fundamental Warranties means the Warranties contained in paragraphs 1.1(a), 1.1(b), 1.1(f), 1.1(g), 1.1(i), 1.1(j) (*Corporate Authorisations*) and 1.11(a) and 1.11(b) (*Insolvency*) of Schedule 7;

Further Divestment has the meaning given in clause 9.1 and **Further Divestments** shall be construed accordingly;

Governmental Entity means any supra-national, national, state, municipal or local government (including any subdivision, court, administrative agency or commission or other authority thereof) or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority, including the European Union;

Hazardous Material means any wastes, pollutants, contaminants, chemicals, or substances or preparations, or any other natural or artificial substances (whether solid, liquid or gaseous) that are defined, listed or otherwise regulated by any Governmental Entity or by an Environmental Law (whether specifically or generally) as hazardous, toxic, pollutant or contaminant, or are otherwise capable of causing harm to the Environment;

Income, Profits or Gains means any income, profits, gains and any other consideration, value, receipt or measure by reference to which Tax is chargeable or assessed;

Initial Inter-Company Payment Amount has the meaning given in clause 5.5;

Initial Purchase Price has the meaning given in clause 4.2;

Intellectual Property Rights means patents, trademarks, service marks, business names, company names, trade names, logos, get-up, URLs, domain names, rights in designs, copyrights (including rights in computer software), ancillary copyrights, and use rights in copyrighted works;

Inter-Company Payables means in relation to each Target Company the aggregate of its financial indebtedness payables to any member of Seller's Group including any accrued and unpaid interest thereon identified by the line items so named in Schedule 2, but excluding Trade Payables;

Inter-Company Receivables means, in relation to each Target Company, the aggregate of its financial indebtedness receivables from any member of Seller's Group including any accrued and unpaid interest thereon identified by the line items so named in Schedule 2, but excluding Trade Receivables;

Inventory means the aggregate amount of inventory of each Target Company identified by the line items so named in Schedule 2 in each case net of reserves for excess and obsolescence and in accordance with US-GAAP as in effect at the Financial Closing Date;

IP Agreement means the executed or Agreed Form (as the case may be) intellectual property agreement with Praxair;

IT Systems means the computer and telecommunication hardware systems, networks, servers, PCs or other peripheral equipment used by the Target Companies;

JVCos has the meaning given in Schedule 1;

Key Employees means an Employee who was grade 13 or above as at Closing;

Known has the meaning given in Schedule 8;

Linde means Linde Aktiengesellschaft, a stock corporation (*Aktiengesellschaft*) organised under the laws of the Federal Republic of Germany, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Munich, Germany under registration number HRB 169850, having its registered address (*Geschäftsanschrift*) at Klosterhofstraße 1, 80331 Munich, Germany;

Local Transfer Agreements means the sale and purchase agreements to be entered into by the relevant Local Seller and Purchaser and/or Designated Purchaser, in the Agreed Form;

Local Sellers has the meaning given in Schedule 1;

Long-Stop Date has the meaning given in clause 8.2(a);

Material Agreement means:

- (a) any agreement between any Target Company on the one hand and a customer or supplier on the other hand for the provision of products or services by or to any of the Target Companies with annual expenditures or annual revenues in excess of two million (2,000,000) EUR;
- (b) any agreement under which any Target Company has sold or disposed of any company or business where it remains subject to any liability (whether contingent or otherwise) which exceeds, or is likely to exceed, two million (2,000,000) EUR; and
- (c) any agreement which is a partnership or profit (or loss) sharing agreement to which a Target Company or Controlled JVCo is a party, which relates to the Business;

- (d) any agreement to which any Target Company is a party which is not in the ordinary course of business or is not on arm's length terms and which, in each case, has a contractual volume (revenue, expenditure, consideration etc.) in excess of five million (5,000,000) EUR in the aggregate or per year; or
- (e) any agreement to which a Target Company or Controlled JVCo is a party which restricts or is likely to restrict any Target Company or Controlled JVCo's freedom to carry on the whole, or any part, of the Business in a country in which the Business is not currently conducted.

Material Litigation has the meaning given in Schedule 7;

Names has the meaning given in the definition of Seller's Trademarks under clause 1.1;

NoxBox Agreement means the agreement documenting the NoxBox Heads of Terms;

NoxBox Heads of Terms means the heads of terms in respect of a non-exclusive transitional supply agreement with Purchaser in relation to NOxBOX Ltd. medical devices, in the Agreed Form;

Objection Notice has the meaning given in Schedule 4;

Overprovision means the amount by which any liability or provision for a Tax which was taken into account in calculating Working Capital in the Closing Statement turns out to be overstated (except to the extent that any overstatement results (a) from the utilisation of a Purchaser's Relief or (b) from any of the acts, transactions or events, or arises in any of the circumstances, referred to in sub-paragraphs (iii), (iv), (v), (x), (xi), (xii), (xiii) or (xv) of clause 13.2(a) (deeming any reference in such sub-paragraphs to a Tax Liability to be replaced for the purposes of this definition with a reference to an overstatement)), applying the accounting principles set out in Schedule 4;

Party and Parties has the meaning given at the beginning of this Agreement;

Permitted Actions has the meaning given in clause 16.1(a);

Permitted Encumbrances means any and all encumbrances which are (i) for tax, assessments, or governmental charges or levies not yet due and delinquent, (ii) statutory encumbrances of carriers, warehousemen, mechanics and the like arising in the ordinary course of business, (iii) easements, encroachments and other minor imperfections of title of a Property arising in the ordinary course of business, (iv) retention of title provisions, or (v) licences to use Intellectual Property Rights, to the extent arising in the ordinary course of business, in any such case of (i) to (v), to the extent that such encumbrances do not have a material adverse effect on the conduct of the Business;

PLC has the meaning given at the beginning of this Agreement;

PLC Guarantee has the meaning given in clause 18;

Praxair has the meaning given at the beginning of this Agreement;

Post-Closing Relief means any Relief that arises to a Target Company as a result of or in connection with any:

- (a) event that occurred after the Financial Closing Date if and to the extent the underlying Tax is a Tax which is specifically assessed as a result and in respect of such taxable event and not on an on-going basis in respect of a Tax assessment period (e.g., transfer Taxes); or
- (b) period of time ending after the Financial Closing Date (in the case of any Tax based on income, profit, gain, turnover, sales, gross receipts, wage, capital expenditure, expense or any similar Tax base);

Pre-Financial Closing Date Tax Period means any tax assessment period ending on or before the Financial Closing Date;

Primary Person has the meaning given in clause 13.1(b);

Product Supply Agreements means the executed or Agreed Form (as the case may be) product supply agreements relating to the Business;

Properties means land and buildings owned or leased by any Target Company which are material to the Business;

Provider has the meaning given in Schedule 8;

Purchaser has the meaning given at the beginning of this Agreement;

Purchaser Group means Purchaser and its Affiliates from time to time, including the Target Companies and the JVCos from Closing;

Purchaser's Relief means any:

- (a) Accounts Relief;
-

- (b) Post-Closing Relief; or
- (c) Relief arising to any member of Purchaser's Tax Group (other than the Target Companies) at any time if and to the extent such Relief does not relate to any Tax Liability of Seller's Group;

Purchaser's Representatives has the meaning given in clause 11.3;

Purchaser's Tax Group means Purchaser and any company in the same Tax Group from time to time;

Purchaser's Warranties has the meaning given in clause 14;

Put Option has the meaning given in clause 9.2 and **Put Options** shall be construed accordingly;

Put Option Exercise Notice has the meaning given in clause 9.3;

Put Option Effective Date has the meaning given in clause 9.4;

Recipient has the meaning given in Schedule 8;

Records has the meaning given in clause 17.1(a);

Regulatory Permit has the meaning given in clause 16.2;

Relevant Tax Return has the meaning given in clause 13.8(c);

Relevant Tax Matter has the meaning given in clause 13.8(a);

Relevant Tax Proceeding has the meaning given in clause 13.8(e);

Relevant Territory means the territories of Germany, Spain, Italy, Belgium, Denmark, France, the Netherlands, Norway, Poland, Portugal, Republic of Ireland, Singapore (but only with respect to DivestCo 3 Subsidiary 4), Sweden and the United Kingdom;

Relief means any relief, loss, allowance, credit, deduction, exemption or set-off in respect of any Tax or relevant to the computation of any Income, Profits or Gains for the purposes of any Tax, or any right to a repayment of or saving of Tax (including any repayment supplement or interest paid by any Tax Authority), and:

- (a) any reference to the use or set-off of a Relief shall be construed accordingly and shall include use or set-off in part; and
- (b) any reference to the loss of a Relief (including the loss of any Accounts Relief, Post-Closing Relief and any other defined Relief) shall include the absence, failure to obtain, non-existence, non-availability, disallowance, withdrawal, claw-back or cancellation of any Relief, or its utilisation or set-off by any person other than a member of Purchaser's Tax Group and shall also include this Relief being available only in a reduced amount and "lost" as it relates to a Relief shall be construed accordingly;

Repeated Warranties means the Fundamental Warranties and the Warranties contained in paragraph 1.2(b)(iii)-(vi) (*Financial Matters*), 1.5(a) and 1.5(b) (*Compliance with Law*) and 1.6 (*Special Regulatory Matters*) of Schedule 7;

Rivoira Indemnity has the meaning given to that term in clause 12.3;

Rivoira Share Swap means the agreement dated 5 December, 2017 and made between Rivoira S.p.A., Siad S.p.A., Rivoira Pharma S.r.l., Praxair Italia S.r.l., Flow Fin S.p.A. and Samac S.r.l.;

Seller has the meaning given at the beginning of this Agreement;

Seller's Images means the images owned or used by any member of Seller's Group;

Seller's Indemnities has the meaning given to that term in clause 12.3;

Seller's Group means Praxair and entities under its Control from time to time, but excluding Target Companies and JVCos;

Seller's Knowledge means the actual knowledge, as at the date of this Agreement of the directors (or members of corporate bodies similar to a board of directors, if any) of the Local Sellers after having made due and careful inquiry with the members of the executive or management board of the relevant Target Company directly held by such Local Seller, and no other knowledge of members of Seller's Group or Seller's Representatives (whether actual or constructive) shall be imputed to Seller for the purposes of the statement concerned;

Seller's Records has the meaning given in clause 17.2(a);

Seller's Representatives has the meaning given in clause 11.3;

Seller's Trademarks means any trademarks, service marks, business names, company names, trade names, logos, get-up, URLs or domain names (" **Names** ") owned or registered by any member of Seller's Group, including any such Names which comprise or include (in whole or in part) any of (or any combination of) the designation "Praxair" or any other designation of any member of Seller's Group, any similar reference to any Names incorporating, relating to, or combining the designation "Praxair" or any other designation of any member of Seller's Group, any abbreviations thereof and any word or logo which in the reasonable opinion of Seller is similar thereto;

Shared Seller's Images means the Seller's Images used in the Business by any Target Company as of the Closing Date;

Shared Seller's Trademarks means the Seller's Trademarks used in the Business by any Target Company as of the Closing Date;

SPA Clearance Condition has the meaning given in clause 8.1(c);

Spanish Contractor Indemnity has the meaning given to the term in clause 12.1;

Storage Agreements means the agreements documenting the Storage Heads of Terms;

Storage Heads of Terms means the heads of terms in respect of the agreements between Praxair Gas UK Limited and a member of Seller's Group providing for access to Praxair Gas UK Limited's terminal and storage facilities at the Port of Tilbury, Essex, England, Tees Offshore Base Middlesbrough and, when constructed, Warrenpoint Harbour Estate, Warrenpoint, Northern Ireland and any ancillary assets, in the Agreed Form;

Straddle Period has the meaning given in clause 13.6;

Surviving Provisions means clauses 1 (*Definitions and Interpretation*), 21 (*Announcements, Confidentiality*), 23 (*Notices, Agent for Service of Process*), 24 (*Whole Agreement*), 25 (*Miscellaneous*), 26 (*Invalidity*) and 27 (*Governing Law, Jurisdiction*);

Target Companies has the meaning given in Schedule 1;

Target Working Capital has the meaning given in clause 4.1;

Tax means any form of taxation, levy, duty, charge, tariff, impost, fee, deduction or withholding (including in all cases advance payments of the same) imposed by any Governmental Entity (the " **Tax**)

Authority ") in any jurisdiction by reference to income, gains, profits, value added, exchange, loans, excise, customs, stamp, transfer, property, capital, use, real estate, sales, payroll, employment, ad valorem, franchise, license, freight, conveyance (including transfer conveyance of real property), documentary, capital gains, gross income, gross receipts or otherwise, in each case together with any related fine, penalty, surcharge or interest imposed by any Tax Authority, in each case (but excluding the reductions of loss carry-forwards, interest carry-forwards and/or Deferred Taxes and deferred Tax assets defined as such under the accounting principles and methodology set out in Schedule 4, except where sub-paragraph (b) or (c) of the definition of Tax Liability applies);

Tax Authority has the meaning given in the definition of Tax under clause 1.1;

Tax Claim means a claim by Purchaser for a payment to be made by Seller to Purchaser pursuant to the covenant at clause 13.1;

Tax Claim Notice has the meaning given in clause 13.2(b);

Tax Fact Book means the document named "Project Planet Tax Fact Book" provided in the Data Room under folder "Transaction Documents", reference 9.1;

Tax Group means those companies treated for the purposes of determining the amount of or liability for or relief from any Tax as being members of the same group of companies or fiscal unity;

Tax Liability means:

- (a) a liability to make an actual payment or increased payment of, or in respect of, or on account of, Tax (including making a payment in settlement of a Tax liability) ("**Actual Tax Liability**"), in which case the amount of the Tax Liability shall be the amount of the actual payment or increased payment;
 - (b) the loss (otherwise than, for the avoidance of doubt, by utilisation or set off) of an Accounts Relief, in which case the amount of the Tax Liability shall be the amount of Tax that would have been saved but for such loss (assuming that each Target Company had used the Relief in full and that, to the extent that there is an Actual Tax Liability as a result of the loss, the Tax would have been charged at the Tax rates applying to that period and, where there is no Actual Tax Liability, the Tax that would have been saved would have been charged at the Tax rates current at Closing) or, where the Relief is a right to repayment of Tax, the amount of the repayment;
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(c) the use or setting off of any Purchaser's Relief in circumstances where, but for such use or setting off, a Target Company would have had an Actual Tax Liability in respect of which Seller would have been liable under clause 13, in which case the amount of the Tax Liability shall be the amount for which Seller would have been liable under clause 13 but for such set-off or utilisation;

Tax Refund means any repayment or reimbursement of any Tax and any supplement or interest thereon paid by any Tax Authority;

Tax Return means any return, declaration, report, claim for refund, notice, form or information relating to any Tax, including any schedule or attachment thereto;

Tax Saving has the meaning given in clause 13.2(a)(ii);

Tax Warranty Claim means any Warranty Claim of Purchaser for breach of the Tax Warranties;

Tax Warranties means the Warranties contained in paragraph 1.17 of Schedule 7;

Third Party Assurances means all guarantees, bonds, sureties, indemnities, counter-indemnities, letters of comfort, letters of credit or any similar assurance given (i) to a third party by a Target Company or JVCo in respect of any obligation of a member of Seller's Group; or (ii) to a third party by a member of Seller's Group in respect of any obligation of a Target Company or JVCo;

Third Party Claim has the meaning given in Schedule 8;

Third Party Indemnity Claim has the meaning given in clause 12.4;

Third Party Right means any right to acquire, option, mortgage, charge, pledge, lien or encumbrance and any agreement or obligation to create any of the foregoing, in each case, other than Permitted Encumbrances;

Third Party Sum has the meaning given in Schedule 8;

Trade Payables means amounts payable in respect of trade creditors by a Target Company all as identified in the line items named as Working Capital or NWC in Schedule 2;

Trade Receivables means amounts receivable in respect of trade debtors of a Target Company all as identified in the line items named as Working Capital or NWC in Schedule 2;

Transaction has the meaning given in Recital (B);

Transaction Documents means this Agreement, the Local Transfer Agreements, the Disclosure Letter, the Transitional Services Agreements, the IP Agreement, the Product Supply Agreements and any other documents required under this Agreement whether executed, in Agreed Form or yet to be finalised;

Transitional Services Agreements means the executed or Agreed Form (as the case may be) transitional services agreements in respect of the provision of certain transitional services (i) by members of Seller's Group for the benefit of Target Companies and JVCos in relation to the Business and / or (ii) by the Target Companies for the benefit of members of Seller's Group in relation to the business of members of Seller's Group;

Uerdingen Indemnity has the meaning given to that term in clause 12.2;

Unconditional Date has the meaning given in clause 8.4;

US-GAAP means generally accepted accounting principles and practices in the United States of America as in effect from time to time;

VAT means value added Tax as provided for in Council Directive 2006/112/EC or any national legislation implementing the same and any similar sales or turnover Tax;

Venator means Huntsman P&A UK Ltd;

Warranties has the meaning given in clause 11.1(a);

Warranty Claim means any claim of Purchaser for breach of a Warranty (excluding, for the avoidance of doubt, any Tax Claims);

Working Capital or **NWC** means, in relation to each Target Company, the aggregate amount of Inventory plus Trade Receivables minus Trade Payables plus Tax assets minus Tax liabilities, all as identified by the line items so named in Schedule 2; and

Working Hours means (i) 9.30 a.m. to 5.30 p.m. London time on a Business Day when the term refers to delivery or receipt of any notices and (ii) 9.30 a.m. to 5.30 p.m. in the relevant location on a Business Day in any other case such term is used herein.

In this Agreement, unless the context otherwise requires:

- (a) references to a person include any individual, firm, body corporate (wherever incorporated), government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality);
- (b) headings do not affect the interpretation of this Agreement; the singular shall include the plural and vice versa; and references to one gender include all genders;
- (c) references to any English legal term or concept shall, in respect of any jurisdiction other than England, be construed as references to the term or concept which most nearly corresponds to it in that jurisdiction;
- (d) references to "EUR" are references to the single currency of the member states of the European Union that have a single currency as their lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union;
- (e) references to a time of day shall be construed as references to London time unless set out otherwise explicitly herein;
- (f) references to a document shall be construed as references to that document as amended, varied or novated from time to time;
- (g) references to the words "herein", "hereof", "hereto" and "hereunder" and words of similar meaning when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (h) references to any statute or statutory provision shall, unless stated otherwise herein, be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted; and
- (i) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

3. Schedules

The Schedules form an integral part of this Agreement and shall be construed and shall have the same force and effect as if expressly set out in the body of this Agreement.

2. **Sale and Purchase**

1. Sales Procurement

Praxair will procure, subject to the terms and conditions of this Agreement, the sale and transfer with effect as from Closing from the relevant Local Sellers to Purchaser and/or Designated Purchasers in

the proportions (if any) as set out in Schedule 1, of all the issued shares in the capital of the DivestCos held by the Local Sellers (the "**DivestCo Shares**").

2. Purchaser's Purchase Undertaking

Purchaser undertakes, subject to the terms and conditions of this Agreement, to purchase and acquire, directly itself or indirectly through Designated Purchasers the DivestCo Shares, with effect as from Closing.

3. Scope of Sale and Transfer

The DivestCo Shares, shall be sold and transferred with full title guarantee free from any Third Party Rights and together with all rights attaching to them at Closing including the right to receive all distributions and dividends declared, paid or made in respect of the relevant DivestCo Shares, after Closing.

3. ***Intentionally Left Blank***

4. **Purchase Price, Payments**

1. Final Purchase Price

The consideration for the purchase of the DivestCo Shares ("**Final Purchase Price**") shall be the amount in EUR which results from taking five billion (5,000,000,000) EUR ("**Enterprise Purchase Price**") and:

- (a) subtracting the aggregate of the Financial Debt as at the Financial Closing Date; and
- (b) adding the aggregate of the Cash as at the Financial Closing Date; and
- (c) subtracting the amount, if any, by which the aggregate of the Working Capital as at the Financial Closing Date falls short of the Target Working Capital; or
- (d) adding the amount, if any, by which the aggregate of the Working Capital as at the Financial Closing Date exceeds the Target Working Capital.

The target of the working capital is equal to sixty one million thirty five thousand (61,035,000) EUR ("**Target Working Capital**").

The Final Purchase Price shall be calculated after Closing by adjusting the Initial Purchase Price in accordance with clause 6.

2. Initial Purchase Price

At Closing, Purchaser shall pay to Seller the amount in EUR (" **Initial Purchase Price** ") which is equal to the Enterprise Purchase Price adjusted as set out in clause 4.1 by using the estimated amounts set out in the Estimated Closing Statement prepared in accordance with clause 6.

The Initial Purchase Price shall be apportioned between the DivestCo Shares pursuant to clause 4.4.

3. Adjustment Payments to the Initial Purchase Price

The Initial Purchase Price shall be adjusted following Closing pursuant to clause 6 and on the following basis:

- (a) If a payment is specifically referable to any particular DivestCo Shares (or to any DivestCo or DivestCo Subsidiary), it shall so far as possible adjust the price paid for the relevant DivestCo Shares; or
- (b) otherwise, it shall adjust the price for the DivestCo Shares on a basis pro rata to the allocation thereof in the calculation of the Initial Purchase Price unless Seller and Purchaser agree otherwise both acting reasonably.

4. Allocation of Purchase Price and Negative Components

The Enterprise Purchase Price and the Target Working Capital shall be apportioned to the DivestCo Shares as set out in Schedule 3.

The adjustments pursuant to clauses 4.1 through 4.3 and 6 shall be allocated to the individual DivestCos as they apply, unless agreed otherwise between the Parties.

If any payment made in satisfaction of a liability under this Agreement, in particular Adjustment Payments, would reduce the price of particular DivestCo Shares to less than one (1) EUR, then such payment or adjustment shall be made on the following basis:

- (a) the price of those particular DivestCo Shares shall be reduced to one (1) EUR; and
- (b) the balance shall adjust the price for the other DivestCo Shares on a pro rata basis unless Seller and Purchaser agree otherwise both acting reasonably.

5. **Settlement of Inter-Company Relations**

1. Efforts to Reduce Inter-Company Payables and Inter-Company Receivables

Prior to Closing and subject to the Permitted Actions, Seller shall use reasonable endeavours to reduce the Inter-Company Payables and Inter-Company Receivables by concentrating and setting off the

Inter-Company Payables and Inter-Company Receivables between members of Seller's Group and the Target Companies, in each case as permitted by applicable law. Seller's Group may also choose to repay or otherwise settle any Inter-Company Receivables.

2. Termination of Cash Pooling Agreements

Seller shall procure for Seller's Group that no later than one (1) Business Day prior to the Closing Date all cash pooling or inter-company netting arrangements between the Target Companies on the one hand and members of Seller's Group on the other hand are terminated with immediate effect (i) netting and converting any currency applicable to amounts owed under any such agreements other than EUR into EUR by using the Exchange Rate as published on the Business Day preceding the termination of the cash pooling or inter-company netting arrangements and (ii) converting the principal amount of both the remaining Inter-Company Payables and Inter-Company Receivables into a term loan maturing on the Closing Date and carrying fixed interest at a rate prevailing at Seller's Group for such term loans. Seller shall confirm for Seller's Group in writing the fulfilment of this obligation to Purchaser without undue delay following such termination. The balances arising from such termination shall be handled in accordance with clause 5.4 through 5.7.

3. Termination of Foreign Exchange and Commodity Hedges

All foreign exchange and commodity hedges regarding the Business and concluded by Seller's Group with the Target Companies shall be terminated at market value no later than five (5) Business Days prior to the Closing Date. Such termination shall be effected by first off-setting the prospective consideration to the extent possible and second settling the remaining balance via the respective cash pool prior to its freezing pursuant to clause 5.2.

4. Final Inter-Company Payment Amount

Seller shall pay to Purchaser on behalf of the relevant members of Seller's Group an amount equal to the Inter-Company Receivables and Purchaser shall pay to Seller on behalf of the Target Companies an amount equal to the Inter-Company Payables, all as at the Financial Closing Date and as shown in the Closing Statement pursuant to clause 6.

Settlement of the aforementioned payments shall occur by way of a net payment equal to the Inter-Company Payables as at Closing minus the Inter-Company Receivables as at Closing (" **Final Inter-Company Payment Amount** "). If the Final Inter-Company Payment Amount is positive, it shall be added to the Final Purchase Price; and, if it is negative, it shall be deducted from the Final Purchase Price.

5. Initial Inter-Company Payment Amount

At Closing, the Inter-Company Payables and the Inter-Company Receivables shall be settled in an amount equal to a good faith estimate of the Final Inter-Company Payment Amount established on the basis of the Estimated Closing Statement pursuant to clause 6 (" **Initial Inter-Company Payment Amount** "). Such settlement shall occur in the same way as set out in clause 5.4, by adding to or deducting from the Initial Purchase Price and making a corresponding payment by Purchaser to Seller at Closing.

6. Adjustment Payments to the Initial Inter-Company Payment Amount

The Initial Inter-Company Payment Amount shall be adjusted following Closing pursuant to clause 6.

7. Acknowledgement and Novation

- (a) Seller and Purchaser agree that the settlement of the Inter-Company Payables and Inter-Company Receivables in accordance with the provisions of clauses 5.4 through 5.6 shall:
- (i) constitute a settlement and discharge on behalf of the members of Seller's Group of the Inter-Company Receivables with effect from Closing, which will be acknowledged by the Target Companies at Closing; and
 - (ii) constitute a settlement and discharge of the Inter-Company Payables on behalf of the Target Companies with effect from Closing, which will be acknowledged by the relevant members of Seller's Group at Closing.
- (b) With effect from Closing, as a consequence of the settlement on behalf of the respective debtor, by way of novation:
- (i) the respective Target Companies that held the Inter-Company Receivables shall hold against Purchaser a receivable on the same economic terms and conditions as were applicable to the settled Inter-Company Receivable; and
 - (ii) the respective Target Companies that owed the Inter-Company Payables shall owe to Purchaser a payable on the same economic terms and conditions as were applicable to the settled Inter-Company Payable.

6. **Closing Statement, Estimated Closing Statement and Adjustment Payments**

1. Closing Statement

Purchaser shall, or shall procure that its accountants shall, after Closing prepare a draft statement showing, as at the Financial Closing Date, the Financial Debt, Cash, Working Capital, Inter-Company

Payables and Inter-Company Receivables of the Target Companies as a whole (" **Closing Statement** "). The Closing Statement shall set out the calculation of the Final Purchase Price and the Final Inter-Company Payment Amount and be in the form set out in Schedule 5.

Purchaser shall deliver the draft Closing Statement to Seller within sixty (60) Business Days following Closing. The Closing Statement shall be prepared in accordance with the accounting principles and methodology set out in Schedule 4.

2. Estimated Closing Statement

Following good faith consultation with Purchaser and at least five (5) Business Days prior to Closing, Seller will deliver to Purchaser a summary prepared in good faith estimating the amounts of Financial Debt, Cash and Working Capital as at the Financial Closing Date, as well as the Initial Inter-Company Payment Amount as at the Financial Closing Date pursuant to clause 5.5 (" **Estimated Closing Statement** "). The Estimated Closing Statement shall be prepared on the same basis as the Closing Statement.

3. Adjustment Payments

When the Closing Statement has been finalised in accordance with Schedules 4 and 5, Purchaser shall pay to Seller any amount by which the sum of the Final Purchase Price and the Final Inter-Company Payment Amount exceed the sum of the Initial Purchase Price and the Initial Inter-Company Payment Amount or Seller shall pay to Purchaser any amount by which the sum of such final amounts falls short of the sum of such initial amounts, as the case may be (each an " **Adjustment Payment** ", together the " **Adjustment Payments** ").

The relevant due date for any Adjustment Payments shall be twenty (20) Business Days following the date upon which the Closing Statement is finalised in accordance with Schedule 4.

4. VAT

The Final Purchase Price and the Final Inter-Company Payment Amount are net amounts that do not yet include the amount of any VAT. The Parties assume that the sale and transfer of the DivestCo Shares as well as the settlement measures regarding the Inter-Company Payables and Inter-Company Receivables are either not subject to VAT or exempt from VAT, and no Party shall with respect to any of such transactions waive (or permit any of its Affiliates to waive) any exemption from VAT, and each Party hereby warrants and represents to the other Party that it has not (and none of its Affiliates

has) waived any such exemption with respect thereto. To the extent that VAT becomes chargeable on the transfer of the DivestCo Shares Purchaser shall pay to Seller after having received an invoice issued in accordance with applicable VAT laws in cash an amount equal to such VAT in addition to the Final Purchase Price. To the extent that VAT becomes chargeable on the settlement of Inter-Company Payables and Inter-Company Receivables pursuant to clauses 5.4 through 5.7, Purchaser shall pay to Seller after having received an invoice issued in accordance with applicable VAT laws in cash an amount equal to such VAT in addition to the Final Inter-Company Payment Amount, but only if and to the extent Purchaser or any member of Purchaser Group shall be entitled to claim input tax.

5. Payments under this Agreement

The payments pursuant to this Agreement shall be made in full and without any deduction or withholding of or in respect of any Tax except to the extent required by law. Except as otherwise provided in this Agreement or any other Transaction Document, if such a deduction or withholding of or in respect of any Tax is required by law the payor shall be obliged to gross-up the relevant amount so that the payee receives the amount which (after making any deduction or withholding of or in respect of any Tax) leaves an amount equal to the full payment which would have been due if no such deduction or withholding had been required. If the recipient of any payment (or any person on whose behalf the payment is received) made pursuant to this Agreement (other than the Initial Purchase Price, the Final Purchase Price, any payment made pursuant to clause 5 or any part of any of them) is or will be subject to Tax in respect of the receipt of (or the right to receive) such payment, the payor shall be obliged to gross-up the relevant amount so that the payee (or the person on whose behalf the payment is received) receives and retains the amount which (after taking account of such Tax) will leave it with the full amount which it would have received and retained if it had not been subject to such Tax.

Each Party shall cooperate reasonably and in good faith with the other Party in taking (or procuring that any of its Affiliates takes) any procedural steps (including the completion and filing of treaty claims and supporting documentation) reasonably requested by any other party for the purpose of reducing or avoiding any deduction or withholding referred to in this clause 6.5. No payor shall be obliged under this clause 6.5 to gross-up any payment if and to the extent that the amount of the relevant deduction, withholding or Tax is greater than would have been the case if (a) the payee had complied at all times with its obligations under this clause 6.5 and (b) the payee (and any person on whose behalf the payment is received) had been resident for Tax purposes at all times in (and only in) the jurisdiction stated in the relevant parties clause to this Agreement as being the jurisdiction

under whose laws the payee is organised and had not at any time had any permanent establishment or other Taxable presence in any other jurisdiction.

Any payments to be made under this Agreement shall be made in EUR by irrevocable wire transfer of immediately available funds to a bank account in the United States, the United Kingdom or in a member state of the European Union specified in writing by the relevant Party or Parties to the other Party or Parties, provided that such specification has been made at least five (5) Business Days prior to the relevant due date. Any such payment shall be deemed to have been duly made only upon the irrevocable and unconditional crediting of the amount payable (without deduction of any Costs) to the relevant bank account. Any payment made by a Party to the relevant bank account of the other Party or Parties shall have debt-discharging effect (in the amount credited to such bank account).

Any payments to be made by Seller or Purchaser under this Agreement shall be deemed to be made on behalf of, and shall have a discharging effect for, the relevant member of Seller's Group or Purchaser Group, respectively. Any payments made under this Agreement to Seller or Purchaser shall be deemed to be made to, and shall have discharging effect in respect of, the relevant member of Seller's Group or Purchaser Group, respectively.

If a Party defaults in making any payment when due of any sum payable under this Agreement, it shall pay interest on that sum from and including the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of 4.00% above the base rate from time to time of the European Central Bank, which interest shall accrue from day to day and be compounded monthly.

Otherwise than expressly provided in this Agreement, no amount due and payable by one Party to any other Party pursuant to this Agreement shall be set-off against any other amount due and payable or alleged to be due and payable by that other Party to the first Party whether pursuant to this Agreement or otherwise.

7. **Replacement of Third Party Assurances**

1. Release of Seller's Group from Third Party Assurances

Purchaser shall use reasonable endeavours to ensure that at Closing, each member of Seller's Group is released in full from all Third Party Assurances listed in Schedule 9 given by any such member of Seller's Group in respect of obligations of any Target Company or JVCo and that replacements satisfactory to Seller acting reasonably, are put in place. In addition, Purchaser shall use its reasonable

endeavours to ensure that, as soon as reasonably practicable after becoming aware of any other Third Party Assurance given by any such member of Seller's Group in respect of any obligations of any Target Company or JVCo, each member of Seller's Group is released in full from such Third Party Assurance.

Pending release of any Third Party Assurance referred to in this clause 7.1, Purchaser shall indemnify and hold harmless Seller and each member of Seller's Group from and against any and all claims, actions, proceedings, losses and Costs arising after Closing under or by reason of that Third Party Assurance.

2. Release of Target Companies and JVCos from Third Party Assurances

Seller shall use reasonable endeavours to ensure that at Closing, each Target Company or JVCo is released in full from all Third Party Assurances listed in Schedule 10 given by any such Target Company or JVCo in respect of obligations of any member of Seller's Group and that replacements satisfactory to Purchaser acting reasonably, are put in place. In addition, Seller shall use its reasonable endeavours to ensure that, as soon as reasonably practicable after becoming aware of any other Third Party Assurance given by any such Target Company or JVCo in respect of any obligations of any member of Seller's Group, each Target Company or JVCo is released in full from such Third Party Assurance.

Pending release of any Third Party Assurance referred to in this clause 7.2, Seller shall indemnify and hold harmless Purchaser and its Affiliates from and against any and all claims, actions, proceedings, losses and Costs arising after Closing under or by reason of that Third Party Assurance.

3. Assistance for Releases

Each of Seller and Purchaser shall provide such assistance as the other may reasonably request in order to comply with this clause 7.

8. **Closing Conditions**

1. Closing Conditions

Closing shall be conditional on the following conditions (" **Closing Conditions** ") having been fulfilled or waived in accordance with this Agreement:

- (a) Completion of the Business Combination having occurred ;
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- (b) Seller having received confirmation from the European Commission in writing that the European Commission (i) approves Purchaser as a suitable purchaser of the Business or does not object to the identity of Purchaser and (ii) approves the sale of the Target Companies pursuant to this SPA as an adequate remedy to concerns that the Business Combination could impede competition in the EEA (together "**BCA Clearance Condition**"); and
- (c) The Transaction having received competition approvals or expiry of the statutory waiting periods in the following jurisdictions: EU (EU Commission) and Brazil ("**SPA Clearance Condition**").

2. Commitments and Processes regarding Closing Conditions

(a) Commitments and Process regarding BCA Clearance Condition

While Seller shall have the primary responsibility for obtaining the BCA Clearance Condition, Purchaser shall, and shall procure that, each member of Purchaser Group shall, upon Seller's request, use its best endeavours to cooperate with Seller to satisfy the BCA Clearance Condition to the extent it relates to the Business or Purchaser's acquisition of the Business and the DivestCo Shares as soon as reasonably practicable and in any event no later than 24 October 2018 ("**Long-Stop Date**").

Such endeavours shall include, if Seller notifies Purchaser, or it becomes reasonably apparent, that according to the European Commission the BCA Clearance Condition can only be met subject to further conditions, obligations or undertakings to the extent they relate to the Business or Purchaser's acquisition of the Business and the DivestCo Shares (the "**BCA Commitments**"), Purchaser shall promptly offer (and not withdraw) such BCA Commitments to the European Commission as Seller considers reasonably necessary to satisfy by no later than the Long-Stop Date the BCA Clearance Condition. Such BCA Commitments may include, without limitation, any condition, obligation, undertaking or modification or any divestment in any manner whatsoever relating to (i) any undertaking or business, activities or assets that is directly or indirectly controlled (for the purposes of Articles 3(2) and 3(3) of the EU Merger Regulation) by Purchaser; or (ii) any DivestCo Subsidiaries, activities or assets.

Purchaser shall cooperate in good faith with Seller in relation to the satisfaction of the BCA Clearance Condition to the extent it relates to the Business or Purchaser's acquisition of the Business and the DivestCo Shares. Such cooperation shall include (subject to appropriate protection in respect of confidential information) the provision of information, the communication of documents and the submission of arguments in good time for the purpose

of making any submissions, notifications, filings to or other communication with any competent Governmental Entity, to the extent that such information and documents are available to Purchaser acting reasonably. If requested by Seller, Purchaser shall assist in any preparatory steps in advance of Seller initiating any discussions with or responding to any requests from any competent Governmental Entity. Purchaser shall also keep Seller fully informed of any material written or oral contact which Purchaser may have with any competent Governmental Entity in relation to the merger clearance process relating to the BCA or the process of obtaining the BCA Clearance Condition (whether instigated by Purchaser or any competent Governmental Entity) unless prohibited from doing so by such Governmental Entities. In this context, Purchaser shall, to the extent legally permitted and reasonably practicable, promptly notify Seller sufficiently in advance of any submission, response or other communication which it proposes to make or submit to any competent Governmental Entity and, to the extent legally permitted and reasonably practicable, at the same time provide Seller with copies of such communication and any supporting documentation or information. For the avoidance of doubt, Purchaser shall also comply with any requirement or request by any monitoring trustee (or similar) appointed in connection with obtaining the BCA Clearance Condition or the SPA Clearance Condition (as set out in clause 8.2(b), below), and shall, to the extent legally permitted and reasonably practicable, keep Seller fully informed of any material written or oral contact Purchaser has with the monitoring trustee (or similar).

(b) Commitments and Process regarding SPA Clearance Condition

Purchaser shall have the primary responsibility for obtaining the SPA Clearance Condition and shall ensure that the necessary notifications (or a draft thereof, for jurisdictions where submission of a draft prior to formal notification is appropriate) in respect of the SPA Clearance Condition shall be made to the relevant Governmental Entity no later than fifteen (15) Business Days after the date hereof and shall not be withdrawn subsequently unless agreed otherwise by Seller and Purchaser.

Purchaser shall and shall procure that each member of Purchaser Group shall, at Purchaser's Cost, use best endeavours to ensure that the SPA Clearance Condition is fulfilled as soon as reasonably practicable and in any event no later than at the Long-Stop Date.

Such endeavours shall include proposing, negotiating, offering to commit, not withdrawing any offer to commit (unless agreed otherwise by Seller and Purchaser) and agreeing, as soon as possible, in each case where necessary to ensure that the SPA Clearance Condition is satisfied

prior to the Long-Stop Date, with a Governmental Entity to effect (and if any proposal or offer is accepted, commit to effect) by agreement, order or otherwise, the sale, divestiture, licence or disposition of any assets or businesses of the Target Companies, Purchaser or any member of Purchaser Group as soon as reasonably practicable.

Purchaser shall, to the extent legally permitted, promptly notify Seller sufficiently in advance of any notification, submission, response or other communication (excluding communications of an administrative nature) which it proposes to make or submit to any competent Governmental Entity and prior to such notification, submission, response or other communication provide, to the extent legally permitted, Seller with copies of such communication and any supporting documentation or information requested by Seller. However, Purchaser shall not be required to provide Seller with any information to the extent that in Purchaser's reasonable assessment such information constitutes or contains confidential information or business secrets of Purchaser Group, and such information shall be provided to Seller's counsel on a counsel-to-counsel basis only. Purchaser undertakes to take into account and reflect any comments which Seller may have in relation to any such notification, submission, communication or response to a request for further information prior to making the relevant notification, submission, communication or response. Purchaser further agrees to keep Seller fully informed as to the material progress of any notification and shall permit Seller or its advisers to attend all meetings and telephone calls with any competent Governmental Entity or other persons or bodies (unless prohibited by the competent Governmental Entity or other person) and to make, to the extent legally permitted, oral submissions at such meetings and in such telephone calls.

Seller shall cooperate in good faith with Purchaser in relation to the satisfaction of the SPA Closing Condition. Such cooperation shall include, (subject to appropriate protection in respect of confidential information) the provision of information, the communication of documents and the submission of arguments in good time for the purpose of making any submissions, notifications, filings to or other communication with any competent Governmental Entity, to the extent that such information and documents are available to Seller acting reasonably. However, to the extent that in Seller's reasonable assessment any information requested by or on behalf of Purchaser constitutes or contains confidential information or business secrets of Seller's Group, such information shall be provided to Purchaser's counsel on a counsel-to-counsel basis, only. If requested by Purchaser, Seller shall assist in any preparatory steps in

advance of initiating any discussions with or responding to any requests from any competent Governmental Entity. Seller shall also keep Purchaser fully informed of any material written or oral contact which Seller may have with any competent Governmental Entity in relation to the merger control process to satisfy the SPA Closing Condition (whether instigated by Seller or any competent Governmental Entity). In this context, Seller shall, to the extent legally permitted and reasonably practicable, promptly notify Purchaser sufficiently in advance of any submission, response or other communication which it proposes to make or submit to any competent Governmental Entity and, to the extent legally permitted and reasonably practicable, at the same time provide Purchaser with copies of such communication and any supporting documentation or information. However, Seller shall under no circumstances be required to provide Purchaser, or its counsel, with any information which in Seller's reasonable assessment constitutes or contains confidential information or business secrets of Seller's Group or pertains to any proceedings in relation to the BCA or in relation to any transactions other than the Transaction.

3. Waiver of Closing Conditions

The Closing Condition set out in clause 8.1(a) may be waived by Seller by giving written notice to Purchaser.

4. Unconditional Date

Seller and Purchaser shall each notify the other promptly upon becoming aware that (i) any of the Closing Conditions have been fulfilled, or (ii) the satisfaction of any of the Closing Conditions is or has become impossible. The first Business Day by which all Closing Conditions have been fulfilled (or waived in accordance with clause 8.3) is the "**Unconditional Date**".

5. Termination

If (i) the Closing Condition in clause 8.1(a) or 8.1(b) has not occurred on or before the Long-Stop Date (or, in case of the Closing Condition in clause 8.1(a), waived) or, (ii) the satisfaction of any of the Closing Conditions has become impossible (such Closing Condition(s) not having been waived), this Agreement may be terminated by Seller and PLC acting jointly. If Closing of this Agreement has not occurred by 1 May, 2019, each of (i) Seller and PLC acting jointly and (ii) Purchaser may terminate this Agreement.

6. No Solicitation

- (a) Subject to clause 8.6(b) below, Seller shall, and shall procure that Seller's Representatives and Affiliates shall, (i) promptly cease and cause to be terminated any and all existing discussions or negotiations with any persons conducted prior to or on the date of this Agreement in respect of an Acquisition Proposal by such person (ii) not directly or indirectly encourage, solicit, initiate, facilitate, engage in, accept, or continue or conduct discussions or negotiations regarding an Acquisition Proposal or provide any additional information to any person (other than Purchaser and its Affiliates) concerning a possible Acquisition Proposal from such person and (iii) not propose to the European Commission any prospective purchaser for the DivestCo Shares and/or the Business other than Purchaser.
- (b) The obligations of Seller contained in 8.6(a) above shall cease to apply if Purchaser fails to perform any of its material obligations under this Agreement.

7. No Right of Termination or Rescission

- (a) The Parties agree that, following the date of this Agreement, no Party will have a right (including any right under common law, tort, statute (including under the Misrepresentation Act 1967), equity, or otherwise) to terminate or rescind this Agreement, except (i) in respect of fraud or fraudulent misrepresentation committed by the other Party (provided that Seller and PLC shall be considered to be one party for purposes of this clause 8.6), or (ii) the contractual termination right provided in clause 8.5.
- (b) If this Agreement is terminated by Seller and PLC acting jointly in accordance with clause 8.5 or by any Party in respect of fraud or fraudulent misrepresentation committed by the other Party, (i) any such termination shall have effect for all Parties and (ii) no Party (nor any of their respective Affiliates) shall have any claim under this Agreement of any nature whatsoever against any other Party (or any of their respective Affiliates) except in respect of any rights, liabilities or obligations which have accrued before termination or under any of the Surviving Provisions.

9. **Changes to Perimeter**

- 1. The parties acknowledge and agree that the European Commission may determine that it is necessary for further divestments of assets or shares directly or indirectly controlled by Seller to be transferred to Purchaser for the BCA Clearance Condition to be satisfied (each a "**Further Divestment**", together the "**Further Divestments**").
 - 2. Purchaser hereby irrevocably grants to Seller an option to require Purchaser (or a Designated Purchaser) to acquire each Further Divestment on the terms and subject to the conditions of this Agreement (each a "**Put Option**", together the "**Put Options**"). The consideration for the grant of the
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Put Options shall be the payment in cash by Seller to Purchaser of an amount equal to EUR 1, receipt of which is hereby acknowledged by Purchaser.

3. A Put Option may be exercised by Seller by way of notice in writing to Purchaser sent as soon as reasonably practicable after the date on which the European Commission informs Seller that a Further Divestment is required (a "**Put Option Exercise Notice**").
 4. A Put Option Exercise Notice shall set out reasonable details of the assets and/or shares comprising the Further Divestment and a date which is no less than five (5) and no more than ten (10) Business Days after the date of the Put Option Exercise Notice on which the Put Option shall become effective ("**Put Option Effective Date**").
 5. From the Put Option Effective Date, the provisions of this Agreement shall apply to the Further Divestment with such Further Divestment being included in the scope of interests to be transferred from Seller to Purchaser, provided that:
 - (a) rights, liabilities, obligations and undertakings under the Agreement shall apply from the Put Option Effective Date in respect of such Further Divestment (not from the date of this Agreement), such that the Warranties shall be given in respect of such Further Divestment on the Put Option Effective Date and disclosures against such Warranties shall be included in a disclosure letter of the same date; and
 - (b) the mechanisms contained in the Agreement in relation to purchase price and adjustments to the purchase price, shall not apply to the Further Divestment (the price payable for the Further Divestments being calculated as set out in clause 9.6 below).
 6. At Closing:
 - (a) in addition to the payment of the Initial Purchase Price, Purchaser shall pay to Seller an amount equal to the fair market value of the Further Divestments, where:
 - (i) the Further Divestment is priced on the basis of turnover, the fair market value shall be calculated by applying the same valuation methodology as Purchaser applied in the final bid submitted by Purchaser on 11 June 2018; and
 - (ii) the Further Divestment is not priced on the basis of turnover, the fair market value shall be calculated by reference to an asset valuation report prepared by an independent third party,provided always, in each case, that the aggregate amount payable by Purchaser for all Further Divestments shall not exceed thirty million (30,000,000) EUR;
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- (b) if, thirty (30) Business Days prior to Closing, Purchaser and Seller fail to reach agreement on the fair market value of the Further Divestment, the Parties shall refer the matter in dispute to an independent third party expert for determination; and
- (c) Seller shall procure that the interests comprised in the Further Divestments shall be transferred to Purchaser or a Designated Purchaser, in accordance with the terms of this Agreement.

10. **Closing, Closing Actions**

1. Closing Date and Place

Subject to clause 8 and clause 10.2, Closing shall take place at the offices of McDermott Will & Emery UK LLP, 110 Bishopsgate, London, EC2N 4AY, or such other place as Seller and Purchaser may agree in writing:

- (a) on the first Business Day of the calendar month immediately following the Unconditional Date;
- (b) if the Unconditional Date falls less than five (5) Business Days before the first day of such immediately following calendar month, on the first Business Day of the next calendar month; or
- (c) such other day as may be mutually agreed by Seller and Purchaser in writing;

(such day the " **Closing Date** ") provided that in each case the Parties hereby agree that Closing shall be deemed to be effective from 00:00 hours local time in the respective jurisdiction of the respective DivestCo of the first calendar day of the month in which the Closing Date falls (the " **Financial Closing Date** ").

2. Closing Date and Conditions

Notwithstanding clause 10.1, if a Governmental Entity requires that Closing (or closing of the sale of any of the DivestCo Shares) must be completed on or by a certain date after the Unconditional Date then Closing shall take place on the Business Day immediately prior to such date and such date 00:00 hours local time in the respective jurisdiction shall be the Financial Closing Date.

3. Closing Actions

At Closing:

- (a) Seller shall perform the actions assigned to it in Schedule 6; and
- (b) Purchaser shall perform the actions assigned to it in Schedule 6, (the " **Closing Actions** ").

4. Closing Preparation and Support

Seller and Purchaser shall negotiate in good faith with a view to agreeing before the Closing Date the final form of any Transaction Document which has not been finalised at the date of this Agreement, such agreement not to be unreasonably withheld or delayed.

5. Designated Purchasers

- (a) Purchaser shall be entitled to designate in writing within 20 (twenty) Business Days of the date hereof one or more of its (directly or indirectly) wholly owned Affiliates as designees which shall, instead of Purchaser, acquire the DivestCo Shares (each such entity a "**Designated Purchaser**"). Purchaser shall procure that it is entitled to make any payment of a portion of the Initial Purchase Price and the Final Purchase Price owed to Seller on behalf of the Designated Purchasers as paying agent. Purchaser shall, furthermore, procure that it is entitled and/or authorised to receive any Adjustment Payment and any other payment owed to any of the Designated Purchasers under or in connection with this Agreement on behalf of such Designated Purchaser. Each Designated Purchaser shall be deemed to be included in the term "Purchaser" hereunder.
- (b) Any designation of a Designated Purchaser in accordance with this clause 10.5 shall not release Purchaser from its obligations under this Agreement.
- (c) Any Designated Purchaser shall be notified to the respective Governmental Entity for clearance in the course of obtaining the BCA Clearance Condition and the SPA Clearance Condition and shall not be changed or exchanged by Purchaser once approved by the Governmental Entity.

11. **Seller's Warranties**

1. Warranties

Seller warrants to Purchaser itself and on behalf of each Designated Purchaser that, except as Disclosed:

- (a) as at the date of this Agreement, the warranties set out in Schedule 7 ("**Warranties**") are true and accurate in all respects by reference to the matters, events and circumstances existing at the date hereof; and
- (b) immediately before Closing, the Repeated Warranties will be true and accurate in all respects by reference to the existing matters, events and circumstances at the Closing Date.

The Warranties and all Warranty Claims are subject to the limitations set out in this Agreement, in particular, in Schedule 8.

2. Basis of Claim

Purchaser acknowledges and agrees that other than paragraphs 1.2 (*Financial Matters*), 1.5 (*Compliance with Law*), 1.6 (*Special Regulatory Matters*), 1.8 (*Insurances*) and 1.9 (*Contractual Matters*) of Schedule 7 the only Warranties given in relation to:

- (a) Intellectual Property Rights and information technology or any related claims or liabilities are set out in paragraph 1.12 (*IP/IT/Data Protection*) of Schedule 7, and no other Warranty in this regard is given;
- (b) real estate and planning and zoning matters or any related claims, liabilities or other matters are those set out in paragraph 1.13 (*Real Estate*) of Schedule 7 and no other Warranty in this regard is given;
- (c) Environmental Matters are those set out in paragraph 1.14 (*Environmental Matters*) of Schedule 7, and no other Warranty in this regard is given; and
- (d) the employment of any past or present employee of any Target Company or any member of Seller's Group or any related claims, liabilities or other matters are set out in paragraph 1.15 (*Employment*) of Schedule 7 and no other Warranty in this regard is given.

3. No Further Warranties

Purchaser agrees that the only warranties given are the Warranties, without relying upon any express or implied representations or warranties, guarantees, declarations or statements of any nature by any members of Seller's Group, or any officer, director, employee, advisor, agent or other representative of any members of Seller's Group (" **Seller's Representatives** ").

Purchaser acknowledges that, except as expressly set out in the Warranties, members of Seller's Group and Seller's Representatives make no representations, warranties or guarantees and assume no disclosure or similar obligations in connection with this Agreement and the Transaction, and further assume no obligation regarding the completeness and accuracy of any information provided by any members of Seller's Group, or any Seller's Representatives, to any Purchaser, members of Purchaser Group, or any officer, director, employee, advisor, agent or other representative of Purchaser or any other members of Purchaser Group or any other person retained by Purchaser regarding the Transaction, this Agreement or the Transaction Documents (" **Purchaser's Representatives** ").

12. **Seller's Indemnities**

1. Spanish Contractor Indemnity

Seller shall indemnify and hold harmless Purchaser and each member of Purchaser Group, from and against any and all claims, actions, proceedings, losses, fines, social security payments, severance

payments and any other Costs arising or incurred by, or on behalf of, any and all members of Purchaser Group in relation to any contractors, sub-contractors or temporary workers working for or commissioned by DivestCo 4 and/or DivestCo 4 Subsidiary 1 and such contractors, sub-contractors or temporary workers being deemed (i) illegally or fraudulently assigned or (ii) actual employees of DivestCo 4 and/or DivestCo 4 Subsidiary 1, including the total of losses and Costs made, suffered or incurred as a result of any member of Purchaser Group defending or settling a claim alleging any liability in connection therewith (the "**Spanish Contractor Indemnity**").

2. Uerdingen Indemnity

- (a) Subject to paragraph (b), Seller shall indemnify and hold harmless Purchaser and each member of Purchaser Group, from and against any and all claims, actions, proceedings, losses and any other Costs arising or incurred by any and all members of Purchaser Group in relation to the explosion of a nitrogen tank operated by Venator on 5 August 2015 in Krefeld-Uerdingen, Germany and the dispute between Venator and DivestCo 2 Subsidiary 8 in respect of the same (the "**Uerdingen Indemnity**");
- (b) The liability of the Seller under the Uerdingen Indemnity shall not exceed 35,000,000 EUR.

3. Rivoira Share Swap

Seller shall indemnify and hold harmless Purchaser and each member of Purchaser Group, from and against any and all claims, actions, proceedings, losses, fines and any other Costs arising or incurred by, or on behalf of, any and all members of Purchaser Group in relation to any breach by any member of the Seller's Group of their obligations under sections 10.1(ii), 10.1(iii)(a), 10.1(iii)(b), 10.1(iv), 10.4, 10.5, 10.6 (the second sentence of this section only), 10.7 and 11 of the Rivoira Share Swap, or incurred as a result of any member of Purchaser Group defending or settling a claim alleging any liability in connection with such breach (the "**Rivoira Indemnity**", together with the Uerdingen Indemnity and the Spanish Contractor Indemnity, the "**Seller's Indemnities**").

4. Third Party Indemnity Claim

Notwithstanding anything to the contrary in this Agreement, if a claim is brought against Purchaser or any member of Purchaser Group arising from, or in connection with the Seller's Indemnities (a "**Third Party Indemnity Claim**"):

- (a) Purchaser shall and shall procure that each member of Purchaser Group takes such action to assess, contest, dispute, defend, appeal or compromise the Third Party Indemnity Claim as Seller may reasonably request and does not make any admission of liability, agreement,
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- settlement or compromise in relation to the Third Party Indemnity Claim without the prior written approval of Seller;
- (b) Seller may, at any time before final compromise, agreement, expert determination or non-appealable decision of a court or tribunal of competent jurisdiction is made in respect of the Third Party Indemnity Claim or the Third Party Indemnity Claim is otherwise disposed of, give notice to Purchaser that it elects to assume the conduct of any dispute, compromise, defence or appeal of the Third Party Indemnity Claim;
 - (c) In the case of 12.4(a) and, subject to the requirement to maintain privilege, Purchaser shall keep Seller reasonably informed of the progress of the Third Party Indemnity Claim and provide Seller with copies of all relevant documents and such other information in its possession as may be requested by Seller (acting reasonably).
 - (d) Subject to the requirement to maintain privilege, Purchaser shall and shall procure that each member of Purchaser Group makes available to Seller such persons during Working Hours and all such information as Seller may reasonably request for assessing, contesting, disputing, defending, appealing or compromising any Third Party Indemnity Claim.
 - (e) Seller shall indemnify Purchaser and each relevant member of Purchaser Group against all liabilities, charges, Costs and expenses which they may incur in taking any such action as Seller may request pursuant to paragraphs (a) and (d), above; and
 - (f) In the case of 12.4(b), Seller shall keep Purchaser reasonably informed of the progress of the Third Party Indemnity Claim and provide Purchaser with copies of all relevant documents and such other information in its possession as may be requested by Purchaser (acting reasonably).

Neither Purchaser nor any other member of Purchaser Group shall be required to take any action (or cease to take any action) under this clause 12.3 where Purchaser reasonably considers that taking such action (or ceasing to take such action) may have a material adverse effect on the business of Purchaser or any other member of Purchaser Group.

13. **Taxes**

1. Tax Covenant

Under a covenant on the terms set out in this clause 13.1 and subject to clause 13.2, and subject to Closing, Seller shall be liable to pay to Purchaser an amount equal to:

- (a) any Tax Liability of the Target Companies:
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- (i) that arises in respect of or by reference to an event that occurred on or before the Financial Closing Date if and to the extent the underlying Tax is a Tax which is specifically assessed as a result and in respect of such taxable event and not on an on-going basis in respect of a Tax assessment period (e.g., transfer Taxes); for the purposes of this clause 13.1(a)(i) any stamp duty or transfer or registration tax that would be payable on any document, provided such document is either necessary to establish the title of a Target Company to any asset or is a document in the enforcement or production of which a Target Company is interested, will be deemed to be a Tax Liability of a Target Company arising in consequence of an event occurring on the date of execution of such document and any interest, fine or penalty relating to any such duty or tax, will be deemed to be an Actual Tax Liability of a Target Company arising in consequence of an event occurring on the last date it would have been necessary to pay such duty or tax to avoid any liability to interest or penalties on paying it; or
 - (ii) in respect of any Tax based upon or related to income, profit, gains, turnovers, sales, gross receipts, wages, capital expenditures, expenses or any similar Tax, if and to the extent that such Tax Liability relates to any period of time ending on or before the Financial Closing Date; or
- (b) any Tax Liability that is the liability of another person (other than a member of Purchaser Group) ("**Primary Person**") and for which any of the Target Companies is liable in consequence of:
 - (i) the Primary Person failing to discharge such Tax Liability; or
 - (ii) a Target Company at any time before the Financial Closing Date being a member of the same Tax Group as, or otherwise connected for any Tax purpose with, the Primary Person.

2. Exclusions

- (a) Seller shall not be liable under clause 13.1 if and to the extent that:
 - (i) the aggregate amount of all Tax Claims (after having taken into account all exclusions and limitations applicable to such Tax Claims under this Agreement) does not exceed the aggregate amount of all liabilities, provisions or reserves for Taxes which have been taken into account in calculating Working Capital in the Closing Statement, meaning that Seller's liability is limited to the excess of the aggregate amount of all Tax Claims over the aggregate amount of all
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liabilities, provisions or reserves for Taxes plus, for the avoidance of doubt, any amounts repaid to Seller in accordance with clause 13.4;

- (ii) a saving (being a reduction of cash Tax otherwise payable or a cash refund of Tax, and excluding in each case any Purchaser's Relief and any saving which results from the use of a Purchaser's Relief) arises to or for the benefit of any member of Purchaser Group or Purchaser's Tax Group within a period of seven (7) years as a consequence of the Tax Liability (other than a Tax Liability associated with any carve-out and any and all restructurings by or within Seller or Seller's Group or any Target Company on or before the Closing Date) (for example, due to the lengthening of any amortization or depreciation periods or higher depreciation allowances, a credit or allowance, a shift of any item relevant for Tax purposes to another period, or the deductibility of certain Taxes or non-recoverable input VAT for income Tax purposes, however, for the avoidance of doubt, not including any step-up in the Tax basis which does not allow for a higher Tax depreciation and in any case reduced by any Tax charges resulting therefrom) (the "**Tax Saving**"). The Tax Saving shall be taken into account in this context:
 - (i) in the full nominal amount if and to the extent the Tax Saving arises in any period prior to and including the date on which the Tax Claim pursuant to clause 13.1 becomes due and payable (or would have become due and payable save for this clause 13.2(a)(ii)) and/or
 - (ii) in the amount of the net present value of the Tax Saving if and to the extent the Tax Saving will arise in any period after such date; the net present value within the meaning of the preceding (ii) shall be calculated on a lump-sum basis (x) by applying the Tax rate applicable at the time the respective Tax Claim pursuant to clause 13.1 becomes due and payable and (y) by applying a discount factor of three per cent (3 %) p.a. and (z) discounted over the shorter of the anticipated period of time during which the Tax Saving is estimated to arise or seven (7) years;
 - (iii) the Tax Liability results from any increase in rates of Tax that comes into force after the Financial Closing Date, or of any change in law, administrative guidelines or regulations that comes into force after the Financial Closing Date;
 - (iv) the Tax Liability arises or is increased by an act, omission or transaction (including the change in the exercise of any Tax election right, the approval or implementation of any reorganization measure or the sale of any asset) of any
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member of Purchaser Group or Purchaser's Tax Group after Closing except where such act, omission or transaction was: (x) carried out or effected under a legally binding obligation entered into on or before Closing, (y) required by mandatory law, administrative guidelines or in final case law, or (z) carried out with the written consent or at the request of Seller;

- (v) the Tax Liability arises or is increased by a change after Closing in the accounting reference date of any Target Company or in the taxation or accounting principles of the Target Company (other than a change made in order to comply with mandatory law, administrative guidelines or final case law);
 - (vi) payment or discharge of the Tax Liability has been made prior to or on the Financial Closing Date;
 - (vii) the Tax Liability arises or is increased as a consequence of a failure of Purchaser to comply with or procure the compliance of the Target Companies with any of their obligations under this clause 13;
 - (viii) except to the extent taken into account under sub-paragraph (ii) above, a Relief (other than an Accounts Relief or Purchaser's Relief) is available (or is made available by Seller at no Cost to Purchaser and the members of Purchaser Group) to offset the Tax Liability;
 - (ix) the Tax Liability has been recovered or can be recovered in cash or by way of set-off from a third party;
 - (x) the Tax Liability arises or is increased by reason of a failure by Purchaser to make an election which has been taken into account in the Closing Statement, unless such failure occurs with the consent or at the request or direction of Seller;
 - (xi) the Tax Liability arises or is increased by the making of any election or claim by a Target Company or Purchaser after the Closing Date, the effect of which was not taken into account in the Closing Statement, other than with Seller's consent or at Seller's request or direction;
 - (xii) the Tax Liability arises or is increased by the disclaimer after the Closing Date of any election, claim or relief validly claimed by the Target Company before the Closing Date in respect of any period ending on or before the Financial Closing Date, where such election, claim or relief was taken into account in the Closing Statement;
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- (xiii) the Tax Liability arises or is increased by the cessation of, or any major change in, the trade or business carried on by a Target Company, in each case occurring after the Closing Date;
 - (xiv) recovery in respect of the Tax Liability has been or can be made under any other provision of the Agreement or any other Transaction Document;
 - (xv) the Tax Liability results from an election under (x) section 336 or section 338 of the U.S. Internal Revenue Code (or any comparable applicable provision of state, local or non-US law) with respect to the acquisition of a Target Company or (y) section 301.7701-3 of the U.S. Treasury Regulations with respect to any Target Company filed by any member of Purchaser Group (other than at the request or direction of Seller) on or after Closing; or
 - (xvi) the Tax Liability is expressly required to be borne by Purchaser pursuant to any other provision of this Agreement (e.g. clause 6.4 or clause 25.1).
- (b) Purchaser may raise a Tax Claim pursuant to clause 13.1 by delivering to Seller a written claim notice (" **Tax Claim Notice** "). In the Tax Claim Notice Purchaser shall specify the amount of the Tax Claim and describe the underlying facts and circumstances in reasonable detail. The Tax Claim Notice shall include a copy of the relevant Tax assessment (if any) and related documents to the extent necessary to understand and evaluate the claim.
- (c) The Tax Claim pursuant to clause 13.1 becomes due and payable within ten (10) Business Days after Seller has received the Tax Claim Notice, provided, however, that Seller shall not be obliged to make any payment earlier than five (5) Business Days before the respective Tax becomes due and payable to the competent Tax Authority. In case of an appeal and/or lawsuit being filed against the relevant Tax assessment, the Tax Claim does not become due and payable by Seller before the assessment of the relevant Tax has become unappealable, provided that the Tax Authority or Tax court has granted a preliminary relief from the assessed Tax payment obligation by way of suspension of payment until the final assessment. Unless explicitly requested by Seller Purchaser is under no obligation to apply for any preliminary relief (e.g. a suspension of payment) and in case of an application upon the request of Seller, any collateral potentially requested by the Tax Authorities shall be provided by Seller.

3. Tax Refunds

- (a) Subject to Closing, Purchaser shall pay to Seller an amount equal to any Tax Refund plus any interest thereon which is received by any Target Company after the Financial Closing Date for amounts paid in respect of any Tax or Taxes paid or otherwise settled by such Target Company prior to or on the Financial Closing Date (including by way of a prepayment),
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provided that Purchaser shall not be liable for any amount of any Tax Refunds if and to the extent that such Tax Refund (a) results from the use of a Purchaser's Relief or (b) results from any of the acts, transactions or events, or arises in any of the circumstances, referred to in sub-paragraphs (iii), (iv), (v), (x), (xi), (xii), (xiii) or (xv) of clause 13.2(a) (deeming any reference to a Tax Liability in such sub-paragraphs to be instead a reference to a Tax Refund for the purpose of this clause 13.3(a) or 13.3(b)) to the extent that the aggregate amount of such Tax Refunds does not exceed the aggregate amount of assets for Taxes or receivables for Taxes which have been taken into account in calculating Working Capital in the Closing Statement, meaning that Purchaser's liability is limited to the excess of the aggregate amount of Tax Refunds over the aggregate amount of all such Tax assets and Tax receivables.

- (b) Subject to the Closing, Purchaser shall pay to Seller an amount equal to any Tax Saving to the extent such Tax Saving has not excluded or reduced a Tax Claim pursuant to clause 13.2(a)(ii).
- (c) Purchaser shall use, and shall procure that the Target Companies will use, reasonable endeavours to comply with any formal requirements to be met after the Closing Date for the recovery of any Tax Refund (but, for the avoidance of doubt, Purchaser shall not be required to take or procure that any Target Company takes any action which would involve the use of a Purchaser's Relief). Purchaser shall promptly notify Seller in writing of the receipt of the Tax Refund. Any amount payable to Seller pursuant to this clause 13.3 shall be due and payable within ten (10) Business Days after the Tax Refund has been received by the relevant Target Company. Purchaser shall deliver, for the next ten (10) calendar years following the Financial Closing Date, to Seller within six (6) months following the end of a calendar year a written statement stating whether and to what extent payment obligations of Purchaser pursuant to this clause 13.3 have arisen during the previous calendar year. Seller shall be entitled to review such statement and Purchaser shall, and shall procure that the Target Companies will, provide to Seller upon Seller's request all information and documentation reasonably requested by Seller for such review.

4. Overprovisions

- (a) If any member of Purchaser Group becomes aware that any liability, provision or reserve for Taxes which have been taken into account in calculating Working Capital in the Closing Statement is likely to be an Overprovision (other than to the extent the Overprovision would arise or be increased as a result of any retrospective change in the law after the Financial Closing Date or any Purchaser's Relief) Purchaser shall promptly give details of such Overprovision by written notice to Seller.
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- (b) Seller may at any time (but not more than twice in any calendar year) instruct the relevant Target Company's Auditors to determine in writing the extent of any Overprovision referred to in clause 13.4(a). Half of the professional fees and expenses charged by the Auditors in consideration for making such determination shall be paid promptly by Seller and the other half of such fees and expenses shall be paid promptly by Purchaser (or, if Purchaser so designates, by the relevant Target Company). If such Auditors determine that an Overprovision has arisen such amount shall be:
 - (i) set off against any payment then due from Seller to Purchaser under this clause 13; and
 - (ii) (to the extent there is any excess) promptly paid by Purchaser to Seller.

5. Tax Covenants of Purchaser; Reverse Tax Indemnification

- (a) Purchaser shall - without Seller's prior written approval - not take, and shall procure that no member of Purchaser Group will take, after the Closing Date, any action, including the making of any Tax elections, the effect of which could give rise to any Tax Liability (including any Tax Claim pursuant to clause 13.1) of any member of Seller's Group, or result in any increase thereof, or in the reduction of any Tax Saving, including any action
 - (i) performed after the Closing Date which has retroactive effect to a period prior to the Financial Closing Date; and
 - (ii) is not consistent with Seller's Group's Tax accounting methods practiced prior to the Closing Date;unless such action is required by mandatory law, administrative guidelines or in final case law or such action is taken with the consent or at the request or direction of Seller, or it was assumed for the purpose of preparing the Closing Statement that such action would be taken. Purchaser shall not, and shall procure that after Closing none of the Target Companies will make any election under (x) section 336 or section 338 of the U.S. Internal Revenue Code (or any comparable applicable provision of state, local or non-US Law) with respect to the acquisition of a Target Company or (y) section 301.7701-3 of the U.S. Treasury Regulations with respect to any Target Company that is effective on or before the day after Closing.
 - (b) Purchaser shall indemnify Seller from any Tax in respect of any of the Target Companies with respect to any periods after the Financial Closing Date that constitutes a Tax Liability for which any member of Seller's Group are held liable secondarily by the Tax Authority.
 - (c) If and to the extent Purchaser fails to comply with any of its obligations under this clause 13, and such failure has the effect that a Tax Liability arises or is increased or that the position of
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any member of Seller's Group is impaired to defend against any claim brought against any Target Company so as to result in a payment pursuant to the covenant at clause 13.1:

- (i) any and all claims of Purchaser under this clause 13 in respect of the specific Tax item shall be expressly excluded, if and to the extent Seller provides evidence that such claims are caused or increased by such failure, and
- (ii) Purchaser shall indemnify Seller for all and any direct damages of any member of Seller's Group and their reasonable Costs incurred in connection with such Tax Liability, if and to the extent Seller can demonstrate that any such damages results from such failure. Any amount payable to Seller pursuant to this clause 13.5(c)(ii) shall be due and payable within ten (10) Business Days after Purchaser has received Seller's notice, provided that Purchaser shall not be required to make any payment earlier than five (5) Business Days before the relevant Tax becomes due. Clause 13.2(a) shall apply *mutatis mutandis* .

6. As-if Assessment

Any Tax assessment period starting prior to the Financial Closing Date and ending thereafter (" **Straddle Period** ") shall be deemed to be split into one Tax assessment period ending on the Financial Closing Date and another Tax assessment period starting after the Financial Closing Date for the purpose of allocating Taxes which are assessed in respect of a Tax assessment period under this clause 13. The Taxes which are deemed for the purpose of this clause 13 to relate to the Tax assessment period ending on the Financial Closing Date and for which Seller shall indemnify Purchaser shall be determined as follows:

- (a) In case of any Taxes based upon or related to income, gains, sales, gross receipts, wages, capital expenditures, expenses or any similar Tax base, the amount of such Taxes shall be deemed to be the amount that would be assessed under the applicable Tax laws of the relevant jurisdiction if the relevant Tax assessment period and the relevant fiscal year of the Target Company ended on the Financial Closing Date (including the amount of Income, Profits or Gains that under such laws is deemed to be earned, accrued or received in such a notional Tax assessment period). Facts and circumstances reducing or increasing the amount of Tax payable that can be exclusively allocated to the time period before or after the Financial Closing Date, under the applicable Tax laws, shall be attributed accordingly, while other amounts which cannot be exclusively attributed to the time period before or after the Financial Closing Date, e.g., periodic Tax allowances like ordinary depreciations, shall be split up on the basis of an appropriate allocation key, being generally understood,
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unless Seller and Purchaser agree on a more suitable allocation key, as the pro rata portion of the time of the taxable period or fiscal year elapsed on Closing. If a Target Company is a subsidiary of a Tax Group, its income shall be apportioned in accordance with the foregoing principles and an amount equal to the amount that would be assessed if the relevant Tax period ended on the Financial Closing Date shall be deemed to be attributed to the Tax Group parent and be taken into account when calculating the Tax Group parent's obligations prior to the Financial Closing Date.

- (b) In case of any other Taxes, the amount of such Taxes shall be deemed to be the amount that would be assessed under the applicable Tax laws of the relevant jurisdiction for the entire Tax assessment period multiplied by a fraction, the denominator of which is the number of days of the entire Tax assessment period and the numerator of which is the number of days of the portion of such Tax assessment period ending on the Financial Closing Date.
- (c) Notwithstanding clauses 13.6(a) and 13.6(b) above, any Taxes based upon or related to any and all actions initiated by Seller or any member of Seller's Group prior to or on the Closing Date with regard to the BCA or the actions pursuant to clause 5 or changes of the legal form of Seller or any other member of Seller's Group or any Target Company shall be allocated and attributed to the period ending on the Financial Closing Date, irrespective of when the respective measure becomes effective and/or the Tax arises.

The same methodology, *mutatis mutandis*, shall be used to determine for the purposes of this Agreement (including the definition of "Post-Closing Relief") whether and the extent to which any Relief relates to a period falling before or after the Financial Closing Date.

7. Time Limitations

Any claims under clause 6.4, clause 13 and clause 25.1 shall be time-barred upon expiration of a limitation period of six (6) months after the relevant assessment has become un-appealable and finally binding according to applicable laws, provided that claims of Seller under clause 13 shall not be time-barred earlier than six (6) months after Purchaser's notification to be delivered pursuant to clause 13.3(c).

8. Cooperation on Tax Matters

- (a) The Parties shall fully cooperate, and shall cause their representatives to fully cooperate, with each other in connection with all Tax matters relating to any Pre-Financial Closing Date Tax Period, the Straddle Period and/or which could reasonably be expected to give rise to a Tax Liability of any member of Seller's Group or Purchaser Group, including the preparation and
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filing of any Tax Return (" **Relevant Tax Matter** "). Cooperation between Purchaser and Seller shall also include (but shall not be limited to) (i) the providing and making available by one Party to the other Party of all books, records and information, and (ii) the full assistance of all officers and employees of any member of Seller's Group or Purchaser Group, to the extent reasonably requested by the other Party in connection with any Relevant Tax Matter.

- (b) Seller undertakes to pay the amount of Tax becoming due with regard to the transformation of Praxair Deutschland Holding GmbH & Co. KG into a limited liability company (and the subsequent sale of the shares in DivestCo 2 under this Agreement) when becoming due (if and to the extent that clause 13.1 applies or would, but for such payment, apply to such Tax) and to provide Purchaser with evidence of such payment.
 - (c) After Closing, Purchaser shall prepare and file, or cause to be prepared and filed, when due all Tax Returns required to be filed on an individual or consolidated basis by any of the Target Companies for any Pre-Financial Closing Date Tax Period or the Straddle Period, provided, however, that any Tax Returns relating to any Relevant Tax Matter (" **Relevant Tax Return** ") shall be subject to the review and instructions of Seller. Relevant Tax Returns shall be consistent with the policies, procedures, practices and election rights adopted in the financial statements of the relevant Tax period as well as the Tax Returns for previous Tax periods of the relevant Target Company submitting such Relevant Tax Return, unless in the reasonable and good faith opinion of Purchaser there is a significant risk that the adopted policies, procedures, practices and election rights are not in compliance with mandatory law or involve or will give rise to an incorrect or misleading statement or presentation of the relevant facts (in which case Purchaser shall notify Seller reasonably promptly that it has reached such opinion together with reasonable details of such opinion, which notification may therefore be required to be given, for the avoidance of doubt, before the date on which the applicable Relevant Tax Returns are furnished to Seller pursuant to the next sentence of this sub-clause). Purchaser shall ensure that any Relevant Tax Returns to be reviewed by Seller will be furnished to Seller, in case of Tax Returns to be filed on a monthly basis not later than five (5) Business Days, and all other Tax Returns not later than thirty (30) Business Days prior to the due date of the Relevant Tax Return, that any changes and amendments to such Relevant Tax Returns requested by Seller, unless they are not in line with the requirements of the preceding sentence or are not provided to Purchaser at least three (3) Business Days prior to the due date for Tax Returns to be filed on a monthly basis and all other Tax Returns no later than fifteen (15) Business Days prior to the due date of the Relevant Tax Return, are made prior to filing and that all Taxes payable under such Relevant Tax Returns shall be timely paid. If Seller and Purchaser fail to reach
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agreement on the contents of the Relevant Tax Returns, the Relevant Tax Returns shall be filed according to the instructions of Seller, except if and to the extent that in the reasonable and good faith opinion of Purchaser there is a significant risk that those instructions are not in compliance with mandatory law or involve or will give rise to an incorrect or misleading statement or presentation of the relevant facts. This clause 13.8(c) applies accordingly to the amendment of any Relevant Tax Return (irrespective of whether the Relevant Tax Return was initially filed prior to or after the Financial Closing Date).

- (d) Notwithstanding any to the contrary in clause 13.8(c), Seller shall be entitled to (i) file (or cause to be filed) the initial consolidated, combined, and unitary U.S. Federal, state, or local income Tax Returns which are due following Closing but which reflect any Target Company's operations for a Relevant Tax Matter, (ii) file (or cause to be filed) any amended consolidated, combined, or unitary U.S. Federal, state, or local income Tax Returns for any Relevant Tax Matter, and (iii) control any audits of U.S. Federal, state or local income Tax Returns for any Relevant Tax Matter, including extending the applicable statute of limitations and settling or litigating claims.
 - (e) If, after the Closing, any Tax Authority informs any member of Purchaser Group in written form of a proposed audit, assessment, dispute or other material circumstance relating to any Relevant Tax Matter ("**Relevant Tax Proceeding**"), Purchaser shall notify Seller of such Relevant Tax Proceeding in reasonable detail and make available to Seller copies of the received documents and upon written request other relevant documents of the Target Companies reasonably pertaining thereto. Purchaser shall, or shall procure that the relevant Target Company shall give such notice and deliver such documents without undue delay, at the latest within five (5) Business Days in the case of Tax issues which a statutory limitation period is connected to, and within ten (10) Business Days if no statutory limitation period is connected therewith, after any member of Purchaser Group has received knowledge of such information.
 - (f) Purchaser shall not, and shall cause any member of Purchaser Group not to, apply for or initiate any audits, disputes, administrative, judicial or other proceedings related to any Relevant Tax Proceeding without the prior written consent of Seller (not to be unreasonably withheld or delayed), unless any such action is required to be taken by law. Purchaser agrees, and shall cause any member of Purchaser Group:
 - (i) to give Seller the opportunity to participate in any audits, disputes, administrative, judicial or other proceedings related to any Relevant Tax Proceeding;
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- (ii) to comply with any reasonable instructions given by Seller in relation to the conducting of such proceedings;
- (iii) not to settle any Relevant Tax Proceeding without Seller's written consent (not to be unreasonably withheld or delayed);
- (iv) to challenge and litigate in cooperation with Seller any Tax assessment or other decision of any Tax Authority related to such Relevant Tax Proceeding if reasonably requested and as instructed by Seller.

Any external Costs reasonably incurred in such proceedings shall be borne by Seller.

9. No additional rights or remedies

- (a) Unless explicitly provided otherwise in this Agreement, Taxes shall be exclusively governed by clause 13.
- (b) If any Target Company has any claim for or in respect of Taxes against any member of Seller's Group other than by virtue of this Agreement (for instance, based on the Transitional Services Agreements, the IP Agreement or the Product Supply Agreements) and such claims go beyond Purchaser's claims under this Agreement, Purchaser shall put Seller economically in the same position as if the relevant Target Company had only the same claims and rights Purchaser has under this Agreement. Conversely, if any member of Seller's Group has any claim for or in respect of Taxes against any Target Company other than by virtue of this Agreement (for instance, based on the Transitional Services Agreements, the IP Agreement or the Product Supply Agreements) and such claims go beyond the claims of any member of Seller's Group under this Agreement, Seller shall put Purchaser economically in the same position as if the members of Seller's Group had only the same claims and rights the members of Seller's Group have under this Agreement. Without prejudice to the rights and obligations under this clause 13.9, any claims for the consideration to be paid under the Transitional Services Agreements, the IP Agreement or the Product Supply Agreements shall remain unaffected by this clause 13.9. For the avoidance of doubt, this clause 13.9(a) shall not limit or prejudice the Tax Warranties or clauses 6.4, 6.5 or 25.1.

10. Miscellaneous

- (a) The determination and calculation of any claims under clause 13 is to be made in a manner which avoids any economic double-counting effect that could lead to an overcompensation or undercompensation for Taxes, Tax Savings, Tax Refunds, Overprovisions or any other points of reference for such payment claims (which may, for instance, result from the interaction with the calculation of the Final Purchase Price and/or Final Inter-Company
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Payment Amount). Further, if and to the extent that the same Tax Saving, Tax Refund, Overprovision or Relief would otherwise be paid or repaid to, or set off, applied or otherwise taken into account for the benefit of Seller more than once pursuant to clause 13.3 (*Tax Refunds*), clause 13.4 (*Overprovisions*), clause 13.5 (*Tax Covenant of Purchaser: Reverse Tax Indemnification*) or paragraph 18 of Schedule 8 (*Recovery from Third Parties*), it shall not be so paid, repaid, set off, applied or otherwise taken into account if and to the extent that it has already been so paid, repaid, set off, applied or otherwise taken into account, so as to ensure that it is so paid, repaid, set off, applied or otherwise taken into account only once.

- (b) Any claims under clause 13 shall be calculated on a *pro rata* -basis which reflects, as the case may be on a look through basis, the percentage of the direct or indirect ownership in the respective Target Company as it is acquired by Purchaser under this Agreement.
- (c) Nothing in this Agreement constitutes an express or implied guarantee or creates any liability of Seller of or for any future Tax treatment of a Target Company or the existence of any Tax attribute available to any Target Company, for instance, the application of a preferential Tax rate, the availability or amount of any Tax loss carry forwards, the Tax basis of any asset, the volume of depreciation (but without liability to Seller's payment obligations under this Agreement including this clause 13).
- (d) If, after any Party has made a payment to the other Party on account of any claim under clause 13, it turns out that such payment was an overpayment (e.g., on the basis of a subsequent reassessment of the relevant Tax or a Tax Refund underlying such claim), the payee shall pay to the payer an amount equal to the overpayment (plus an amount equal to any interest received) promptly after receipt of the corresponding refund (except to the extent taken into account under clause 13.2(a)(ii) or 13.3).

14. **Purchaser's Warranties**

Purchaser warrants to Seller that as at the date of this Agreement, the warranties set out in clauses 14.1 through 14.6 are true and accurate in all material respects ("**Purchaser's Warranties** "). Purchaser's Warranties shall be deemed to be repeated immediately before Closing by reference to the then existing facts and circumstances.

1. Incorporation

Purchaser is validly incorporated, in existence and duly registered under the laws of its jurisdiction and has the power to conduct its business as conducted at the date of this Agreement.

2. Corporate Authorisations

- (a) Purchaser has obtained all corporate authorisations and (other than to the extent relevant to the Closing Conditions) all other governmental, statutory, regulatory or other consents, licences and authorisations required to empower it to enter into and perform its obligations under this Agreement where failure to obtain them would adversely affect to material extent its ability to enter into and perform its obligations under this Agreement.
- (b) This Agreement and each of the Transaction Documents to which Purchaser is or will be a party will, when executed, constitute legal, valid and binding obligations of Purchaser in accordance with their terms.

3. No Breach

Entry into and performance by Purchaser of this Agreement and/or any Transaction Document to which it is party will not (i) breach any provision of its memorandum and articles of association, by-laws or equivalent constitutional documents or (ii) (subject, where applicable, to fulfilment of the Closing Conditions) result in a breach of any laws or regulations in its respective jurisdiction of incorporation or of any order, decree or judgment of any court or any Governmental Entity or regulatory authority, where (in either case) failure to obtain them would adversely affect to material extent its ability to enter into and perform its obligations under this Agreement and/or any Transaction Document to which it is a party.

4. Insolvency

Purchaser is neither insolvent nor bankrupt under the laws of its jurisdiction of incorporation, unable to pay its debts as they fall due nor has entered into any arrangement (whether by court process or otherwise) with its creditors or any class of its creditors. Purchaser has not received any written notice concerning or is otherwise aware of the appointment of an administrator or a receiver (including any administrative receiver or the equivalent to a receiver or administrative receiver in the relevant jurisdiction) in respect of the whole or any material part of the property, assets and/or undertaking of the business of Purchaser as carried on as at the date of this Agreement. No order has been made or resolution has been passed for the winding up of Purchaser and no petition presented for that purpose.

5. No Delay regarding Closing Conditions

Purchaser is not subject to any order, judgment, direction, investigation or other proceedings by any Governmental Entity which will, or are likely to, prevent or delay the fulfilment of any of the Closing Conditions.

6. Available Funds

Purchaser has available cash or available loan facilities which will at Closing provide in immediately available funds the necessary cash resources to pay the Initial Purchase Price and the Initial Inter-Company Payment Amount and meet its other obligations under this Agreement and, in the case of loan facilities, they involve no pre-conditions (other than the fulfilment of the Closing Conditions) and Purchaser will be able to satisfy all conditions of drawdown to such loan facilities at or prior to Closing.

15. **Intellectual Property, Branding**

1. No Rights in Seller's Trademarks

Save as provided for in clause 15.2 or in the Transitional Services Agreements, nothing in this Agreement shall give to any member of Purchaser Group any rights (including with respect to Intellectual Property Rights) in any Seller's Trademarks or Seller's Images. All such rights owned by any member of Seller's Group shall continue to vest in the relevant member of Seller's Group unless agreed otherwise under the Transaction Documents.

2. Restrictions on Use of Seller's Trademarks and Seller's Images by Purchaser

- (a) From the Closing Date, Purchaser shall, and shall procure that each member of Purchaser Group will,
- (i) subject to the remaining provisions of this clause 15.2, in any form and manner refrain from
 - 1. using and displaying and, if used prior to the Closing Date, cease to use and display, and remove, (i) any Names which include (in whole or in part) any of Seller's Trademarks, including as corporate mark, business name or as name affix, and (ii) any Seller's Images;
 - 2. using the custom fonts used by Seller at Closing other than in the context of informational, promotional or marketing materials of the Business existing on the Closing Date (for which clause 15.2(a)(ii) shall apply); or
 - 3. holding itself out as having any current affiliation with any member of Seller's Group; and
 - (ii) take, at its own Cost, all actions reasonably necessary to ensure the discontinuation of the use of the Names including (in whole or in part) any of Seller's Trademarks, as well as any Seller's Images, for, or in relation to, the operations of the Business without undue delay, including any actions necessary to eliminate the use of such
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Names and such Seller's Images within twelve (12) months of the Closing Date from

1. stationery (including letterhead, business cards, schedules, inventories, agreements, customer agreements, publicity releases and forms), informational, promotional or marketing materials, websites, e-mails and any other communication or documents (print or electronic) of, used in connection with, or related to, the Business;
2. buildings, interior décor items, fixtures and furnishings, displays, signs and signage on or at buildings and on street signs providing directions to the sites of the Business; and
3. tools and products relating to the Business and any materials (print or electronic) used in connection with, or related to, any products or services of the Business, provided that any Names including (in whole or in part) any of Seller's Trademarks, if any, on
 - (A) any cylinders being part of the Business, but on the Closing Date not located at a site of the Business, shall as soon as reasonably practicable following the Closing Date, be removed or permanently concealed by, or on behalf of, any member of Purchaser Group; and
 - (B) any freezers, tanks or other installations being part of the Business, but not located at a site of the Business on the Closing Date, shall have to be removed by any member of Purchaser Group within eighteen (18) months of the Closing Date.

(b) Subject to Purchaser's compliance with clause 15.2(f), Seller acknowledges and agrees that:

- (i) Purchaser is permitted to continue making use of Shared Seller's Trademarks (excluding any logos, designs or stylised versions of Seller's Trademarks) and Shared Seller's Images:
 1. with respect to such Shared Seller's Trademarks and Shared Seller's Images, when accurately describing any products or services as having been originated by any member of Seller's Group in its operation of the Business prior to Closing;
 2. with respect to such Shared Seller's Trademarks and Shared Seller's Images, in the framework of Purchaser Group being allowed to sell out or otherwise dispose of any branded inventory of Seller's private label hard goods (in line
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- with the exclusion of any representations and warranties), during a reasonable period of time (which shall in no case exceed eighteen (18) months) from the Closing Date; and
3. with respect to such Shared Seller's Trademarks and Shared Seller's Images contained in URLs, to the extent Purchaser is not in a position to procure, by the Closing Date, the availability of an alternative URL that does not include (in whole or in part) any of Shared Seller's Trademarks and Shared Seller's Images, during a reasonable period of time (which shall in no case exceed twelve (12) months) from the Closing Date; and
 - (ii) no member of Purchaser Group shall be obliged to remove or obliterate any Shared Seller's Trademarks:
 1. from any executed agreements or copies thereof, in existence prior to the Closing Date; or
 2. from any internal documents, not customer-facing, in existence prior to the Closing Date that are used for internal purposes only.
- (c) Purchaser shall, and shall procure that each member of Purchaser Group will, to the extent not effected before the Closing Date, transfer with effect as of the Closing Date to Seller for no consideration any rights the Business might have acquired by its use of a Name or otherwise in any of Seller's Trademarks.
- (d) Purchaser shall, in exercising any of its rights under this clause 15.2 always act in accordance with fair market practices and considering to the fullest extent the good name, reputation and goodwill of any member of Seller's Group, their products and services.
- (e) Purchaser recognises the value of the publicity and goodwill associated with Seller's Trademarks, acknowledges that Seller's Trademarks have acquired secondary meaning, and that all related rights and goodwill belong exclusively to the relevant member of Seller's Group.
- (f) Purchaser shall, and shall procure that each member of Purchaser Group will, only use Shared Seller's Trademarks in accordance with the trademark policies established by the relevant member of Seller's Group, which policies may be amended from time to time and about which Seller will inform Purchaser promptly following Closing and thereafter following any amendment thereof. Purchaser shall not use, display, advertise or promote any other mark, brand name, trade name, label, seal or symbol in any manner that, in the opinion of the relevant member of Seller's Group, may be confusingly similar to or an imitation of Seller's Trademarks.
- (g) Upon reasonable notice, Seller may make inspections during Working Hours of all Purchaser Group's records regarding use of Seller's Trademarks and may inspect all operations and
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practices related to the use of Seller's Trademarks, including the selling or disposing of branded inventory under clause 15.2(b)(i)2.

3. Ownership; No Further Obligations

Purchaser acknowledges that:

- (a) as between Seller and its Affiliates on the one hand, and Purchaser and its Affiliates on the other hand, Seller (or any member of Seller's Group) owns Seller's Trademarks and Seller's Images, and neither Purchaser nor any of its Affiliates shall contest such ownership allocation as between Seller and Purchaser (and their respective Affiliates);
- (b) Seller and its Affiliates have no obligation to maintain or enforce any of Seller's Trademarks; and
- (c) Seller and its Affiliates have no obligation to provide to Purchaser:
 - (i) any assistance, training, advice, maintenance or services of any kind with respect to Seller's Trademarks or Seller's Images; or
 - (ii) any physical or tangible materials in any form or media containing any of Seller's Trademarks or Seller's Images.

4. Specific Indemnification

Purchaser agrees and undertakes to indemnify Seller for any and all documented Costs reasonably incurred by any member of Seller's Group to the extent arising from, or in connection with, any unauthorised use of Seller's Trademarks and/or Seller's Images by any member of Purchaser Group after the Closing Date which is not permitted under this Agreement or any other executed Transaction Document.

5. Joint Notice

On or as soon as possible after the Closing Date, Purchaser and Seller shall send out a joint notice in a form and to a list agreed between Seller and Purchaser, such agreement not to be unreasonably withheld or delayed, of the suppliers, customers and clients of the Business advising them of the transfer of the Business.

6. No Use of Shared Seller's Trademarks by Seller

Seller shall, and shall procure that all members of Seller's Group will, refrain from using, in the Relevant Territory, Shared Seller's Trademarks to market and sell products competing with the Business as conducted by the Target Companies as of the Closing Date for a period of five (5) years

from the Closing Date; except that this clause 15.6 will not prohibit, restrict, or limit any Seller's Group member's use of Shared Seller's Trademarks in connection with any product or service, or any marketing or sales, (a) directed generally, or generally available, to the public and not targeted to the Relevant Territory, (b) directed to one or more customers with a substantial presence outside of the Relevant Territory, or (c) relating to the surface coatings, electronic materials or medical devices businesses.

16. **Pre-Closing Covenants**

1. Conduct of Business

- (a) From the date of this Agreement until Closing, Seller shall procure that the Business is carried on, in all material respects, in the ordinary and usual course, except (i) for the actions, agreements, commitments, payments, transactions or other measures foreseen, permitted or reflected under this Agreement, the Transaction Documents or the Rivoira Share Swap (ii) any measures, actions or omissions to act aimed at, in connection with or relating to the separation of the Target Companies or JVCos from Seller's Group in the context of the Transaction, including, but not limited to, the carve in/carve out steps described in Schedule 11 or the re-allocation or transfer of certain employees between Seller's Group and Target Companies or JVCos (described in the document entitled "Transfer of European Employees" and identified with number 4.5 of the Global/Corporate folder in the Data Room, the "**Pre-Closing Steps**") (which shall be completed in such a way as to create no residual liabilities for Target Companies or JVCos, provided that Purchaser's sole remedy in respect of any residual Tax liabilities created shall be under clause 13 of this Agreement), or (iii) any action or measure pursuant to requirements or requests of a Governmental Entity in connection with obtaining the BCA Clearance Condition or the SPA Clearance Condition (iv) any action, measure, omission to act, requirement or request by any monitoring trustee (or similar) appointed in connection with obtaining the BCA Clearance Condition or the SPA Clearance Condition, or (v) for decisions outside the ordinary business course, with the prior consent in writing by Purchaser, such consent not to be unreasonably withheld, conditioned or delayed, and deemed to be granted if Purchaser has not responded to a request from Seller for consent within ten (10) Business Days following the receipt of such request ((i) through (v) the "**Permitted Actions**"), it being understood that Seller shall keep Purchaser reasonably informed in relation to the completion of the Pre-Closing Steps.
- (b) From the date of this Agreement until Closing, Seller shall further procure that except for Permitted Actions:
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- (i) the Business shall be run in the ordinary course and in accordance with prudent business practice in the manner a prudent business operator with sufficient resources would do so;
 - (ii) except for any dividends or distributions provided for in the Combined Carve Out Financial Statements, no Target Company declares, pays or makes any dividend or other distribution;
 - (iii) no Target Company repays, repurchases or reduces any of its issued share capital;
 - (iv) no share or loan capital is being issued or agreed to be issued by a Target Company;
 - (v) there is no change of the articles of association of a Target Company;
 - (vi) there is no merger, spin-off, change of legal form or similar measures involving or otherwise directly affecting any Target Company;
 - (vii) no Target Company creates any Third Party Rights over share capital held by it (other than for the benefit of another Target Company);
 - (viii) no Target Company sells or purchases or disposes of (other than to another Target Company) any interest in any share or loan capital or other security or interest in a company or business with a value in excess of two million (2,000,000) EUR;
 - (ix) all agreements between a Target Company or Controlled JVCo and members of Seller's Group take place on arm's length terms;
 - (x) other than in relation to an onsite plant or participation in a tender in relation to an onsite plant, no Target Company enters into or terminates any contract or incurs any commitment (either as a result of a single transaction or of a series of connected transactions), including without limitation any borrowing or indebtedness in the nature of borrowing, which has a value or is likely to involve expenditure in excess of ten million (10,000,000) EUR per annum (excluding VAT) which cannot be terminated or performed within its terms within one (1) year after the date on which it is entered into;
 - (xi) no Target Company enters into a contract in respect of a new on-site plant where such contract is likely to involve capital expenditures in excess of ten million (10,000,000) EUR;
 - (xii) no Target Company participates in a tender for an onsite plant which is likely to involve capital expenditure in excess of thirty million (30,000,000) EUR
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except where Purchaser has been allowed to review and provide comments on such tender in advance of its submission;

- (xiii) no Target Company enters into any guarantee, indemnity or other agreement to secure any obligation of a third party, including any member of Seller's Group (other than another Target Company);
 - (xiv) no Target Company (i) institutes or settles any litigation where that action is likely to result in a payment to or by a Target Company of two million (2,000,000) EUR or more (except for collection in the ordinary course of trading debts) (ii) settles an insurance claim in excess of two million (2,000,000) EUR materially below the amount claimed;
 - (xv) in connection with the Properties, no Target Company (i) terminates or serves any notice to terminate, surrenders or accepts any surrender of any lease, tenancy or licence; or (ii) enters into or prolongs the term of any lease, tenancy or licence by more than twelve (12) months, in each case which is material for the Business;
 - (xvi) no Target Company enters into or modifies materially any agreement with any Key Employee, including any off-cycle increase or amendment of salaries, benefits, bonus payment or other remuneration and on-cycle increases of more than 3% per annum as well as the termination of employment by termination notice or termination agreement;
 - (xvii) no Target Company: (x) assigns or otherwise transfers any Business Intellectual Property; or (y) except as required by applicable law or in accordance with the ordinary course of business, grants, modifies, agrees to terminate or permit the lapse of, or enters into any licence, agreement or arrangement concerning any Business Intellectual Property;
 - (xviii) no Target Company other than in the ordinary course of business makes any change to its accounting practices or policies, except as required by applicable law or applicable generally accepted accounting principles; and
 - (xix) no Target Company or Controlled JVCo changes its place of Tax residence.
- (c) For the purposes of applying a reference to a monetary threshold expressed in EUR with respect to clause 16.1, an amount in a different currency shall be deemed to be an amount in EUR translated at the Exchange Rate at the relevant date on which the respective action is taken.

2. Regulatory Permits

Seller shall, and shall procure that the relevant Local Seller and the relevant Target Company will, between the date of this Agreement and the Closing Date (i) apply, upon Purchaser's reasonable request and at Purchaser's Cost, for any regulatory permit, licence or authorisation (" **Regulatory Permit** ") for the relevant Target Company (or any amendment of existing Regulatory Permits) which it does not already have and is required for the Target Company to carry on the Business in a manner consistent with past practice and use reasonable endeavours to obtain such Regulatory Permit prior to Closing and, (ii) in case (i) cannot be completed by Closing, agree with Purchaser upon appropriate transitional arrangements to be entered into by the relevant member of Seller's Group and the relevant Target Company for a transition period between Closing and the date the required Regulatory Permit will have been obtained, such agreement not to be unreasonably withheld or delayed.

3. Insurance

From the date of this Agreement until (and including) the Closing Date, members of Seller's Group shall and shall procure that the Target Companies ensure that all material policies of insurance maintained by them in respect of the Business continue in full force and effect and Seller shall procure (i) that all insurance premiums under such policies are paid when due, (ii) that the terms or coverage of any such insurance policies are not altered and (iii) that no actions are taken or omitted that would entitle any of the insurers under any such insurance policies to refuse indemnity in relation to particular claims in whole or in part.

Upon Closing, all insurance cover arranged in relation to the Business by Seller's Group, other than insurance cover held by the Target Companies with a third party and being unrelated to group insurance policies arranged by Seller's Group, shall cease and no member of Purchaser Group shall make any claim under any such policies in relation to insured events arising after Closing. Seller and any members of Seller's Group shall be entitled to make arrangements with its insurers to reflect this clause.

4. Finalising Transaction Documents

- (a) The Parties acknowledge and agree that whilst the main body of each of the Transitional Services Agreement, Product Supply Agreement and IP Covenant Agreement are in Agreed Form, as at the date of this Agreement certain schedules and riders to these documents are not in Agreed Form.
 - (b) Seller and Purchaser agree to use their reasonable endeavours to (i) negotiate, agree and finalise the NoxBBox Agreement and the Storage Agreements; (ii) agree the final form of the schedules referred to in paragraph (a) above and Schedule 3; and (iii) reach agreement in respect of any
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other Agreed Form document that the Parties have not finally concluded as at the date of this Agreement, in each case prior to Closing.

5. **Clean-ups regarding Conversion of DivestCo 2**

Without undue delay after the date hereof and in any event prior to the Closing Date, Seller shall use reasonable endeavours to procure that (i) article 2.5.2 of the notarial deed no. 1407/2018 of notary Brücker in Düsseldorf regarding the change of legal form of DivestCo 2 is corrected by the notary to reflect that Praxair Seller 2 subscribed to 4 , 999 , 999 shares in DivestCo 2 and (ii) article 3 of the articles of association of DivestCo 2 currently filed with the German commercial register is amended to reflect the identity of both original shareholders of DivestCo 2 as well as the number of shares originally subscribed to by each shareholder. Seller shall further use reasonable endeavours to procure that the corrected notarial deed pursuant to sub-clause (i) and a duly notarised copy of the articles of association pursuant to sub-clause (ii) are promptly filed with the commercial register kept at the local court of Düsseldorf.

6. **Rivoira Share Swap**

Seller shall use reasonable endeavours to obtain a written waiver as soon as practicable from each of the shareholders of each of (i) IGAT - Industria Gas Tecnici S.p.A. and (ii) Chemgas S.r.l., pursuant to which such shareholders irrevocably waive their respective pre-emptive rights in connection with the Rivoira Share Swap. Seller shall provide Purchaser with a copy of each such waiver as soon as practicable after it has been obtained. Each Party shall cooperate reasonably and in good faith with the other Party to obtain such waivers. Seller shall also use reasonable endeavours to take all necessary steps to obtain all relevant merger clearance approvals.

17. **Post-Closing Covenants**

1. **Access to Information of Target Companies**

For the longer of (i) the retention period under applicable laws and (ii) the period of seven (7) years following the Closing Date, Purchaser shall procure that:

- (a) The Target Companies shall provide, subject to applicable laws, Seller and Local Sellers (at Seller's or Local Sellers' Cost) with reasonable access during Working Hours to (and the right to take copies of) the books and accounts and all other data held by them after Closing to the extent that they relate to the Business, or Seller's Group business (if any), in the period up to
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Closing and are required for formal third party investigations and reviews such as tax or regulatory investigations or for preparation of accounts or in connection with third party proceedings or in connection with any Claim or Tax Claim (" **Records** ").

- (b) The members of Purchaser Group shall (at Seller's Cost) also give such assistance to any member of Seller's Group as Seller may reasonably request in relation to any third party proceedings by or against any member of Seller's Group so far as they relate to the Business, including proceedings relating to employees' claims or Taxes. No member of Purchaser Group shall be under the obligation to become a party to such proceedings.

In the event of any conflict or inconsistency between this clause 17.1 and clause 13.8 (*Co-operation on Tax Matters*), the provisions of clause 13.8 shall prevail.

2. Access to Information of Seller

For the longer of (i) the retention period under applicable laws and (ii) the period of seven (7) years following the Closing Date, Seller shall procure that:

- (a) The members of Seller's Group shall provide, subject to applicable laws, Purchaser with reasonable access during Working Hours to (and the right to take copies of) the books and accounts and all other data held by them after Closing to the extent that they relate to the Business in the period up to Closing and are required for formal third party investigations and reviews such as Tax or regulatory investigations or for preparation of accounts or Tax Returns or in connection with third party proceedings (" **Seller's Records** ").
- (b) The members of Seller's Group shall (at Purchaser's Cost) also give such assistance to any Target Company as Purchaser may reasonably request in relation to any third party proceedings by or against any Target Company so far as they relate to the Business in the period up to Closing, including proceedings relating to employees' claims or Taxes. No member of Seller's Group shall be under the obligation to become a party to such proceedings.

3. Cooperation

Each of the Parties shall for no additional consideration or payment execute (or procure the execution of) such further documents and take such further action as may be required by law or be necessary to implement and give effect to this Agreement.

18. **PLC Guarantee**

PLC hereby unconditionally and irrevocably guarantees as of the completion of the Business Combination to Purchaser by means of an independent guarantee promise the full, due and timely performance and observance of any and all obligations of Seller and Local Sellers under this Agreement or the Transaction Documents (each, a " **Guaranteed Obligation** " and together, the " **Guaranteed Obligations** ") (" **PLC Guarantee** ").

The PLC Guarantee shall not be affected by any act, omission, matter or thing which, but for this clause 18, would reduce, release or prejudice any of the Guaranteed Obligations under this clause 18 (without limitation and whether or not known to it or Purchaser).

If any payment by Seller or any discharge given by Purchaser is avoided or reduced as a result of insolvency or any similar event, the liability of Seller and PLC shall continue as if the payment, discharge, avoidance or reduction had not occurred and Purchaser shall be entitled to recover the value or amount of that security or payment.

Provided that the liability of PLC shall under no circumstances exceed that of Seller under the terms of this Agreement or the other Transaction Documents, whenever Seller does not pay any amount when due under or in connection with the Guaranteed Obligations, if the due date for Seller's obligation has passed for more than fifteen (15) Business Days and Purchaser's claim has not been settled by Seller, PLC shall, within five (5) Business Days of receipt of a written request from Purchaser pay that amount, provided that the only remedy of Purchaser under the PLC Guarantee shall be the payment of sums due under the Agreement or damages for breach of contract.

The consideration for the Guaranteed Obligations shall be the payment in cash by Purchaser to PLC of an amount equal to EUR 1.00, receipt of which is hereby acknowledged by PLC.

19. **Conflict with other Agreements**

1. Conflict

If there is any conflict between the terms of this Agreement and any other Transaction Document, this Agreement shall prevail (as between the Parties to this Agreement and as between any members of Seller's Group and any members of Purchaser Group) unless (i) such other Transaction Document expressly states that it overrides this Agreement in the relevant respect and (ii) Seller and Purchaser are either also parties to that other Transaction Document or otherwise expressly agree in writing that such other agreement shall override this Agreement in that respect.

2. No Conflicting Claims

Without prejudice to clause 19.1, Purchaser undertakes that no claim shall be made by any member of Purchaser Group or by any Target Company or JVCo against any member of Seller's Group under any of the Local Transfer Agreements for breach of any warranty, representation, undertaking, covenant or indemnity relating to the sale of any of the Target Companies or JVCos other than those which are required to implement the transfer of those DivestCo Shares which are to be transferred on the basis of the relevant Local Transfer Agreement. Should, nevertheless, such claims be made, Purchaser shall indemnify and hold harmless the relevant member of Seller's Group in respect of any claims, actions, proceedings, losses and Costs arising in respect of the same.

20. **Responsibility after Closing**

1. Assumption of Responsibility

Except for claims of Purchaser or any other member of Purchaser Group against Seller or PLC arising under this Agreement or the Transaction Documents, Purchaser shall and shall procure that each member of Purchaser Group, including from the Closing Date the Target Companies: (i) to the extent permitted under applicable law, waives (with effect from Closing or thereafter as soon as permitted under applicable law), and (ii) abstains from pursuing (in each case) any claim against any member of Seller's Group and Seller's Representatives in connection with the Business before Closing, unless such claim is based on fraud. Nothing in this clause 20 shall limit Purchaser's right to assert any claims or obligations against Seller expressly provided for under another provision of this Agreement in which case this clause 20 shall not apply.

2. Indemnification of Members of Seller's Group and Seller's Representatives

If, after Closing has taken place, any member of Seller's Group or any Seller's Representative is held liable for any claims, actions, proceedings, losses and Costs:

- (a) of any Target Company;
- (b) as a result of Seller's or other members of Seller's Group's shareholding or ownership interest in any Target Company;
or
- (c) any claims relating to Inter-Company Payables and Inter-Company Receivables,

then Purchaser shall indemnify and hold harmless each member of Seller's Group and any Seller's Representative in respect of any claims, actions, proceedings, losses and Costs arising in respect of the same. Nothing in this clause 20.2 shall limit Purchaser's right to assert any claims or obligations

against Seller, including Warranty Claims, expressly provided for under another provision of this Agreement.

21. **Announcements, Confidentiality**

1. Announcements

No Party (nor any of their respective Affiliates) shall make any external public announcement or issue any external circular in connection with the occurrence of the Transaction or the existence or subject matter of this Agreement (or any other Transaction Document) without the prior written approval of Purchaser or Seller, as the case may be (such approval not to be unreasonably withheld or delayed). The Parties will cooperate and act in good faith to align their communications to employees, customers and suppliers of the Business in relation to the Transaction.

The restriction in this clause 21.1 shall not apply to the extent that the announcement or circular is required by law, by any stock exchange or any regulatory or supervisory body or authority of competent jurisdiction, whether or not the requirement has the force of law. If this exception applies, the Party making the announcement or issuing the circular shall use its reasonable endeavours to consult with the other Parties in advance as to its form, content and timing.

2. Confidentiality

- (a) The confidentiality agreement concluded between Seller, Linde and Purchaser as of 6 March 2018 (the "**Confidentiality Agreement**") shall remain in full force and effect in accordance with its terms. If there is a conflict between the terms of the Confidentiality Agreement and the terms of this Agreement, the provisions of this Agreement shall prevail.
 - (b) Subject to clauses 21.2(d) and 21.2(e), Seller shall (and shall procure that each member of Seller's Group, and, in respect of the period up to the Closing, each Target Company, and each such person's advisers and connected persons, shall) and Purchaser shall (and shall procure that each member of Purchaser Group, including, in respect of the period from the Closing, each Target Company, and each such person's advisers and connected persons, shall) keep confidential the provisions and subject matter of, and the negotiations relating to, each Transaction Document.
 - (c) Purchaser:
 - (i) shall, and shall procure that each other member of Purchaser Group for the time being shall, keep confidential all information provided to it by or on behalf of Seller or otherwise obtained by it in connection with this Agreement which relates to Seller or any other member of Seller's Group; and
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- (ii) shall procure that, if after Closing any Target Company holds confidential information relating to Seller or any other member of Seller's Group, that Target Company shall after Closing keep that information confidential and, shall upon request return that information to Seller or destroy it without retaining copies to the extent technically feasible.
 - (d) Nothing in clauses 21.2(b) or 21.2(c) prevents any confidential information being disclosed:
 - (i) where such confidential information disclosed comprises only information set out in an announcement in the Agreed Form;
 - (ii) with the written approval of the other Parties; or
 - (iii) to the extent required by law, by any stock exchange or any regulatory or supervisory body or authority of competent jurisdiction, whether or not the requirement has the force of law, but if a person is so required to disclose any confidential information, the relevant party shall promptly notify the other Parties, where practicable and lawful to do so, before the disclosure occurs (as the case may be) and shall co-operate with the other Parties regarding the timing and content of such disclosure (as the case may be) or any action which the other parties may reasonably elect to take to challenge the validity of such requirement.
 - (e) Nothing in clauses 21.2(b) or 21.2(c) prevents any confidential information being disclosed to the extent:
 - (i) required to enable any person to enforce its rights under any Transaction Document or for the purpose of any judicial proceedings;
 - (ii) that the information is disclosed on a strictly confidential basis by a person to its professional advisers, auditors or bankers;
 - (iii) that the information is disclosed by Seller on a strictly confidential and need to know basis to another member of Seller's Group or by Purchaser on a strictly confidential and need to know basis to another member of Purchaser Group; or
 - (iv) that the information is in or comes into the public domain except through breach of the provisions of this Agreement or through breach of any other duty of confidentiality relating to that information.
 - (f) Seller shall implement, or shall procure the implementation by each member of Seller's Group of, all necessary measures to ensure that, after the Closing Date, neither Seller nor any member of Seller's Group obtains any customer information used in the Business and that any such
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customer information obtained by Seller or any member of Seller's Group before the Closing Date is, as soon as reasonably practicable but, in any event, within ninety (90) calendar days of the Closing Date destroyed (to the extent technically feasible) by Seller and members of Seller's Group without retaining copies, provided that Seller and members of Seller's Group shall be entitled to retain such customer information which is required to be kept by law or regulation.

- (g) Seller undertakes to procure that the customer information referred to in paragraph (f) above will not, from Closing, be accessible to employees of Seller or members of Seller's Group working in sales, marketing, products, customer relations, research and development or pricing.

22. **Non-Solicit**

1. Seller's Non-Solicit Undertaking

Seller agrees and undertakes that between the date of this Agreement and Closing and, further, for a subsequent period of two (2) years from the Closing Date it will not, and will procure that no member of Seller's Group will (for as long as it is a member of Seller's Group) offer employment to, enter into a contract for the services of, or attempt to entice away any Key Employee.

2. Purchaser Non-Solicit Undertaking

Purchaser agrees and undertakes that between the date of this Agreement and Closing and, further, for a subsequent period of two (2) years from the Closing Date it will not, and will procure that no member of Purchaser Group will (for as long as it is a member of Purchaser Group) offer employment to, enter into a contract for the services of, or attempt to entice away any persons who are then employees of Seller or any member of Seller's Group and with whom Purchaser or Purchaser's Representatives have come in contact in the course of analysing or negotiating the Transaction.

3. Exemptions

Nothing in this clause 22 shall prevent any member of Seller's Group or Purchaser Group, respectively, from offering to employ, entering into a contract for the services or attempting to entice any person away where such employee has not been approached by or on behalf of any member of Seller's Group or Purchaser Group, as applicable, but has responded to a public advertisement open to employees' generally which has not been drawn to that employee's attention by or on behalf of Seller's Group or Purchaser Group, as applicable.

23. **Notices, Agent for Service of Process**

1. Notices

Any notice in connection with this Agreement shall be in writing in English and delivered by hand, fax, registered post or courier using an internationally recognised courier company. A notice shall be effective upon receipt and shall be deemed to have been received (i) at the time of delivery, if delivered by hand, registered post or courier or (ii) at the time of transmission if delivered by fax provided that in either case, where delivery occurs outside Working Hours, notice shall be deemed to have been received at the start of Working Hours on the next following Business Day.

From the date of this Agreement until Closing, notices delivered in accordance with clause 16.1(a) (and only for the purposes of clause 16.1(a)) may be delivered by Email, the applicable Email addresses (for those purposes only) are set out below.

The addresses and fax numbers of the Parties for the purpose of clause 23 are:

- (a) If to Praxair, to:
Praxair, Inc.
10 Riverview Dr.
Danbury, CT 06810
United States of America
Attention: General Counsel
Fax: +1 (203) 837 2515
Email: guillermo_bichara@praxair.com

with a copy (which shall not constitute notice) to:

Linde AG
Klosterhofstraße 1
80331 Munich
Germany
Attention: Head of M&A
Fax: + 49 89 35757-1255
Email: christian.ortenburg@linde.com

Attention: Head of Group Legal and Compliance

Fax: +49 89 35757-1475

Email: christoph.hammerl@linde.com

(b) If to PLC, to:

Linde Public Limited Company

The Priestley Centre

10 Priestley Road, The Surrey Research Park

Guildford, Surrey GU2 7XY

United Kingdom

Attention: Company Secretary

Fax: +44 1483 505211

Email: andrew.brackfield@boc.com

Rick_Steinseifer@praxair.com

with a copy (which shall not constitute notice) to:

Linde AG

Klosterhofstraße 1

80331 Munich

Germany

Attention: Head of M&A

Fax: + 49 89 35757-1255

Email: christian.ortenburg@linde.com

Attention: Head of Group Legal and Compliance

Fax: +49 89 35757-1475

Email: christoph.hammerl@linde.com

and to Praxair (as per clauses 23.1 (a)).

(c) If to Purchaser, to:

Taiyo Nippon Sanso Corporation

Attention: Tsutomu Moroishi

Corporate Officer/Executive GM - Global Operations

1-3-26 Koyama
Shinagawa-ku, Tokyo 142-8558 Japan
Fax: +81 3 6866 1878
Email: tsutomu.moroishi@tn-sanso.co.jp

with a copy (which shall not constitute notice) to:

Matheson Tri-Gas, Inc.
Attention: Stephen Stroud
150 Allen Road
Basking Ridge NJ 07920
United States of America
Fax: +1 908 604 1470
Email: sstroud@mathesongas.com

2. Service of Process Agent for Purchaser

Purchaser shall at all times maintain an agent for service of process and any other documents in proceedings in England or any other proceedings in connection with this Agreement and any other Transaction Document. Such agent shall initially be Law Debenture Corporate Services Limited, Fifth Floor, 100 Wood Street, London EC2V 7EX, England. Any claim form, judgment or other notice of legal process shall be sufficiently served on Purchaser if delivered to such agent at its address for the time being. Purchaser undertakes not to revoke the authority without giving at least ten (10) Business Days' notice in writing to Seller of such proposed revocation and to appoint another such agent with an address in England upon such revocation. If, for any reason, Seller reasonably requests Purchaser to do so, it shall promptly appoint another such agent with an address in England and advise Seller. If, following such a request, Purchaser fails to appoint another agent, Seller shall be entitled to appoint one on behalf of Purchaser at the expense of Purchaser.

3. Service of Process Agent for Seller

Seller shall at all times maintain an agent for service of process and any other documents in proceedings in England or any other proceedings in connection with this Agreement and any other Transaction Document. Such agent shall initially be Linde Public Limited Company at The Priestley Centre, 10 Priestley Road, Surrey Research Park, Guildford, Surrey, GU2 7XY, England. Any claim form, judgment or other notice of legal process shall be sufficiently served on Seller if delivered to such

agent at its address for the time being. Seller undertakes not to revoke the authority without giving at least ten (10) Business Days' notice in writing to Purchaser of such proposed revocation and to appoint another such agent with an address in England upon such revocation. If, for any reason, Purchaser reasonably requests Seller to do so, it shall promptly appoint another such agent with an address in England and advise Purchaser. If, following such a request, Seller fails to appoint another agent, Purchaser shall be entitled to appoint one on behalf of Seller at the expense of Seller.

24. **Whole Agreement, Remedies**

1. Whole Agreement

This Agreement and the other Transaction Documents contain the whole agreement between the Parties relating to the transactions contemplated by this Agreement and the other Transaction Documents and supersede all previous agreements (whether oral or written) between the Parties relating to these transactions, other than the Confidentiality Agreement.

2. Remedies

It is agreed between the Parties that:

- (a) no Party shall have any claim or remedy in respect of any statement, representation, warranty or undertaking made by or on behalf of any other Party or Parties (or any of the members of Seller's Group or Seller's Representatives or members of Purchaser Group or Purchaser's Representatives (as the case may be)) in relation to the Transaction which is not expressly set out in this Agreement or any other Transaction Document;
 - (b) in entering into this Agreement and the Transaction Documents, Purchaser has not relied and is not relying upon any express or implied representation, statement, assurance, or warranty whether oral or written of any person (whether Party to this Agreement or not) other than the Warranties or as expressly set out in the Transaction Documents and neither the members of Seller's Group, nor Seller's Representatives have given or made any express or implied representation, warranty, statement, assurance or undertaking in relation to the Target Companies, JVCos, or Target Companies' or JVCos' businesses, assets, liabilities, operations, prospects, or condition (financial or otherwise), including with respect to merchantability or fitness for any particular purpose of any assets, the nature or extent of any liabilities, the prospects of its business, the effectiveness or the success of any operations, other than as expressly set out in the Warranties;
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- (c) any terms or conditions implied by law in any jurisdiction in relation to the Transaction (including any right under common law, tort, statute (including under the Misrepresentation Act 1967), equity, or otherwise) are excluded to the fullest extent permitted by law or, if incapable of exclusion, any right, or remedies in relation to them are irrevocably waived;
- (d) except for any liability in respect of a breach of this Agreement or any other Transaction Document, no Party (or any of the members of Seller's Group or Seller's Representatives or members of Purchaser Group or Purchaser's Representatives (as the case may be)) shall owe any duty of care or have any liability in tort or otherwise to any other Party or Parties (or any of the members of Seller's Group or Seller's Representatives or members of Purchaser Group or Purchaser's Representatives (as the case may be)) in relation to the Transaction;
- (e) the only right or remedy of a relevant Party in relation to the Transaction, any provision of this Agreement or any other Transaction Document shall be, unless specifically stated otherwise herein, be for breach of this Agreement or the relevant Transaction Document;
- (f) no member of Seller's Group, nor Seller's Representatives (having only a right but not an obligation to make certain disclosures hereunder) have given or made any representation or warranty as to the accuracy or completeness of the Disclosure Letter, the contents of the Data Room, any management presentations, any management accounts or financial statements (other than the Combined Carve Out Financial Statements), any financial fact book, tax fact book, legal fact book, environmental fact book, information memorandum and any other information, or of the forecasts, estimates, projections, statements of intent or statements of opinion provided to Purchaser or Purchaser's Representatives on or prior to the date of this Agreement, including anything contained in or derived from any of the foregoing;

provided that nothing in this clause shall exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation by a Party.

Each Party agrees to the terms of this clause 24.2 on its own behalf and as agent for each of the members of Seller's Group and Seller's Representatives or members of Purchaser Group and Purchaser's Representatives (as the case may be).

25. **Miscellaneous**

1. Costs

- (a) Except as otherwise provided in this Agreement or any other Transaction Document, each Party shall be responsible for its own Costs (including those of its Affiliates) incurred in connection with the Transaction.
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- (b) Seller shall bear all fees of Governmental Entities in relation to obtaining the BCA Clearance Condition, and Purchaser shall bear all fees of Governmental Entities in relation to obtaining the SPA Clearance Condition, whereas each Party shall bear its own Costs incurred with these proceedings.
- (c) Except as otherwise provided for in this Agreement or any other Transaction Document, Purchaser shall bear all notarisational fees, stamp duties and similar transfer Taxes and any fees of courts or Governmental Entities or regulatory authorities with respect to notifications, filings or regulatory proceedings arising in respect of the purchase of the DivestCo Shares pursuant to this Agreement.

2. Assignment

Unless Seller and Purchaser agree in writing, no party shall assign, transfer or charge all or any of its rights under this Agreement or under any Transaction Document nor grant, declare, create or dispose of any right or interest in it.

Purchaser shall be permitted to assign, transfer or charge all but not less than all of its rights under this Agreement to a bank or financing institution as required solely for the purposes of debt financing the Transaction.

Any purported assignment in contravention of this clause 25.2 shall be void.

3. Contract (Rights of Third Parties) Act 1999

Except as otherwise expressly stated in this Agreement, a person who is not a Party to this Agreement may not enforce any of its terms under the Contract (Rights of Third Parties) Act 1999.

4. Waivers, Rights and Remedies

Except as expressly provided in this Agreement, no failure or delay by any party in exercising any right or remedy relating to this Agreement or any of the Transaction Documents shall affect or operate as a waiver or variation of that right or remedy or preclude its exercise at any subsequent time. No single or partial exercise of any such right or remedy shall preclude any further exercise of it or the exercise of any other remedy.

5. Counterparts

This Agreement may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

6. Variations

No amendment of this Agreement (or of any other Transaction Document) shall be valid unless it is in writing and duly executed by or on behalf of all of the Parties to it.

26. **Invalidity**

Each of the provisions of this Agreement and the Transaction Documents is severable. If any provision is held to be or becomes invalid or unenforceable in any respect under the law of any jurisdiction, it shall have no effect in that respect and the Parties shall use all reasonable endeavours to replace it in that respect with a valid and enforceable substitute provision the effect of which is as close to its intended effect as possible.

27. **Governing Law, Jurisdiction**

1. Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by English law.

2. Arbitration

Subject to the expert determination provisions set out in this Agreement, any dispute (including claims for set-off and counterclaims) arising out of or in connection with this Agreement, including disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this Agreement and (ii) any non-contractual obligations arising out of or in connection with this Agreement, which cannot be amicably resolved between the Parties within thirty (30) Business Days, or such further period as the Parties agree in writing, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator agreed upon by the Parties or, in case such agreement cannot be achieved within ten (10) Business Days, by three arbitrators whereby the claimant or claimants

together, and respondent or respondents together, shall each be entitled to nominate one arbitrator, the third arbitrator being appointed by the two-party-nominated arbitrators. The seat of the arbitration proceedings shall be London, United Kingdom. The language of the arbitration shall be English. The decision of the arbitrator (or of the tribunal, as the case may be) shall be final and binding upon the Parties. No Party shall be required to give general discovery of documents, but may be required only to produce specific, identified documents which are relevant to the dispute.

3. Interim Relief

Clause 27.2 shall be without prejudice to the right of any Party to apply to the English courts to seek interim relief, at any time before and after the arbitrator (or of the tribunal as the case may be) has been appointed, up until when the arbitrator (or of the tribunal as the case may be) has made its final award, to prevent the continuation of an actual breach or a threatened breach of this Agreement and the Parties hereby submit to the non-exclusive jurisdiction of such courts for such purposes.

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schedule 7 - seller'S warranties

1. Corporate Authorisations, No-Breach, Incorporation, Seller's Group and Shares

- (a) Seller has obtained and as of the Closing Date each Local Seller will have obtained all corporate authorisations (other than to the extent relevant to the Closing Conditions) required to empower it to enter into and perform its obligations under this Agreement and any other Transaction Document, where failure to obtain them would adversely affect its ability to enter into or perform its obligations thereunder.
 - (b) As of the Closing Date, Seller will have obtained all governmental, statutory and regulatory authorisations required to empower it to perform its obligations under this Agreement and any other Transaction Document, where failure to obtain them would adversely affect its ability to perform its obligations thereunder.
 - (c) Entry into and performance by each member of Seller's Group of this Agreement and/or any Transaction Document to which it is a party will not breach any provision of its memorandum and articles of association, by-laws or equivalent constitutional documents.
 - (d) Subject to fulfilment of the Closing Conditions, entry into and performance by each member of Seller's Group of this Agreement and/or any Transaction Document to which it is a party will not result in a breach of any laws or regulations or of any order, decree or judgment of any court or any Governmental Entity or regulatory authority, where (in either case) the
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breach would adversely affect its ability to enter into or perform its obligations under this Agreement and any other Transaction Document.

- (e) This Agreement and each of the other Transaction Documents to which Seller is or will be party will, when executed, constitute legal, valid and binding obligations of Seller in accordance with their terms.
- (f) The particulars relating to all Target Companies and JVCos in Schedule 1 will as of the Closing Date be true and accurate in all respects.
- (g) Seller, each Local Seller, each Target Company and each JVCo is validly incorporated, in existence and duly registered under the laws of its jurisdiction of incorporation and has full power to conduct its business as conducted at the date of this Agreement.
- (h) Seller has made available in the Data Room copies of the constitutional documents of each of the Target Companies and JVCos, and no action has been taken to amend any of them.
- (i) Seller will at Closing be entitled to transfer (or procure the transfer of) the DivestCo Shares on the terms of this Agreement.
- (j) The DivestCo Shares constitute the whole of the paid-up share capital of the DivestCos, and the shares in the DivestCo Subsidiaries held by the DivestCos constitute the whole of the paid-up share capital of the DivestCo Subsidiaries. All the DivestCo Shares and the shares in the DivestCo Subsidiaries are fully paid and free of additional payment obligations, and each Local Seller will at Closing be the sole legal and beneficial owner of the number of shares in the capital of the relevant Target Company and the relevant JVCo set out for it in Schedule 1 free from any Third Party Rights.
- (k) No member of Seller's Group nor any of the Target Companies or Controlled JVCos has entered into any agreement whereby any person (other than a Target Company or a Controlled JVCo) has the right to call for the issue of any share or loan capital in any Target Company or Controlled JVCo.
- (l) Other than as set out in Schedule 1, no Target Company or Controlled JVCo holds any ownership interests in any other legal entity.

2. Financial Matters

- (a) The Combined Carve Out Financial Statements were prepared in accordance with the requirements of all relevant laws and US-GAAP then in force and applied on a consistent basis throughout the period involved save as disclosed therein and, subject to the basis of preparation and the assumptions made therein to reflect the separation of the respective business, present fairly, in all material respects, the combined carve-out financial position of the respective Target Companies as of the date to which they relate, and the respective
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Target Companies' combined carve-out financial performance and such companies' combined carve-out cash flows for the periods to which they relate.

- (b) From 31 March 2018 until the date of this Agreement and except for Permitted Actions:
 - (i) each Target Company has carried on business in the ordinary course;
 - (ii) there has been no material adverse change in the financial or trading position of any Target Company;
 - (iii) except for any dividends or distributions provided for in the Combined Carve Out Financial Statements, no Target Company has declared, paid or made any dividend or other distribution;
 - (iv) no Target Company has repaid, repurchased or reduced any of its issued share capital;
 - (v) no share or loan capital has been issued or agreed to be issued by a Target Company; and
 - (vi) other than in the ordinary course of business: (A) no capital commitment has been entered or agreed to be entered into by a Target Company to spend monies in excess of five million (5,000,000) EUR (in respect of each individual commitment) and (B) no Target Company has acquired or disposed of or agreed to acquire or dispose of any fixed asset with a value in excess of five million (5,000,000) EUR.
- (c) The statutory books of each Target Company as well as other material books and records relating to the Business have been maintained in all material respects in accordance with laws of the relevant jurisdiction.

3. Financial Debt

No Target Company owes any Financial Debt to any person outside Seller's Group or has any loan agreements and other loan commitments including bonds (with the exception of customary extensions of the due date of trade receivables or payables agreed in the ordinary course of business and of inter-company agreements to be terminated prior to or at Closing) exceeding five million (5,000,000) EUR, in each case, other than (i) Financial Debt owing pursuant to agreements or instruments, details of which are set out in the Data Room, (ii) Financial Debt which will be repaid on or before the Financial Closing Date or (iii) Financial Debt reflected in the Closing Statement and reducing the Final Purchase Price.

4. Licences and Permits

Each Target Company currently holds all public licences and permits which are material for its business and required for carrying on its business in the places and in the manner in which it is carried on at

the date of this Agreement. To Seller's Knowledge, there are no circumstances which indicate that any public licence or permit, which is material to the Business, will or is likely to be revoked or not renewed, in the ordinary course of events (other than as a result of the Transaction or any of the Transaction Documents or otherwise).

5. Compliance with Law

- (a) Each Target Company and each Controlled JVCo has, in the last three (3) years prior to the date of this Agreement conducted and is continuing to conduct its respective business in material compliance with all applicable laws and regulations, including Data Protection Legislation and, to Seller's Knowledge, no matter, event or circumstance exists which might lead to a Target Company or Controlled JVCo failing to materially comply with all applicable laws and regulations, including Data Protection Legislation.
- (b) There has in the last three (3) years prior to the date of this Agreement been no material default by any Target Company or Controlled JVCo under any order, decree or judgment of any court or any Governmental Entity or regulatory authority in the jurisdiction in which it is incorporated which applies to the Business.
- (c) Each Target Company or Controlled JVCo has conducted its business and corporate affairs in all material respects in accordance with its memorandum and articles of association, by-laws or other equivalent constitutional documents.

6. Special Regulatory Matters

- (a) No Controlled JVCo has engaged in any activity or conduct that has resulted or will result in a material breach of:
 - (i) any applicable laws relating to money laundering and the combat of terrorism financing;
 - (ii) any Anti-Corruption Laws; or
 - (iii) any applicable laws relating to economic or trade sanctions.
 - (b) No Target Company nor, to Seller's Knowledge any of their respective directors, officers, employees or other persons for whom they could be liable nor any other person acting on a Target Company's behalf has engaged in any activity or conduct that has resulted or will result in a material breach of:
 - (i) any applicable laws relating to money laundering and the combat of terrorism financing;
 - (ii) any Anti-Corruption Laws; or
 - (iii) any applicable laws relating to economic or trade sanctions.
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- (c) Target Companies have in place a monitoring and compliance system to ensure compliance with the relevant laws and regulations set out in paragraph 1.6(b)(i) through (b)(iii).

7. Material Assets

- (a) Target Companies own or are entitled, or will at Closing own or be entitled, except for Permitted Encumbrances, to use all the respective material assets reflected in the Combined Carve Out Financial Statements prepared as of 31 March 2018 other than those disposed of or replaced in the ordinary course of business, and such material assets are all of the material assets required to carry on the Business as currently conducted.
- (b) The material assets of the Business are, except for Permitted Encumbrances, in the possession or under the control of the respective Target Companies (save where in the possession or under the control of a third party in the normal course of business).
- (c) All material plant, machinery and equipment used by a Target Company for the Business are in a good state of repair (subject to normal wear and tear) and can be efficiently and properly used for the purposes for which they were acquired or retained other than where the foregoing was not the case, it would not have a material adverse impact on the Business as a whole.
- (d) The material assets of the Target Companies, together with the services and assets to be provided under the Transitional Services Agreement comprise all the material assets and services that are sufficient to operate the Business substantially in the manner in which it was operated in the twelve (12) months prior to the Closing Date.

8. Insurances

The Data Room contains a summary of the insurance agreements in place on the date hereof maintained by or covering each Target Company. All corresponding premiums have been duly paid when due, to the extent required to maintain the insurance coverage under said insurance agreements and said insurance agreements are in full force and effect and, to Seller's Knowledge, no circumstances exist which can be reasonably expected to lead to the insurers avoiding any liability under them. No individual or related claims under the insurance agreements for amounts in excess of one million (1,000,000) EUR are outstanding and to Seller's Knowledge, no circumstances exist which can be reasonably expected to give rise to a claim under any of the insurance agreements.

9. Contractual Matters

- (a) There are no material unremedied breaches by Target Companies of Material Agreements or, to Seller's Knowledge, by the counterparties to the Material Agreements and, to Seller's Knowledge, all Material Agreements are in full force and effect.
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- (b) No Material Agreement contains terms, whereby as a direct result of the entry into and performance of this Agreement or any other Transaction Documents, (x) any other party will be entitled to be relieved of any material obligation or become entitled to exercise any material right (including any termination or pre-emption right or other option) or (y) any Target Company will be in material default.
- (c) During the 12 (twelve) months preceding the date of this Agreement, no major customer or supplier to any Target Company and/or to the Business has given written notice to any Target Company of its intention to take any action that would adversely impact its ongoing commercial relationship with the Target Company which written notice shall not include termination of agreements in the ordinary course of business or at the end of a term of an agreement.

10. Litigation and Investigations

- (a) No Target Company is involved, as a party in any civil, criminal or administrative litigation, arbitration or administrative proceedings or any other dispute resolution process and to Seller's Knowledge, no such proceedings have been threatened in writing by or against a Target Company, where the proceedings (if successful) are likely to result in a Cost, benefit or value to the Business of ten million (10,000,000) EUR or more (" **Material Litigation** "). To Seller's Knowledge, there is no matter, event or circumstance which can reasonably be expected to give rise to any Material Litigation.
- (b) No Target Company has received written notice in the two (2) years prior to the date of this Agreement or is to, Seller's Knowledge, otherwise aware of any current or pending material investigation by a Governmental Entity concerning any Target Company or any person for whom it would be liable.

11. Insolvency

- (a) Neither Seller, nor Local Seller or any Target Company or Controlled JVCo is insolvent or bankrupt under the laws of its respective jurisdiction of incorporation, unable to pay its debts as they fall due or has proposed or entered into any arrangement (whether by court process or otherwise) with their creditors or any class of its creditors.
 - (b) Neither Seller, nor Local Seller or any Target Company or Controlled JVCo has received any written notice concerning or is otherwise aware of the appointment of an administrator or a receiver (including any administrative receiver or the equivalent to a receiver or administrative receiver in the relevant jurisdiction) in respect of the whole or any material part of the property, assets and/or undertakings of the Business.
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- (c) No order has been made and no resolution has been passed for the winding-up of Seller, any Local Seller or any Target Company or Controlled JVCo and, to Seller's Knowledge, no petition has been presented for that purpose.

12. IP/IT/Data Protection

- (a) The Target Companies own or have licensed to them or may legally use all material Intellectual Property Rights necessary to carry on the Business as currently carried on (" **Business Intellectual Property** "). The licences of Intellectual Property Rights granted to, or by, any Target Company are (other than licenses to rights in computer software which are not material to the Business) Disclosed in the Data Room. To Seller's Knowledge, the Business Intellectual Property has not been and is not being violated by any third party.
- (b) To Seller's Knowledge, there is no actual, pending or threatened action or proceeding or other dispute resolution process regarding the validity, subsistence or enforceability of the Business Intellectual Property that is material to the Business.
- (c) To Seller's Knowledge, in the two (2) years prior to the date of this Agreement, Target Companies have not violated and do not violate third parties' Intellectual Property Rights by the production, marketing, sale or distribution of their current products or by any other actions in the conduct of the Business as currently carried on.
- (d) All licences (other than off-the-shelf licenses) and leases relating to the material IT Systems being available to the Business after Closing have been Disclosed in the Data Room, unless such IT Systems are only licensed or leased after the date of this Agreement.

13. Real Estate

- (a) Details in respect of the Properties are contained in the Data Room.
- (b) A Target Company has valid legal title or a right to use each of the Properties and there is no Third Party Right in or over or affecting any of the owned Properties.
- (c) Each Target Company in which title to a Property is vested has performed, observed and/or complied with (as the case may be) all covenants (whether in relation to freehold or leasehold land), conditions, agreements, statutory requirements, planning consents, by-laws, orders and regulations affecting such Property where failure to do so would be material to the Target Company and no written notice of any breach of any of these matters has been received.

14. Environmental Matters

- (a) (i) No Target Company or Controlled JVCo is in material breach of any Environmental Laws relating to the operations carried on at any Property owned or used by any Target Company in relation to the Business, nor is there any pollution or contamination of the
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Environment on, in or migrating from any Property, which is reasonably likely to give rise to material liability of any Target Company, and (ii) there are no material claims or proceedings pending or threatened in writing against any Target Company with respect to any breach of Environmental Laws relating to the Business and/or the Properties.

- (b) Each Target Company has all requisite Environmental Licences necessary to carry on its business as currently carried on (all of which are valid and subsisting) and no Target Company has received written notice that it is materially in default under any Environmental Licence. To Seller's Knowledge, no events have occurred as a result of which any Environmental Licence may be revoked or suspended (in whole or in part) or any material conditions may be imposed on any Target Company.
- (c) No Target Company is engaged in any material litigation, arbitration or administrative proceedings concerning any Environmental Law or Environmental Matter.

15. Employment

- (a) The Disclosure Letter contains an anonymised, true and accurate list of the Employees employed by each Target Company. Such list provides information in respect of material remuneration entitlements such as salary, bonus, profit participation or other variable remuneration elements, and stock options, stock appreciation rights or similar rights, as well as pensions and the country or territory in which they usually work. Except as set out in such list, no obligations of the Target Companies exist to increase and/or amend any Employee's salary, benefits, bonus payment or other remuneration by more than 5% per annum.
 - (b) The Disclosure Letter contains copies of the contracts of employment as well as any material amendment agreements or side letters to those contracts of employment, if any for all Key Employees.
 - (c) Neither the Target Companies nor, to Seller's Knowledge, the Key Employees are in material breach of the contracts referred to in paragraph 1.15(b) of this Schedule 7 and all Target Companies have, in all material respects, on the due date and in compliance with applicable law, paid any sums which have become due and payable in respect of Employees, including in relation to their pension and benefit arrangements.
 - (d) The Data Room contains template copies of the standard terms and conditions of employment typically applicable to Employees of the relevant Target Companies. The principal terms and conditions of the contracts of employment of the Employees do not materially deviate from said standard terms and conditions contained in the Data Room.
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- (e) No Key Employee has given or received notice of termination of his/her employment or has entered into a termination agreement with any of the Target Companies.
 - (f) No offer of employment has been made by a relevant Target Company to an individual who would be entitled to a fixed salary of greater than one hundred and fifty thousand (150,000) EUR if such offer were accepted, which has not yet been accepted or which has been accepted but where the employment has not yet started.
 - (g) No Key Employee is entitled to any bonus payments by any of the Target Companies as a result of the consummation of this Agreement, and no Key Employee has received an offer of employment or offer to otherwise enter into a contract for their services from any member of Seller's Group, Seller's Representatives or Representatives of any member of Seller's Group (for as long as it is a member of Seller's Group).
 - (h) The Data Room contains a complete list of all deferred and variable remuneration schemes in which the Employees participate as at the date of this Agreement.
 - (i) The Data Room contains complete copies of all material collective agreements (other than those entered into by the relevant employer's association or binding on any Target Company by operation of law) with trade unions, worker's councils or similar organisations or bodies of employee representatives to which any relevant Target Company is bound, which provide for material payment obligations of a Target Company or impose any restriction as to the future closure of plants or other restructurings affecting the workforce, in particular, there are no reconciliation of interest agreements or social plans beyond what is in the Data Room.
 - (j) No Target Company is experiencing (i) any strike or lockout of its employees or (ii) any dispute with any union, workers' council or other body of employee representatives pending before any court, Governmental Entity or arbitrator which relates to an alleged material breach of any of the agreements described in paragraph 1.15(i) or to any labour relations or employment matters of a general and significant nature (including mass lay-offs or unfair labour practices).
 - (k) No Target Company is bound by any pension or retirement plan or commitment which obligates it to pay any pension or retirement (including early retirement) benefit to any of its current or former employees (other than any defined contribution plans and employer's contributions to statutory pension schemes), except for the pension or retirement plans or commitments copies of which are contained in the Data Room. All such applicable pension plans currently materially comply with their governing documents and have been duly funded as far as necessary under applicable law.
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16. Finders' Fee

No Target Company has any obligation or liability to pay any fee or commission to any broker, finder or agent with respect to this Agreement and the consummation of the transactions contemplated hereby.

17. Tax Warranties

- (a) The information provided in the Tax Fact Book is true and accurate in all material respects and is not misleading in any material respect and, with regard to contingency reserves, audits and examinations, is still true and accurate as of the Financial Closing Date.
 - (b) All Tax Returns required to have been filed by each Target Company have been filed on time. Such Tax Returns are true and accurate in all material respects.
 - (c) All Taxes which are or have been due and owing by each Target Company (whether or not shown on any Tax Return) have been paid on time.
 - (d) The Combined Carve Out Financial Statements contain any provision, reserve or allowance in respect of Tax required by all relevant laws and US-GAAP to have been contained therein and present fairly, in all material respects, the Tax position of the Target Companies as of the date to which they relate. If all relevant facts now known to Seller, Target Companies and/or their auditors had been known by Target Companies and their auditors when the Combined Carve Out Financial Statements were prepared, any provision, reserve or allowance in respect of Tax that would have been shown in the Combined Carve Out Financial Statements in those circumstances would have been the same as the provision, reserve or allowance which was in fact shown therein.
 - (a) Each Target Company is and has at all times been resident for Tax purposes in its place of incorporation and is not and has not at any time been treated as resident in any other jurisdiction for any Tax purposes. No Target Company is subject to Tax in any jurisdiction other than its place of incorporation other than Disclosed by Seller in the Tax Fact Book.
 - (b) No Target Company is involved in any current dispute or action with a Tax Authority or is or has in the last five years been the subject of any investigation, enquiry, audit or non-routine visit by any Tax Authority other than Disclosed by Seller in the Tax Fact Book. Seller is not aware that in relation to any of the Target Companies an investigation, enquiry, audit or non-routine visit by any Tax Authority is planned.
 - (c) No Tax Authority has operated or agreed to operate any special arrangements (being an arrangement which is not based on relevant legislation or any published practice) in relation to any Target Company's Tax affairs.
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- (d) There are no encumbrances for Taxes upon the assets of any Target Company.
- (e) No Target Company is a party to, or bound by, any Tax indemnity, Tax sharing or Tax allocation agreement other than as described in the Tax Fact Book.
- (f) No Target Company is a party to any joint venture, partnership or other arrangement or contract that could be treated as a partnership for federal income Tax purposes other than as described in the Tax Fact Book.

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schedule 8 - remedies and limitations

1. General Remedy

- (a) Subject to paragraph (b) below, the only remedy of Purchaser in respect of a Claim shall be damages for breach of contract and in respect of a Warranty Claim shall be damages for breach of the Warranties.
- (b) Purchaser shall not be prohibited from seeking specific performance or other similar equitable relief in respect of the obligations contained in clause 2.1 of this Agreement if: (i) the Business Combination has completed; and (ii) Purchaser is ready and able to perform its obligations pursuant to clause 10 of this Agreement.

2. Specific Limitations

Neither Purchaser nor any other member of Purchaser Group shall be entitled to claim for any:

- (a) punitive, special, exemplary, incidental, indirect or consequential losses or damages;
 - (b) loss of goodwill or possible business after Closing, whether actual or prospective;
 - (c) pure economic loss;
 - (d) penalties, charges or interest arising directly or indirectly from any act, transaction or omission of Purchaser or any other member of Purchaser Group after Closing; and
 - (e) legal or other professional fees, costs and expenses unless reasonably and properly incurred and evidenced, provided that this paragraph (e) shall not apply in respect of any claim made by Purchaser pursuant to clause 12 (*Seller's Indemnities*) or clause 13.1 (*Taxes*) of this Agreement.
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Any Claims shall be calculated on a *pro rata* -basis which reflects, as the case may be on a look through basis, the percentage of the direct or indirect ownership in the respective Target Company or JVCo as it is acquired by Purchaser under this Agreement.

3. Knowledge

Seller shall not be liable in respect of any Warranty Claim if and to the extent that the fact, matter, event or circumstance giving rise to such Warranty Claim:

- (a) has been fairly disclosed to Purchaser or any of Purchaser's Representatives in the Disclosure Letter or any document or other information in the Data Room on or before the date of this Agreement in sufficient detail to enable a reasonable purchaser to identify and make a reasonably informed assessment of the nature of the fact, matter or circumstance so disclosed (" **Disclosed** "); or
- (b) is within the actual knowledge of the following specified Purchaser's Representatives at the date hereof (" **Known** "): Scott Kallman, Steve Foster, Stephen Stroud, John Molnar and Ron Wettig.

4. Reserves in Accounts

Seller shall not be liable for any Claim to the extent that the fact, matter, event or circumstance giving rise to the Claim is reflected in, provided for, reserved for or accrued in the Combined Carve Out Financial Statements or is provided for, reserved for, accrued for or otherwise property taken into account in the Closing Statement or any Adjustment Payments.

5. Recovery

Seller shall not be liable in respect of any Claim to the extent that the amount of such Claim is recoverable, directly or indirectly, by Purchaser under a policy of insurance in force for the benefit of Purchaser, other members of Purchaser Group or any Target Company or JVCo, provided that for the purposes of enabling Purchaser to establish whether a relevant Claim is recoverable, the time limitations in paragraph 14 of this Schedule 8, will be suspended for a period not to exceed eighteen (18) months in respect of the relevant Claim in order to determine the recoverability of the relevant Claim.

6. Legislative Changes

Seller shall not be liable in respect of any Claim if and to the extent such Claim arises or is increased as a result of a change in law or any change in interpretation of law on the basis of case law, regulation, directive, requirement or any change or changes to any published administrative practice of any government, governmental department, agency or regulatory body (whether relating to rates or imposition of Tax or otherwise) made after the date hereof irrespective of whether any of the aforementioned changes were formally announced prior to or at the date hereof or not.

7. No Double Recovery

If and whenever a specific loss gives rise to more than one Claim (or to a Claim and a Tax Claim), Purchaser shall not be entitled to recover damages or obtain payment, reimbursement, restitution or indemnity in respect of the same specific loss to the extent already recovered or received by Purchaser.

8. Accounting, and Business Changes

Seller shall not be liable in respect of any Claim if and to the extent such Claim arises or is increased as a result of:

- (a) any change after Closing of the date to which any Target Company or JVCo prepares its accounts or in the bases, methods, principles or policies or accounting of any Target Company or JVCo other than a change which is required because such bases, methods, principles or policies of accounting as at the date of Closing are materially not in accordance with applicable law or any published accounting practice or principle then current; or
- (b) a cessation, or any change in the nature or conduct, of any trade carried on by any Target Company or JVCo at Closing, being a cessation or change occurring on or after Closing.

9. Contingent Liabilities

If any Warranty Claim is based upon a liability which is contingent only, Seller shall not be liable to make any payment unless such contingent liability ceases to be contingent and becomes an actual obligation to make a payment within six (6) months of the relevant time periods set out in paragraph 14 of this Schedule 8 and Purchaser, within those six (6) months, notifies Seller that such Warranty Claim has ceased to be contingent. If legal proceedings have not been validly served upon the respective defendant within six (6) months of the date on which Purchaser notified Seller that the Warranty Claim ceased to be contingent, the Warranty Claim shall be deemed withdrawn and shall become fully barred and unenforceable.

10. Cure of Breach

If a breach of a Warranty is capable of remedy by Seller, Purchaser shall only be entitled to monetary compensation in respect of such breach if it gives Seller written notice of the breach and the breach is not remedied by Seller within ten (10) Business Days after the date on which such notice is served on Seller. Without prejudice to its duty to mitigate any loss, Purchaser shall (or shall procure that any relevant member of Purchaser Group shall) provide all reasonable assistance to Seller at Seller's Cost to remedy any such breach.

11. Mitigation

Seller shall not be liable for any Claim to the extent that it would not have arisen but for, or has been increased as a result of any voluntary act, omission or transaction carried out by Purchaser on or before Closing or by any member of Seller's Group or any Target Company or JVCo at the direction, with the consent of, or at the request of Purchaser or any other member of Purchaser Group, or any act, omission or transaction of Purchaser or any other member of Purchaser Group after Closing, in each case, where Purchaser was aware or ought reasonably to have been aware that such direction or request may cause Seller to be liable.

Nothing in this Agreement shall be deemed to relieve Purchaser from any common law duty to mitigate any loss or damage incurred by it as a result of any Warranty being untrue or inaccurate.

12. Thresholds

Seller shall not be liable for any Warranty Claim and/or Tax Claim (as applicable):

- (a) unless the amount of the liability pursuant to that Warranty Claim exceeds an amount of one million (1,000,000) EUR (provided that all Warranty Claims arising from a series of connected acts, transactions or events or arising from or relating to any extent to the same or similar facts or circumstances shall be deemed to be aggregated and taken together and, so aggregated and taken together, shall be treated as a single Warranty Claim, solely for the purposes of this sub-paragraph 12(a));
 - (b) unless the amount of the liability pursuant to that Tax Claim exceeds an amount of fifty thousand (50,000) EUR (provided that all Tax Claims arising from a series of connected acts, transactions or events or arising from or relating to any extent to the same or similar facts or circumstances shall be deemed to be aggregated and taken together and, so
-

aggregated and taken together, shall be treated as a single Tax Claim, solely for the purposes of this sub-paragraph 12(b)); and

- (c) unless and to the extent the aggregate amount of the liability of Seller for all Warranty Claims not excluded by sub-paragraphs (a) and (b) exceeds thirty million (30,000,000) EUR (in which case Purchaser shall be entitled to claim only the amount in excess of ten million (10,000,000) EUR).

This paragraph 12 of this Schedule 8 shall not apply to any Fundamental Warranty Claims.

13. Maximum Liability

- (a) The aggregate amount of the liability of Seller for all Warranty Claims (other than Fundamental Warranty Claims) shall not exceed an amount equal to 20% of the Final Purchase Price.
- (b) Without prejudice to sub-paragraph 13(a) above, the aggregate amount of the liability of Seller for all Claims and Tax Claims (other than Tax Claims pursuant to clause 13.1(b)) under or in connection with this Agreement (including Fundamental Warranty Claims shall not exceed the Final Purchase Price (including any amounts paid by Seller to Purchaser for any other Claims or Tax Claims other than Tax Claims pursuant to clause 13.1(b) under this Agreement).
- (c) Any amounts paid by Seller pursuant to a Claim or Tax Claim and subsequently paid or repaid to, or set off or otherwise applied or taken into account for the benefit of, Seller pursuant to clause 13.3 (*Tax Refunds*), clause 13.4 (*Overprovisions*), clause 13.5 (*Tax Covenant of Purchaser: Reverse Tax Indemnification*) or paragraph 18 of this Schedule (*Recovery from Third Parties*) shall be disregarded to the extent of such payment, repayment, set-off, application or benefit for the purposes of paragraph 13(b).

14. Time Limitations

Seller shall not be liable for any Warranty Claim unless Seller receives from Purchaser written notice as soon as reasonably practicable after Purchaser (or any member of Purchaser Group) becomes aware of any matter which gives rise to a Warranty Claim, such notice providing details known at the time of the relevant facts of the Warranty Claim and Purchaser's estimate (on a without prejudice basis) of the amount of the Warranty Claim, within:

- (a) two (2) years of the Closing Date, in respect of Warranty Claims (other than Fundamental Warranty Claims, Environmental Warranty Claims and Tax Warranty Claims); and
-

- (b) three (3) years of the Closing Date, in respect of Fundamental Warranty Claims;
- (c) five (5) years of the Closing Date, in respect of Environmental Warranty Claims; and
- (d) seven (7) years of the Closing Date, in respect of Tax Warranty Claims.

Any Claim shall (if it has not been previously satisfied, settled or withdrawn) be deemed to have been withdrawn and shall become fully barred and unenforceable unless legal proceedings have been validly served upon the respective defendant within six (6) months of the date on which notice of the Claim has been given by Purchaser to Seller in accordance with this paragraph 14.

15. Exchange Rate

For the purposes of applying a reference to a monetary threshold expressed in EUR with respect to a Claim or claim of Seller under clause 13 an amount in a different currency shall be deemed to be an amount in EUR translated at the date before the day of receipt of the relevant notice by Seller or Purchaser (as the case may be).

16. Adjustment of Purchase Price

Any payments to be made by Seller under this Agreement with respect to Warranty Claims or Tax Claims shall be considered, to the extent possible, an adjustment to the Final Purchase Price and shall be made on the basis set out in clause 6. For the avoidance of doubt, nothing in this paragraph 16 shall be treated as limiting the amount of any Claim or Tax Claim.

17. Third Party Claims

1. If a Warranty Claim arises as a result of, or in connection with, a liability or alleged liability of a Target Company to a third party (a " **Third Party Claim** "), then Seller may, at any time before any final compromise, agreement, expert determination or non-appealable decision of a court or tribunal of competent jurisdiction is made in respect of the Third Party Claim or the Third Party Claim is otherwise disposed of, give notice to Purchaser that Seller elects to assume the conduct of any dispute, compromise, defence or appeal or the Third Party Claim and of any incidental negotiations on the following terms:

- (a) Seller shall indemnify Purchaser and all Designated Purchasers and each relevant Target Company against all Costs and liabilities which they may incur in taking any such action as Seller may request pursuant to subparagraphs (b) and (c) below;
 - (b) subject to the requirement to maintain privilege, Purchaser shall procure that each relevant Target Company makes available to Seller such persons during Working Hours
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and all such information as Seller may reasonably request for assessing, contesting, disputing, defending, appealing or compromising the Third Party Claim;

- (c) Purchaser shall procure that each relevant Target Company takes such action to assess, contest, dispute, defend, appeal or compromise the Third Party Claim as Seller may request and does not make any admission of liability, agreement, settlement or compromise in relation to the Third Party Claim without the prior written approval of Seller, such approval not to be unreasonably withheld or delayed; and
- (d) Seller shall keep Purchaser informed of the progress of the Third Party Claim and provide Purchaser with copies of all relevant documents and such other information in its possession as may be requested by Purchaser (acting reasonably).

Neither Purchaser nor any member of Purchaser Group shall be required to take any action (or cease to take any action) under this clause 17.1 where Purchaser reasonably considers that taking any such action (or ceasing to take any such action) may directly have a material adverse effect on the business of Purchaser or other members of Purchaser Group.

2. If a Warranty Claim arises as a result of, or in connection with a Third Party Claim, Purchaser shall, until the earlier of such time as Seller shall give any notice as contemplated by paragraph 17.1 and such time as any final compromise, agreement, expert determination or non-appealable decision of a court or tribunal of competent jurisdiction is made in respect of the Third Party Claim or the Third Party Claim is otherwise finally disposed of:
 - (a) procure that each relevant Target Company consults with Seller, and takes account of the requirements of Seller, in relation to the conduct of any dispute, defence, compromise or appeal or the Third Party Claim;
 - (b) subject to the requirement to maintain privilege, keep, or procure that each relevant Target Company keeps, Seller promptly informed of the progress of the Third Party Claim and provide, or procure that each relevant Target Company provides Seller with copies of all relevant documents and such other information in Purchaser's or Target Company's possession as may be requested by Seller (acting reasonably); and
 - (c) procure that no relevant Target Company shall cease to defend the Third Party Claim or make any admission of liability, agreement or compromise in relation to the Third Party Claim without the prior written consent of Seller not to be unreasonably withheld or delayed.
 3. Nothing in this paragraph 17 shall require the provision by any person of any information to the extent such provision would contravene any applicable law or regulation or would breach any duty of
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confidentiality owed to any third party. If any information is provided by any person (the "**Provider**") to any other person (the "**Recipient**") pursuant to this paragraph 17:

- (a) that information shall only be used by the Recipient in connection with the Third Party Claim and clause 21.2 shall in all other respects apply to that information; and
- (b) to the extent that information is privileged:
 - (i) no privilege shall be waived by reason of or as a result of its being provided to the Recipient; and
 - (ii) if a third party requests disclosure by the Recipient in relation to that information, if the Recipient is Seller or Purchaser, the Recipient shall or, if the Recipient is a Target Company, Purchaser shall procure that the Recipient shall promptly notify the Provider and, to the extent it can do so, itself assert privilege in opposition to that disclosure request.

18. Recovery from third parties

If:

- (a) Seller makes a payment in respect of a Claim or a Tax Claim (the "**Damages Payment**");
- (b) at any time after the making of such payment any Target Company or Purchaser received any sum other than from Seller or any Tax Authority which would not have been received but for the matter or circumstances giving rise to that Claim or Tax Claim (the "**Third Party Sum**");
- (c) the receipt of the Third Party Sum was not taken into account in calculating the Damages Payment; and
- (d) the aggregate of the Third Party Sum and the Damages Payment (in both cases, less any Costs reasonably incurred by any member of Purchaser Group in recovering the same, to the extent not reimbursed by Seller, and any Tax suffered by any member of Purchaser Group in respect of the recovery of the same) exceeds the amount required to compensate Purchaser in full for the loss or liability which gave rise to the Claim or Tax Claim in question (such excess being the "**Excess Recovery**")

Purchaser shall, promptly following receipt of the Third Party Sum by it or the relevant Target Company, repay to Seller an amount equal to the lower of (i) the Excess Recovery and (ii) the Damages Payment.

Signed for and on behalf of)
PRAXAIR, INC.) /s/ Stephen F. Angel
)

By: Stephen F. Angel Authorised Signatory

Title: Chairman, CEO & President

Signed for and on behalf of)
TAIYO NIPPON)
SANSO CORPORATION) /s/ Yujiro Ichihara
)

By: Yujiro Ichihara Authorised Signatory

Title: President CEO

Signed for and on behalf of)
LINDE PLC) /s/ C.J. Cossins
)

By: C.J. Cossins Authorised Signatory

Title: Director

Americas
sale and purchase agreement
16 JULY 2018

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Sale and Purchase Agreement

between

1. **Linde Aktiengesellschaft** , a stock corporation (*Aktiengesellschaft*) organised under the laws of the Federal Republic of Germany, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Munich, Germany under registration number HRB 169850, having its registered address (*Geschäftsanschrift*) at Klosterhofstraße 1, 80331 Munich, Germany,

- herein " **Linde** " -
 2. **Praxair, Inc.** , a corporation organised under the laws of Delaware, USA, having its registered address at 10 Riverview Drive, Danbury, Connecticut, CT06810, United States of America,

- herein " **Praxair** " and together with Linde " **Sellers** " -
 3. **MG Industries GmbH** , a private limited liability company (*Gesellschaft mit beschränkter Haftung*) organised under the laws of the Federal Republic of Germany, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Frankfurt am Main, Germany under registration number HRB 111628, having its registered address at Messer-Platz 1, 65812 Bad Soden am Taunus, Germany,

- herein " **Purchaser** " -
 4. **Messer Canada Inc.** , a corporation organised under the laws of Canada, registered with the register of Corporations Canada under registration number 1083715-6 having its registered address at 199 Bay Street, Suite 5300, Commerce Court West, Toronto, Ontario M5L 1B9, Canada,

- herein " **Canadian Local Purchaser** " -
 5. **MG Industries USA, Inc.** , a company organised under the laws of Delaware, with registration number 6964345 and registered address at 251 Little Falls Drive, Wilmington, New Castle, Delaware 19808, United States of America,
-

- herein " **American Local Purchaser** " -

(the Canadian Local Purchaser and the American Local Purchaser herein collectively the " **Local Purchasers** ")

and

6. **Linde Public Limited Company** , a public limited company organised under the laws of Ireland, having its business address at The Priestley Centre, 10 Priestley Road, The Surrey Research Park, Guildford, Surrey GU2 7XY, United Kingdom, - herein " **PLC** " -

(each of Linde, Praxair, Purchaser, the Local Purchasers and PLC herein also referred to individually as a " **Party** " and collectively as " **Parties** ")

RECITALS

- (A) **Whereas** , *inter alia*, Linde, Praxair and PLC have entered into a business combination agreement as of 1 June 2017, as amended, to effect a strategic combination of the businesses of Linde and Praxair (" **BCA** " and the transactions contemplated by the BCA the " **Business Combination** ").
- (B) **WHEREAS** , in connection with the Business Combination, Linde wishes to procure the sale and transfer of the Linde DivestCos from Linde Sellers to Purchaser, Praxair wishes to procure the sale and transfer of the Praxair DivestCo from Praxair Sellers to Purchaser or, as the case may be, the relevant Local Purchaser, and Purchaser or, as the case may be, the relevant Local Purchaser, wishes to acquire, directly or indirectly, the DivestCos from the Local Sellers in each case in accordance with the terms and conditions of this sale and purchase agreement (" **Agreement** "). The transactions contemplated by this Agreement and the Transaction Documents, but excluding the Carve Out, are referred to as the " **Transaction** " .
- (C) **WHEREAS** , PLC is willing to guarantee as of the completion of the BCA the performance of any obligations which Linde, Praxair or any of their Affiliates have under this Agreement or the Transaction Documents.

NOW, THEREFORE, the Parties agree as follows:

1. **Definitions, Interpretation**

1. Definitions

In this Agreement, the following terms shall have the meaning ascribed to them in this clause 1.1. Where there is any inconsistency between the definitions set out in this clause 1.1 and the definitions set out in any other clause or Schedule, then, for the purposes of construing such other clause or Schedule, the definitions set out in such other clause shall prevail.

Acceptable Bank means a bank or financial institution (headquartered in the European Union, the United Kingdom, the United States or Switzerland) which has a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa2 or higher by Moody's Investors Service Limited or a rating for its short term unsecured and non credit-enhanced debt obligations of A-2 or higher by Standard & Poor's Rating Services or F-3 or higher by Fitch Ratings Ltd or P-3 or higher by Moody's Investors Service Limited, or in each case a comparable rating from an internationally recognised credit rating agency;

Accounting Firm has the meaning given in Schedule 4;

Accounts Relief means a Relief which has been taken into account in calculating Working Capital in the Closing Statement;

Adjustment Payment(s) has the meaning given in clause 6.3;

Affiliate means, in respect of any person, any other person directly or indirectly having Control over, or being under the Control of, or being under common Control with the first person;

Agreed Form means, in relation to a document, the form of that document as initialled on or prior to the date of this Agreement for the purpose of identification by or on behalf of Sellers and Purchaser (in each case with such amendments as may be agreed in writing by or on behalf of Sellers and Purchaser);

Agreement has the meaning given in Recital (B);

Anti-Corruption Laws means applicable laws which prohibit the corrupt making of any offer, any payment or gift, any promise to pay or give, or any authorisation of the payment of any money or giving of anything of value to any official of any Governmental Entity or healthcare professional

made for the purposes of (i) influencing any act or decision of such person in his official or professional capacity, (ii) inducing such person to do or omit to do any act in violation of the lawful or professional duty of such person, or (iii) securing any improper advantage, in each case, to assist the Target Companies in obtaining or retaining business for or with, or directing business to, any person;

Appointment Date has the meaning given in Schedule 4;

Attributed Entity has the meaning given in clause 12.13(c);

Auditors means the auditors for the time being of the relevant Target Company;

BCA has the meaning given in Recital (A);

BCA Clearance Condition has the meaning given in clause 8.1(b);

BCA Commitments has the meaning given in clause 8.2(a);

Bonus Employees has the meaning given in clause 16.4;

Business Combination has the meaning given in Recital (A);

Business Day means a day, other than a Saturday or Sunday or public holiday in London, United Kingdom, New York, NY, USA, or Frankfurt am Main, Germany, on which banks are open in London, United Kingdom, New York, NY, USA, and Frankfurt am Main, Germany, for general commercial business;

Business means the Linde DivestCo Business and the Praxair DivestCo Business;

Business Intellectual Property has the meaning given in Schedule 7;

Canada Cash Amount has the meaning given in clause 5.9;

Canada Cash Extraction has the meaning given in clause 5.9(b);

Canadian Local Purchaser has the meaning given at the beginning of this Agreement;

Capital Gains Or Royalty WHT has the meaning given in clause 6.5(b);

Capital Gains WHT has the meaning given in clause 6.5(c);

Carve Out has the meaning given in clause 2.1;

Carve Out Agreements means the Master Carve Out and Asset Exchange Agreement, the Carve Out Agreement, the Reverse Carve Out Agreement and the EMA executed or in Agreed Form (as the case may be) as well as other agreements in relation to the separation of the Target Companies from the respective Seller's Group entered into with the consent of Purchaser (such consent not to be unreasonably withheld or delayed), relating to the Business, a portion thereof or a business operated by any of the DivestCos which is not part of the Business;

Carve Out Assets has the meaning given in the Master Carve Out and Asset Exchange Agreement;

Carve Out Business has the meaning given in Schedule 13;

Carve Out Deemed Contribution Allocation Schedule has the meaning given in clause 12.10(b);

Carve Out Purchase Price means the consideration paid by Linde LLC for the Carve Out Assets which it purchases from Linde Gas North America LLC in accordance with the Master Carve Out and Asset Exchange Agreement;

Carve-Out Purchase Price Allocation Schedule has the meaning given in clause 12.10(b);

Carve Out Steps has the meaning given in clause 2.1;

Carve Out Tax has the meaning given in clause 12.1(c);

Cash means, in relation to each Target Company, the aggregate of its cash position, all as identified by the line items so named in Schedule 2;

Cash Excess Amount has the meaning given in clause 15.5(a);

Chilean Spin-Off has the meaning given in clause 12.1(c);

Claim means any claim by Purchaser under or in connection with this Agreement, excluding a Tax Claim;

Claim Insurance Policy has the meaning given in Schedule 14;

Closing means closing of the sale and purchase of the DivestCo Shares, potentially excluding those of the Colombian Entities in accordance with the provisions of this Agreement;

Closing Actions means the obligations of Sellers and Purchaser pursuant to clause 9.3;

Closing Business Day means a day, other than a Saturday or Sunday or public holiday in London, United Kingdom, New York, NY, USA, Luxembourg, Luxembourg, Saint Helier, Jersey, or Frankfurt am Main and Munich, Germany, on which banks are open in London, United Kingdom, New York, NY, USA, Luxembourg, Luxembourg, Saint Helier, Jersey, and Frankfurt am Main and Munich, Germany, for general commercial business;

Closing Conditions has the meaning given in clause 8.1;

Closing Date has the meaning given in clause 9.1;

Closing Statement has the meaning given in clause 6.1;

Colombian Entities means Linde Colombia S.A., Linde Energy Services S.A.S. E.S.P. and Remeo Medical Services S.A.S. and **Colombian Entity** means any of them;

Colombian Transfer Date has the meaning given in clause 9.5(b)(ii);

Combined Carve Out Financial Statements means, in relation to (i) the Linde DivestCo Business, the carve out combined financial statements (balance sheet, p&l, comprehensive income cash flow statement and notes) as of and for the years-ended 31 December 2016 and 31 December 2017, which have been audited by KPMG and (ii) the Praxair DivestCo Business, the carve out financial statements (balance sheet, p&l, comprehensive income, cash flow statement and notes) as of and for the years-ended 31 December 2016 and 31 December 2017, which have been audited by PricewaterhouseCoopers;

Confidentiality Agreements has the meaning given in clause 21.2(a);

Consent and Waiver Declarations has the meaning given in clause 3.5;

Control means, in respect of another person, if a controlling person (a) owns, directly or indirectly, more than 50% of the share capital of the person, or (b) has the power to cast or control more than 50% of the maximum number of votes that may be cast at a general meeting of the person, or (c) otherwise possesses, directly or indirectly, the power to determine the composition of the majority of, or the outcome of decisions on financial or operating policies by, the board of directors or any other governing authority of the controlled person, and the terms "**Controlling**" and "**Controlled**" shall be construed accordingly;

Costs means charges, costs (including reasonable legal costs) and expenses, in each case of any nature whatsoever;

Credit Partners Group means CVC Credit Partners Group Holding Foundation and each of its subsidiaries from time to time and any funds or entities managed or advised by them from time to time;

CVC Advisory Group means CVC Capital Partners Advisory Group Holding Foundation and each of its subsidiaries from time to time;

CVC Funds mean investment funds or vehicles advised by CVC Advisers (Deutschland) GmbH and Affiliates of CVC Advisers (Deutschland) GmbH;

CVC Network means all persons forming part of the CVC Advisory Group, the CVC Funds, the CVC Investment and Management Group and the CVC Portfolio Companies but excluding the Purchaser and members of the Purchaser German TopCo Group;

CVC Investment and Management Group means CVC Capital Partners SICAV-FIS S.A. and each of its subsidiaries from time to time;

CVC Persons mean the CVC Advisory Group, the CVC Investment and Management Group and the CVC Funds;

CVC Portfolio Companies mean any portfolio company directly or indirectly invested in by the CVC Funds;

Damages Payment has the meaning given in Schedule 8;

Data Room means the following folders (i) in the electronic file room named "Planet": "Brazil green", "Brazil red", "Canada green", "Canada red", "Colombia green", "Colombia red", "USA green", "USA red", "Purple", "Purple Red", "Transaction Documents", such electronic file rooms hosted by the provider Merrill Corporation as at Friday, 13 July 2018 24:00h CET, comprising the documents and other information made available by Sellers to Purchaser, the content of which is recorded on two identical USB flash drives prepared by Merrill Corporation and is listed in the data room index attached to the Disclosure Letter, provided, however, that any information contained in subfolder "Purple Red - 10 Information provided to other parties" shall not be considered "Disclosed" or "Known" and not form part of the defined term "Data Room" and (ii) in the electronic file room named "Planet VDR": "Chile", such electronic file rooms hosted by the provider Merrill Corporation

as at Thursday, 12 July 2018 13:38h EDT, comprising the documents and other information made available by Sellers to Purchaser, the content of which is recorded on identical USB flash drives prepared by Merrill Corporation and is listed in the data room index attached to the Disclosure Letter;

Debt Commitment Letter has the meaning given in clause 17;

Deemed Tax Liability has the meaning given in this clause 1.1;

Deferred Closing has the meaning given in clause 9.5(b);

Disclosed has the meaning given in Schedule 8;

Disclosure Letter means the letter from Sellers to Purchaser executed and delivered immediately before the execution of this Agreement;

DivestCo Shares has the meaning given in clause 3.2;

DivestCo Subsidiaries has the meaning given in Schedule 1;

DivestCos has the meaning given in Schedule 1;

EMA has the meaning given in clause 2.2;

Employees means persons employed by the relevant Target Companies under a contract of employment or a management contract (e.g. board members or managing directors) on the date hereof together with those that join the Target Companies after the date hereof but prior to the Financial Closing Date, but excluding those that have ceased to be employed by any Target Company prior to the Closing Date;

Enterprise Purchase Price has the meaning given in clause 4.1;

Environment means all or any of the following: air, water, soil, soil gas, groundwater, land, biota, any ecological systems or components thereof, buildings and installations, and human health and safety;

Environmental Laws means all international, European Union, national, state, federal, regional or local laws (including common law, statute law, civil and criminal law) which are in force and binding as of the date hereof and relating to Environmental Matters;

Environmental Licence means any permit, licence, authorisation, consent, exemption or other approval required in relation to any of the Properties or any of the DivestCos by any Environmental Law;

Environmental Matters means all matters relating to the pollution or protection of the Environment;

Environmental Warranties means the Warranties contained in paragraphs 1.14(a) to 1.14(c) of Schedule 7;

Environmental Warranty Claim means any Warranty Claim of Purchaser for breach of the Environmental Warranties;

Equity Commitment Letter has the meaning given in clause 17;

Estimated Capital Gains Or Royalty WHT has the meaning given in clause 6.5(f)(i);

Estimated Closing Statement has the meaning given in clause 6.2;

Exchange Rate means, with respect to a particular currency for a particular day, the rate of exchange for that currency into USD on such date as published by [Reuters](#) in respect of that currency for such date;

Excess Recovery has the meaning given in Schedule 8;

Exclusive Location has the meaning given in clause 22.4(a)(i);

Final Inter-Company Payment Amount has the meaning given in clause 5.4;

Final Purchase Price has the meaning given in clause 4.1;

Financial Closing Date has the meaning given in clause 9.1; provided that references to the Financial Closing Date shall be references to a moment in time not taking into account the economic effects of any Closing Actions;

Financial Debt means in relation to each Target Company the aggregate of its borrowings and non-trading indebtedness position, all as identified by the line items so named in Schedule 2;

FIRPTA Certificate has the meaning given in clause 6.5(c)(i);

FTC means the Federal Trade Commission of the United States of America;

Fundamental Warranty Claim means any Warranty Claim of Purchaser for breach of the Fundamental Warranties;

Fundamental Warranties means the Warranties contained in paragraphs 1.1(a), 1.1(b), 1.1(c), 1.1(d), 1.1(f), 1.1(h), 1.1(i), 1.1(j) and 1.11 of Schedule 7;

Governmental Entity means any supra-national, national, state, municipal or local government (including any subdivision, court, administrative agency or commission or other authority thereof) or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority, including the European Union;

Gross-Up has the meaning given in clause 6.5;

Healthcare Approval has the meaning given in clause 9.5(a);

Helium Contracts means the helium contracts set forth under numbers 1 and 3 to 5 of Schedule 16;

Helium Inventory means the helium inventory reserves held by the Target Companies in the Bureau of Land Management reservoir (as reported by the Bureau of Land Management in the report for the calendar month September 2018);

IFRS means International Financial Reporting Standards (*IFRS*) issued by the International Accounting Standards Board (*IASB*) as adopted by the European Union pursuant to EU Regulation No. 1606/2002 of the European Parliament and the Council on the application of International Accounting Standards in the European Union;

Income, Profits or Gains means any income, profits, gains and any other consideration, value, receipt or measure by reference to which Tax is chargeable or assessed;

Indemnification Due Date has the meaning given in clause 12.2(a)(ii);

Initial Inter-Company Payment Amount has the meaning given in clause 5.5;

Initial Exclusive Location has the meaning given in clause 22.4(a)(i);

Initial Linde LLC Receivable Amount has the meaning given in clause 5.8(b);

Initial Purchase Price has the meaning given in clause 4.2;

Intellectual Property Rights means patents, trademarks, logos, trade names internet domain names, rights in designs, copyrights (including rights in computer software), ancillary copyrights, and use rights in copyrighted works;

Inter-Company Payables means in relation to each Target Company the aggregate of its payables to any member of Sellers' Groups including any accrued and unpaid interest thereon identified by the line items so named in Schedule 2, but excluding Trade Payables;

Inter-Company Receivables means, in relation to each Target Company, the aggregate of its receivables from any member of Sellers' Groups including any accrued and unpaid interest thereon identified by the line items so named in Schedule 2, but excluding Trade Receivables;

Inventory means the aggregate amount of inventory of each Target Company identified by the line items so named in Schedule 2;

IP Agreements means the executed or Agreed Form (as the case may be) intellectual property agreements with Linde and Praxair as licensor on the one hand, respectively, and the American Local Purchaser as licensee on the other hand;

IT Systems means the computer and telecommunication hardware systems, networks, servers, PCs or other peripheral equipment used by the Target Companies;

JVCos has the meaning given in Schedule 1;

Key Employees means an Employee who was grade 13 or above, in the case of Praxair, or band/grade 4 or above, in the case of Linde as at the Closing Date;

Known has the meaning given in Schedule 8;

Leakage means any of the following actions to the extent not remedied:

- (a) the
 - (i) declaration, making or payment of any dividend or distribution by any Target Company (including any payment, act, omission or transaction deemed to be a dividend or distribution under the applicable Tax law);
 - (ii) redemption or purchase of shares or loan stock or return of capital (in each case together with any connected expenses) by any Target Company;
 - (iii) payment of any amount by any Target Company;
 - (iv) transfer of any asset by any Target Company;
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- (v) forgiveness, release or waiver of any liability by any Target Company;
- (vi) incurring, assumption or discharge of any liability by any Target Company;
- (vii) payment or incurrence of any management fee, general service fee or other general charges or bonuses by any Target Company or by any Linde JVCo disproportionately to a Target Company's participation (including directors' fees or monitoring fees);
- (viii) giving by any Target Company of any guarantee, surety, indemnity or Third Party Right (other than Permitted Encumbrances); or
- (ix) surrender, loss, use or setting off of a Tax asset that was taken into account in calculating Working Capital in the Closing Statement,

in each case (i) through (ix) to or for the benefit of any member of the Sellers' Groups or PLC or persons Controlled by PLC (other than a Target Company);

- (b) all amounts payable by the Target Companies in respect of costs or advisor fees in relation to the Transaction, or transaction related bonuses (in each case including related Taxes);
- (c) any agreement or binding arrangement by any member of Sellers' Group or any Target Company to do any of the matters referred to in paragraphs (a) to (b) above; or
- (d) any Tax chargeable on or incurred by a Target Company as a consequence of, or in respect of, any of the matters referred to in paragraphs (a) to (c) (inclusive) above;

in each case (a) through (d) other than

- (A) any trading amounts or service charges incurred, paid or agreed to be paid in the ordinary course of the trading activities of, or the intra-group services of any member of Sellers' Groups to, any of the Target Companies consistent with past practice, by any Target Company to any member of Sellers' Groups or PLC or persons Controlled by PLC;
 - (B) any payments between Target Companies;
 - (C) payments made, or to be made, in accordance with the terms of the Transaction Documents or Carve Out Agreements or any other of the agreements listed in clause 15.6(a) through (j) or agreements or arrangements pursuant to clause 9.5(b)(v) and (vi);
 - (E) actions approved by Purchaser in writing; or
 - (F) amounts for which Purchaser is indemnified or held harmless pursuant to this Agreement.
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For the avoidance of doubt, Leakage shall not include either the settlement of the Inter-Company Payables and Inter-Company Receivables in accordance with this Agreement, or any Closing payments and the release of Third Party Assurances in each case in accordance with this Agreement;

Linde has the meaning given at the beginning of this Agreement;

Linde Canada Investments LLC Dissolution has the meaning given in clause 12.3(a);

Linde DivestCos has the meaning given in Schedule 1;

Linde DivestCo Shares has the meaning given in clause 3.1;

Linde DivestCo Subsidiaries has the meaning given in Schedule 1;

Linde DivestCo Business means the business currently operated by the Linde DivestCos, as reflected in the carve out combined financial statements as of 31 December 2017 which have been audited by KPMG,

which means, with respect to the United States (excluding, for the avoidance of doubt, Puerto Rico and the US Virgin Islands) it shall comprise (i) the business conducted by Linde LLC and Linde Energy Services, Inc. for the production, sale, purification, treatment and/or distribution of (A) atmospheric gases, (B) CO₂, (C) hydrogen, and (D) helium, including the remote operations centre, related plants, rail depots, truck terminals, fuelling stations, transfill stations, tractor trucks, cryo-trailers, gas depots and tanks, cylinders and customer contracts, in each case, operating from the Linde LLC locations identified in Schedule 13 hereto, as well as (ii) the shares held by entities of the Linde Group in East Coast Oxygen Company as well in East Coast Nitrogen Company,

as *supplemented by* the facilities, membership interests and other assets and liabilities to be transferred to Linde LLC, including by Linde Gas North America LLC pursuant to the Master Carve Out and Asset Exchange Agreement, in each case, as identified in the schedules and annexes to such agreements, subject to clause 3.5 in respect of Cliffside Helium, LLC and Cliffside Refiners, L.P.

and as *reduced by* the Retained Atmospheric Gases Business and the Retained CO₂ Business to be transferred by Linde LLC to Linde Gas North America LLC pursuant to the Master Carve Out and Asset Exchange Agreement, including without limitation, the air separation units (ASUs), liquefied natural gas (LNG) facilities, ECOVAR production systems, oil & gas supply

modules (OGSMs) and packaged gas products (PGPs) business identified in the schedules and annexes thereto, and as such business has developed and will develop up to Closing or, with respect to the Colombian Entities, a Deferred Closing, as the case may be, in the ordinary course of business.

For the avoidance of doubt, the definition of Linde DivestCo Business shall not affect the rules set forth in this Agreement relating to Cash, Financial Debt and Working Capital.

The Parties are aware and agree that the changes in the helium perimeter set out in Schedule 16 shall adjust the Business sold under this Agreement but are not reflected in the Combined Carve Out Financial Statements as of 31 December 2017.

Linde DivestCos has the meaning given in Schedule 1;

Linde Group means Linde and persons under its Control from time to time, but excluding the Target Companies and the JVCos;

Linde JVCos has the meaning given in Schedule 1;

Linde LLC Receivable has the meaning given in clause 5.8;

Linde LLC Term Loan has the meaning given in clause 5.8(c)(ii);

Linde Sellers has the meaning given in Schedule 1;

Local Transfer Agreements means the sale and purchase agreements to be entered into by the relevant Local Sellers and Purchaser or the Local Purchasers (as the case may be), to be agreed upon between Sellers and Purchaser acting reasonably before Closing;

Local Purchasers has the meaning given at the beginning of this Agreement;

Local Sellers has the meaning given in Schedule 1;

Long-Stop Date has the meaning given in clause 8.2(a);

Master Carve Out and Asset Exchange Agreement means the master carve-out and asset exchange agreement entered into by Linde Gas North America LLC and Linde LLC relating to the exchange of certain of their respective assets.

Master Defense Agreement has the meaning given in Schedule 14;

Material Agreement means any agreement between any Target Company or JVCo on the one hand and a customer or supplier on the other hand for the provision of products or services by or to any of the Target Companies with annual expenditures or annual revenues in excess of ten million (10,000,000) USD;

Medium Similar Business has the meaning given in clause 8.2(c)(ii);

Messer Group means Messer Group GmbH and its Affiliates, from time to time, excluding the Purchaser, its Subsidiaries and persons affiliated with the Purchaser other than through Messer Group GmbH;

Non-Solicitation Period has the meaning given in clause 22.4;

Non-Surviving Inter-Company Relations has the meaning given in clause 15.6;

Objection Notice has the meaning given in Schedule 4;

Overprovision means the amount by which any liability, provision or reserve for a Tax (generally only for liabilities, provisions or reserves included in a line item described or identified as tax liability, tax provision or tax reserve in Schedule 2, however, in case of payroll tax, irrespective of whether such liability, provision or reserve is included in a line item described or identified as tax liability, tax provision or tax reserve in Schedule 2) which was taken into account in calculating Working Capital in the Closing Statement turns out to be overstated (except to the extent that any overstatement results from the utilisation of a Purchaser's Relief), applying the accounting principles set out in Schedule 4 (and ignoring the effect of any change in law made after the Financial Closing Date);

Party and **Parties** has the meaning given at the beginning of this Agreement;

Perimeter Changes has the meaning given in clause 8.2(a);

Perimeter Change Business has the meaning given in clause 8.2(c)(i);

Perimeter Change Excess Amount has the meaning given in clause 15.5(b);

Perimeter Change Equity Value has the meaning given in clause 8.2(c);

Permitted Actions has the meaning given in clause 15.1(a);



Permitted Encumbrances means any and all encumbrances which are (i) for tax, assessments, or governmental charges or levies not yet due and delinquent, (ii) statutory encumbrances of carriers, warehousemen, mechanics and the like arising in the ordinary course of business, (iii) easements, encroachments and other minor imperfections of title, or (iv) retention of title provisions entered into in the ordinary course of business, or (v) licences to use Intellectual Property Rights, to the extent, in any such case, such encumbrances do not have a material adverse effect on the conduct of the Business;

Perimeter Change Excess Amount I has the meaning given in clause 15.5(b);

Perimeter Change Excess Amount II has the meaning given in clause 15.5(c);

PLC has the meaning given at the beginning of this Agreement;

PLC Guarantee has the meaning given in clause 18.2;

Post-Closing Relief means any Relief that arises to a Target Company:

- (a) in consequence of an event that occurred after the Financial Closing Date, and is not relating to a Tax in respect of Income, Profits or Gains; or
- (b) in respect of, by reference to or in consequence of Income, Profits or Gains earned, accrued or received in a Tax assessment period (including a portion of a Straddle Period) ending after the Financial Closing Date;

Praxair has the meaning given at the beginning of this Agreement;

Praxair DivestCo Business means the business currently operated by the Praxair DivestCo, as reflected in the financial statements for the Praxair DivestCo as of 31 December 2017, which has been audited by PricewaterhouseCoopers, and as such business has developed and will develop up to Closing in the ordinary course of business;

Praxair DivestCo Shares has the meaning given in clause 3.2;

Praxair DivestCo has the meaning given in Schedule 1;

Praxair Group means Praxair and persons under its Control from time to time, but excluding the Target Companies and JVCos;

Praxair Sellers has the meaning given in Schedule 1;

Prepayment Amount means any amount of fees, penalties, prepayment premiums, break costs, close-out amounts, make whole amounts or similar amounts payable in respect of any Financial Debt;

Pre-Financial Closing Date Tax Period means any tax assessment period ending on or before the Financial Closing Date;

Proceedings has the meaning given in clause 11.3;

Product Supply Agreements means the executed or Agreed Form (as the case may be) product supply agreements relating to the Business;

Properties means land and buildings owned or leased or otherwise used by any Target Company which are material to the Business;

Provider has the meaning given in Schedule 8;

Purchaser has the meaning given at the beginning of this Agreement;

Purchaser German TopCo means Platin 1596. GmbH, a limited liability company (*GmbH*) organised under the laws of the Federal Republic of Germany, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Frankfurt am Main, Germany under registration number HRB 111626, the indirect parent of Purchaser.

Purchaser German TopCo Group means Purchaser, Platin 1598. GmbH (commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Frankfurt am Main, Germany under registration number HRB 111801), Platin 1597. GmbH (commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Frankfurt am Main, Germany under registration number HRB 111627) and Purchaser German TopCo and their respective Subsidiaries from time to time, including the Target Companies and JVCos from Closing, together with Messer Group GmbH and its Subsidiaries, from time to time;

Purchaser Group means Purchaser and its respective Subsidiaries from time to time, including the Target Companies and JVCos from Closing, together with Messer Group GmbH and its Subsidiaries, from time to time;

Purchaser Shareholders Group means the Purchaser and its Affiliates from time to time, including the Target Companies and JVCos from Closing, together with Messer Group GmbH, its Affiliates, from time to time, as well as the CVC Network;

Purchaser's Relief means any:

- (a) Accounts Relief;
- (b) Post-Closing Relief; or
- (c) Relief arising to any member of Purchaser German TopCo Group (other than the Target Companies or JVCos) at any time;

Purchaser's Representatives has the meaning given in clause 10.3;

Purchaser's Tax Group means Purchaser and any company in the same Tax Group from time to time;

Purchaser's Warranties has the meaning given in clause 13;

Recipient has the meaning given in Schedule 8;

Records has the meaning given in clause 16.1(a);

Regulatory Permit has the meaning given in clause 15.2;

Relevant Period has the meaning given in clause 22.4(a)(i);

Relevant Tax Return has the meaning given in clause 12.10(b);

Relevant Tax Matter has the meaning given in clause 12.10(a);

Relevant Tax Proceeding has the meaning given in clause 12.10(e);

Retained Atmospheric Gases Business means the business of producing, refining, distributing, marketing, or selling atmospheric gases conducted by Linde LLC prior to the completion of the transactions contemplated under the Master Carve Out and Asset Exchange Agreement at its atmospheric gas plants, on-site customer plants and other locations identified in Schedule 15, including without limitation, air separation units (ASUs), liquified natural gas (LNG) facilities,

ECOVAR production systems, oil & gas supply modules (OGSMs) and packaged gas products (PGPs);

Retained CO₂ Business means the business of producing, distributing, marketing, or selling liquid CO₂ and dry ice conducted by Linde LLC prior to the completion of the transactions contemplated under the Master Carve Out and Asset Exchange Agreement at the CO₂ and CO₂/dry ice locations identified in Schedule 15;

Relief means any relief, loss, allowance, credit, deduction, exemption or set-off in respect of any Tax or relevant to the computation of any Income, Profits or Gains for the purposes of any Tax, or any right to a repayment of or saving of Tax (including any repayment supplement or interest in respect of Tax), and:

- (a) any reference to the use or set-off of a Relief shall be construed accordingly and shall include use or set-off in part;
- (b) any reference to the loss of a Relief (including the loss of any Accounts Relief, Post-Closing Relief and any other defined Relief) shall include the absence, failure to obtain, non-existence, non-availability, disallowance, withdrawal, claw-back or cancellation of any Relief, or its utilisation or set-off by any person other than a member of Purchaser's Tax Group and shall also include this Relief being available only in a reduced amount and "lost" as it relates to a Relief shall be construed accordingly;

Restricted Customer has the meaning given in clause 22.4(a)(i);

Restricted Product has the meaning given in clause 22.4(a)(i);

Retention Letters has the meaning given in clause 16.4;

Reverse Carve Out has the meaning given in Schedule 13;

Reverse Carve Out Assets has the meaning given in the Master Carve Out and Asset Exchange Agreement;

Reverse Carve Out Business has the meaning given in Schedule 13;

Reverse Carve Out Purchase Price means the consideration paid by Linde Gas North America LLC for the Reverse Carve Out Assets which it purchases from Linde LLC in accordance with the Master Carve Out and Asset Exchange Agreement;

Reverse Carve Out Purchase Price Allocation Schedule has the meaning given in clause 12.10(c);

Sanctions mean economic or financial sanctions or trade embargoes or other comprehensive prohibitions against transaction activity pursuant to anti-terrorism laws or export control laws imposed, administered or enforced from time to time by any Sanctions Authority, including but not limited to pursuant to the Annex to the United States Executive Order 13224, the USA PATRIOT Act, the Trading with the Enemy Act or OFAC regulations, including, but not limited to, the Sectoral Sanctions Identification List;

Sanctions Authority means any Governmental Entity that administers, enacts or enforces any Sanctions in (i) the European Union or any EU member state (including the competent authorities in each EU member state that administer or enforce such laws, regulations, embargoes or restricted measures), (ii) the United States of America (including the Office of Foreign Assets Control of the US Department of Treasury (OFAC), the US Department of State and the US Department of Commerce) (iii) the UK and (iv) the United Nations;

Sanctions List means any of the lists of specifically designated nationals or designated or sanctioned individuals or entities or persons (or equivalent) issued by any Sanctions Authority, each as amended, supplemented or substituted from time to time, in particular but not limited to the Specially Designated Nationals and Blocked Persons List (SDN list) issued by the Office of Foreign Assets Control (OFAC) as amended from time to time;

Sanctioned Person means any person or vessel (i) designated on any Sanctions List, (ii) that is, or is part of, a Governmental Entity of a Sanctioned Territory, (iii) owned or controlled by, or acting on behalf of, any of the foregoing, (iv) located within or operating from a Sanctioned Territory, or (v) otherwise targeted under any Sanctions;

Sanctioned Territory means any country or other territory subject to a general export, import, financial or investment embargo under Sanctions, which countries and territories, as of the date of this Agreement, are Crimea (as defined and construed in the applicable Sanctions laws and regulations), Cuba, Iran, North Korea, Sudan and Syria;

Sellers has the meaning given at the beginning of this Agreement;

Sellers' Images means the images owned or used by any member of Sellers' Groups, but excluding any corporate images, or rights therein, transferred, or contemplated to be transferred, under the Carve Out Agreements;

Sellers' Indemnification Claims has the meaning given in clause 20.2;

Sellers' Groups means Linde Group and Praxair Group and **Seller's Group** means any of them;

Sellers' Knowledge means the actual knowledge, as at the date of this Agreement,

- (i) with respect to the Linde DivestCo Business, of Christian Graf zu Ortenburg, Matthias von Plotho, Andrew Brackfield and Björn Schneider after having made due inquiry with the members of the executive or management board of (x) the relevant Target Companies directly held by the Local Sellers and (y) Linde LLC,
- (ii) with respect to the Praxair DivestCo Business, of the directors (or members of corporate bodies similar to a board of directors, if any) of the Praxair Sellers after having made due inquiry with the members of the executive or management board of Praxair DivestCo,

and no other knowledge of members of Sellers' Groups or Sellers' Representatives (whether actual or constructive) shall be imputed to Sellers for the purposes of the statement concerned;

Sellers' Representatives has the meaning given in clause 10.3;

Sellers' Trademarks means any trademarks, service marks, business names, company names, trade names, logos, get-up, URLs or domain names (" **Names** ") owned or registered by PLC and/or any member of Sellers ' Groups including such Names which comprise or include (in whole or in part) any of (or any combination of) the designation(s) "Linde", "BOC", "Aga", "Afrox", "AirCo", "Praxair" or any other designation of any member of Sellers' Groups, any similar reference to any Names incorporating, relating to, or combining the designation(s) "Linde", "BOC", "Aga", "Afrox", "AirCo", "Praxair" or any other designation of any member of Sellers' Groups, any abbreviations thereof and any word or logo which in the reasonable opinion of the relevant Seller is similar thereto, but excluding any Names transferred, or contemplated to be transferred, under the Carve Out Agreements;

Shared Location has the meaning given in clause 22.4(a)(ii);

Sister Company has the meaning given in clause 15.5(c)(ii);

Small Similar Business has the meaning given in clause 8.2(c)(i);

SNS has the meaning given in clause 9.5(a);

SPA Clearance Condition has the meaning given in clause 8.1(c);

Straddle Period has the meaning given in clause 12.8;

Subsidiary means any person directly or indirectly Controlled by another person;

Surviving Provisions means clauses 1 (Definitions and Interpretation), 21 (*Announcements, Confidentiality*), 23 (*Notices, Agent for Service of Process*), 25 (*Miscellaneous*), 26 (*Invalidity*) and 27 (*Governing Law, Jurisdiction*);

Target Companies has the meaning given in Schedule 1;

Target Helium Inventory has the meaning given in clause 4.1;

Target Working Capital has the meaning given in clause 4.1;

Tax means any form of taxation, levy, duty, charge, tariff, impost, fee, deduction, or withholding (including in all cases advance payments of the same) imposed by any Governmental Entity (the " **Tax Authority** ") in any jurisdiction by reference to income, gains, profits, (input and output) value added, exchange, loans, excise, customs, stamp, transfer, property, capital, use, real estate, sales, payroll, employment, ad valorem, franchise, license, freight, conveyance (including transfer conveyance of real property), documentary, capital gains, gross income and gross receipts (including ICMS, PIS and COFINS under Brazilian laws), in each case together with any related fine, penalty, surcharge interest, or other kind of addition thereon imposed by any Tax Authority, and in each case irrespective of whether owed as a primary liability or as a secondary liability, but, in each case, excluding the re-ductions of loss carry-forwards, interest carry-forwards and/or deferred Taxes and deferred Tax assets defined as such under the accounting principles and methodology set out in Schedule 4;

Tax Authority has the meaning given in the definition of Tax under clause 1.1;

Tax Claim means a claim by Purchaser for a payment to be made by Sellers to Purchaser pursuant to clause 6.5 or clause 12;

Tax Claim Notice has the meaning given in clause 12.2(b);

Tax De Minimis Amount has the meaning given in Schedule 8;

Tax Group means those companies treated for the purposes of determining the amount of or liability for or relief from any Tax as being members of the same group of companies or fiscal unity;

Tax Liability means:

- (a) a liability to make an actual payment or increased payment of, or in respect of, or on account of, Tax (including (i) making a payment in settlement of a Tax liability and (ii) payments pursuant to any contractual Tax indemnification obligations (with regard to agreements concluded with a party other than a member of Sellers' Groups or Purchaser German TopCo Group, however, limited to payments under Tax allocation agreements or agreements on business sales, asset sales outside the ordinary course of business, share sales and reorganizations)) ("**Actual Tax Liability**"), in which case the amount of the Tax Liability shall be the amount of the actual payment or increased payment;
- (b) the loss otherwise than by utilisation or set off of an Accounts Relief, in which case the amount of the Tax liability shall be the amount of Tax that would have been saved but for such loss (assuming that each Target Company had used the Relief in full and that, to the extent that there is an Actual Tax Liability as a result of the loss, the Tax would have been charged at the Tax rates applying to that period and, where there is no Actual Tax Liability, the Tax that would have been saved would have been charged at the Tax rates current at Closing) or, where the Relief is a right to repayment of Tax, the amount of the repayment;
- (c) the use or setting off of any Purchaser's Relief in circumstances where, but for such use or setting off, a Target Company would have had an Actual Tax Liability in respect of which the Sellers would have been liable under clause 12 or clause 6.5(g)(ii), in which case the amount of the Tax Liability shall be the amount for which the Sellers would have been liable under clause 12 or clause 6.5(g)(ii) but for such set-off or utilisation;

and the loss of an Accounts Relief, or the use or setting-off of any Purchaser's Relief, in each case as described in limb (b) or (c) above shall be referred hereafter as a "**Deemed Tax Liability**";

Tax Refund means any repayment, reimbursement, recovery, credit or set off of any Tax or in respect of any Tax (including, claims for Tax rebates), and any supplement or interest thereon;

Tax Return means any return, declaration, report, claim for refund, notice, form or any other written information relating to any Tax, including any schedule or attachment thereto;

Tax Saving has the meaning given in clause 12.2(a)(ii);

Third Party Assurances means all guarantees, bonds, sureties, indemnities, counter-indemnities, letters of comfort, letters of credit or any similar assurance given (i) to a third party by a Target Company or JVCo in respect of any obligation of a member of Sellers' Groups; or (ii) to a third party

by a member of Sellers' Groups in respect of any obligation of a Target Company or JVCo but excluding the payment guarantee issued by Linde to Swiss Re Corporate Solutions Brasil Seguros S/A dated 28 December 2017 in respect of a surety bond issued by Swiss Re Corporate Solutions Brasil Seguros S/A in the context of tax litigation in Brazil or any instrument replacing such guarantee;

Third Party Claim has the meaning given in Schedule 8;

Third Party Right means any right to acquire or otherwise request a transfer of title, use, limit the Target Companies' right of use, option, mortgage, charge, pledge, lien or encumbrance and any agreement or obligation to create any of the foregoing, in each case, other than Permitted Encumbrances;

Third Party Sum has the meaning given in Schedule 8;

Trade Payables means amounts payable in respect of trade creditors by a Target Company or JVCo all as identified in the line items named as Working Capital or NWC in Schedule 2;

Trade Receivables means amounts receivable in respect of trade debtors of a Target Company or JVCo all as identified in the line items named as Working Capital or NWC in Schedule 2;

Transaction has the meaning given in Recital (B);

Transaction Documents means this Agreement, the Local Transfer Agreements, the Disclosure Letter, the Transitional Services Agreements, the IP Agreements, the Product Supply Agreements and any other documents required under this Agreement whether executed, in Agreed Form or yet to be finalised, but excluding agreements with respect to the Carve Out;

Transitional Services Agreements means the executed or Agreed Form (as the case may be) transitional services agreements in respect of the provision of certain transitional services (i) by members of Sellers' Groups for the benefit of the Target Companies in relation to the Business and/or (ii) by the Target Companies for the benefit of members of Sellers' Groups in relation to the business of members of Sellers' Groups;

Unconditional Date has the meaning given in clause 8.4;

US-GAAP means generally accepted accounting principles and practices in the United States of America;

VAT means value added Tax and any similar sales or turnover Tax;

W-8BEN-E Certificate has the meaning given in clause 6.5(c)(ii);

Warranties has the meaning given in clause 10.1(a);

Warranty Claim means any claim of Purchaser for breach of a Warranty;

Welding Fumes Case has the meaning given in Schedule 14;

Withholding Tax Jurisdiction Advisor has the meaning given in clause 6.5(d);

Withholding Tax Opinion has the meaning given in clause 6.5(d);

Working Capital or **NWC** means, in relation to each Target Company, the aggregate of the line items so named in Schedule 2 and in any case including all receivables, assets, liabilities, provisions or reserves for Taxes (including, but not limited to, (i) any Taxes resulting from or by reference to income, profits or gains, (ii) any Taxes for which a Target Company is liable if such Tax is not attributable to such or any other Target Company and (iii) any Carve Out Taxes), but excluding Cash and Financial Debt; and

Working Hours means (i) 9.30 a.m. to 5.30 p.m. London time on a Business Day in the UK when the term refers to delivery or receipt of any notices and (ii) 9.30 a.m. to 5.30 p.m. in the relevant location on a Business Day in any other case such term is used herein.

2. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) references to a person include any individual, firm, body corporate (wherever incorporated), government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality);
 - (b) headings do not affect the interpretation of this Agreement; the singular shall include the plural and vice versa; and references to one gender include all genders;
 - (c) references to any English legal term or concept shall, in respect of any jurisdiction other than England, be construed as references to the term or concept which most nearly corresponds to it in that jurisdiction;
 - (d) references to "USD" are references to the lawful currency of the United States of America;
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- (e) references to a time of day shall be construed as references to London time unless set out otherwise explicitly herein;
- (f) references to a document shall be construed as references to that document as amended, varied or novated from time to time;
- (g) references to the words "herein", "hereof", "hereto" and "hereunder" and words of similar meaning when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (h) references to any statute or statutory provision shall, unless stated otherwise herein, be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted; and
- (i) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

3. **Schedules**

The Schedules form an integral part of this Agreement and shall be construed and shall have the same force and effect as if expressly set out in the body of this Agreement.

2. **Carve Out**

1. **Sellers' Carve Out Covenant**

To the extent not implemented prior to the date hereof, Sellers shall procure the implementation of the steps described in Part 2 of Schedule 13 to establish the perimeter of the Target Companies and JVCos (" **Carve Out Steps** " and the transactions contemplated by the Carve Out Steps and the Carve Out Agreements together the " **Carve Out** ") with an aim of implementing the Carve Out Steps prior to the Financial Closing Date. The legal transfer of the ownership interests in Cliffside Helium, LLC and Cliffside Refiners, L.P. as foreseen under step 9 in Part 2 of Schedule 13 shall only occur if the Consent and Waiver Declarations have previously been obtained.

The Carve Out Steps shall be implemented substantially in accordance with the Carve Out Agreements. If, on the Closing Date, certain of the Carve Out Steps have not yet been implemented Sellers shall remain obliged to procure the implementation of the Carve Out Steps. Purchaser shall, and shall procure that Purchaser Group and Sister Company and its respective Subsidiaries shall after Closing, provide such assistance as Sellers may reasonably request in order to comply with their obligations pursuant to the preceding sentence and shall after Closing procure compliance of the

Target Companies with their obligations under the Transaction Documents and the Carve Out Agreements.

The Sellers shall procure that any amendments to the Carve Out Agreements, or waivers of any rights under the Carve Out Agreements shall only be made upon prior written consent of the Purchaser.

For the avoidance of doubt, any payments to be made by the Target Companies pursuant to the Carve Out Steps or the Carve Out Agreements, but still outstanding at Closing, and any payments to be received by the Target Companies pursuant to the Carve Out Steps or the Carve Out Agreements, but still outstanding at Closing, in particular the 'Exchanged Assets Closing Payment Amount' as defined in the Master Carve Out and Asset Exchange Agreement, will be reflected in the Closing Statements.

2. Acknowledgment Linde Multiemployer Plan

Purchaser hereby acknowledges and accepts, subject to the occurrence of and with effect from the Closing Date, the obligations of Linde LLC under section 7.1 of the U.S. Employee Carve-out Matters Agreement entered into in connection with the Carve Out, between Linde North America, Inc. and Linde Gas North America, LLC (the "EMA"), and shall cause Linde LLC to fully and timely perform such obligations under section 7.1 of the EMA.

3. **Sale and Purchase**

1. Linde Sales Procurement

Linde will procure, subject to the terms and conditions of this Agreement and as of Closing or, if applicable, Deferred Closing, the sale and transfer from the relevant Linde Sellers to Purchaser or the relevant Local Purchaser (as set out below) in the proportions (if any) as set out in Schedule 1 of all the issued shares in the capital of the Linde DivestCos held by the Linde Sellers (together the "Linde DivestCo Shares"), it being understood that (i) the Linde DivestCo Shares in Linde Canada Limited shall be purchased and acquired by the Canadian Local Purchaser, (ii) the Linde DivestCo Shares in Linde North America, Inc. shall be purchased and acquired by the American Local Purchaser and (iii) the remaining Linde DivestCo Shares shall be purchased and acquired by the Purchaser or the relevant Local Purchaser (yet to be determined by the Purchaser pursuant to clause 3.3).

2. Praxair Sales Procurement

Praxair will procure, subject to the terms and conditions of this Agreement and as of Closing, the sale and transfer from the relevant Praxair Sellers to Purchaser or the relevant Local Purchaser in the

proportions (if any) as set out in Schedule 1 of all the issued shares in the capital of the Praxair DivestCo held by the Praxair Sellers (the " **Praxair DivestCo Shares** " and together with the Linde DivestCo Shares the " **DivestCo Shares** ").

3. Purchaser's Purchase Undertaking

Purchaser, the Canadian Local Purchaser, and the American Local Purchaser undertake, subject to the terms and conditions of this Agreement and as of Closing, or, if applicable, Deferred Closing, to purchase and acquire the respective DivestCo Shares. Purchaser may designate additional Local Purchasers until ten (10) Business Days prior to Closing, provided that (i) they are 100% held subsidiaries of Purchaser, (ii) Purchaser remains jointly and severally liable with each of them pursuant to clause 18.1(b), (iii) Purchaser shall always be authorized to make and receive payment on behalf of each of them, provided that Local Purchasers may also make payments to Sellers and Local Sellers on their own behalf, (iv) Purchaser bears any WHT caused in connection with such appointment in accordance with clause 6.5(h), and (v) clause 25.2 second paragraph (ii) shall apply.

4. Scope of Sale and Transfer

The DivestCo Shares shall be sold and transferred free from any Third Party Rights and together with all rights attaching to them at Closing, or if applicable, Deferred Closing, including the right to receive all distributions and dividends declared, paid or made in respect of the relevant DivestCo Shares after Closing.

5. Cliffside

The Sellers undertake to use their respective reasonable efforts that as soon as reasonably practical the outside third party partners of Cliffside Helium, LLC and Cliffside Refiners, L.P., have, in each case in compliance with the respective applicable constitutional documents, shareholders', joint venture, or other applicable agreements and if and to the extent required under such documents and agreements, waived any and all rights to object to any sale and transfer in relation to the implementation of the Carve Out or the Transaction (if any) (" **Consent and Waiver Declarations** "). The Sellers shall deliver to the Purchaser as soon as reasonably practical copies of Consent and Waiver Declarations obtained and shall keep the Purchaser reasonably informed of the process and status of obtaining respective Consent and Waiver Declarations.

If, as of Closing, not all relevant third parties have given their Consent and Waiver Declarations, the Parties agree to the following:

- (a) None of the missing Consent and Waiver Declarations shall prevent the Closing;
- (b) The obligation of the Sellers to use reasonable efforts that the respective Consent and Waiver Declarations are obtained shall continue to apply;
- (c) Until the relevant Consent and Waiver Declarations are obtained, and to the extent permitted by applicable law and fiduciary duties, Sellers shall exercise, or procure that the relevant entities of the Linde Group exercise, those voting rights in Cliffside Helium, LLC and/or Cliffside Refiners, L.P. currently held by entities of the Linde Group, and to take any further action or omit any action with regard to these participations, as directed by Purchaser in writing and Sellers shall keep Purchaser without undue delay informed on any relevant development in respect to such participations as well as the agenda of any meeting to allow Purchaser to give any such voting or other directions and all benefits (including, for the avoidance of doubt, dividend payments) and losses and liabilities shall be for the account of Purchaser and the Purchaser and Linde shall put each other into the respective position, unless and to the extent a loss or liability has been triggered by an entity of the Linde Group or a Sellers' Representative (excluding any Sellers' Representative pertaining to the Praxair Group) (i) not complying with the Purchaser's instructions compliant with laws (including fiduciary duties) or (ii) acting without any instructions not required by laws (including fiduciary duties). If the Consent and Waiver Declarations have still not been obtained in case the Business (or the relevant parts of it) is sold on to a third party acquirer, the Purchaser may assign all but not less than all rights according to this clause 3.5 to the acquirer and Sellers hereby consent to such assignment;

Nothing in this Agreement shall be deemed to constitute any obligation to sell or transfer Cliffside Helium, LLC and Cliffside Refiners, L.P. before the Consent and Waiver Declarations are obtained.

4. **Purchase Price, Payments**

1. Final Purchase Price

The consideration for the purchase of the DivestCo Shares (including those that may be subject to a Deferred Closing) ("**Final Purchase Price**") shall be the amount in USD which results from taking 3,325,000,000 USD (three billion three hundred twenty-five million US dollars) ("**Enterprise Purchase Price**") and:

- (a) subtracting (i) the aggregate of the Financial Debt as at the Financial Closing Date and (ii) a fixed amount of 254,100,000 USD; and
 - (b) adding the aggregate of the Cash as at the Financial Closing Date; and
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- (c) subtracting the amount, if any, by which the aggregate of the Working Capital as at the Financial Closing Date falls short of the Target Working Capital; or
- (d) adding the amount, if any, by which the aggregate of the Working Capital as at the Financial Closing Date exceeds the Target Working Capital; and
- (e) subtracting the amount, if any, equal to the volume in mSCF by which the aggregate of the Helium Inventory as at the Financial Closing Date falls short of the Target Helium Inventory multiplied by a value of USD 55.00 per mSCF; or
- (f) adding the amount, if any, equal to the volume in mSCF by which the aggregate of the Helium Inventory as at the Financial Closing Date exceeds the Target Helium Inventory multiplied by a value of USD 55.00 per mSCF; and
- (g) adding the Perimeter Change Equity Value (if any) and deducting the compensation in favour of the Purchaser (if any) to be established according to clauses 8.2(a) through 8.2(c).

The target of the working capital is equal to 248,000,000 USD (" **Target Working Capital** ").

The target helium inventory is equal to 771,700 mSCF (" **Target Helium Inventory** ").

The Final Purchase Price shall be calculated after Closing by adjusting the Initial Purchase Price in accordance with clause 6.

2. Initial Purchase Price

At Closing, Purchaser shall pay to Sellers the amount in USD (" **Initial Purchase Price** ") which is equal to the Enterprise Purchase Price adjusted as set out in clause 4.1 by using the estimated amounts set out in the Estimated Closing Statement prepared in accordance with clause 6, provided that

- (a) in case there is any Deferred Closing required, Purchaser may at its written request defer the payment of an amount equalling such portion of the Enterprise Purchase Price (*i.e.* before any of the steps set forth in clause 4.1(a) through (g)) as allocated to the Colombian Entities pursuant to Schedule 3 until the Colombian Transfer Date, as the case may be (in case of such request the deferred portion of the purchase price shall not bear any interest);
 - (b) in case there is a Cash Excess Amount or there is/are Perimeter Change Excess Amounts, Purchaser may defer the payments as set forth in clause 15.5,
 - (c) out of the Initial Purchase Price an amount equal to the Initial Linde LLC Receivable Amount (if any) shall be deferred and settled pursuant to clause 5.8; and
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- (d) out of the Initial Purchase Price an amount equal to the Canada Cash Amount shall be deferred and settled pursuant to clause 5.9.

The Initial Purchase Price shall be apportioned pursuant to clause 4.4.

3. Adjustment Payments to the Initial Purchase Price

The Initial Purchase Price shall be adjusted following Closing pursuant to clause 6 and on the following basis:

- (a) If a payment is specifically referable to any particular DivestCo Shares (or to any DivestCo), it shall so far as possible adjust the price paid for the relevant DivestCo Shares; or
- (b) otherwise, it shall adjust the price for the DivestCo Shares on a basis pro rata to the allocation thereof in the calculation of the Initial Purchase Price unless Sellers and Purchaser agree otherwise both acting reasonably.

The adjustment of the Initial Purchase Price pursuant to clause 6 shall be made for all DivestCos irrespective of whether there is any Deferred Closing.

4. Allocation of Purchase Price and Negative Components

The Enterprise Purchase Price and the Target Working Capital shall be apportioned to the (i) Linde DivestCos Shares and rights and covenants regarding the Linde DivestCo Business under the IP Agreements with Linde as licensor and (ii) the Praxair DivestCos Shares, all as set out in Schedule 3.

The adjustments and the underlying items of Financial Debt, Cash and Working Capital of each DivestCo pursuant to clauses 4.1 through 4.3 and 6 shall be allocated to the individual DivestCos as they apply, unless agreed otherwise between the Parties.

If any payment made in satisfaction of a liability under this Agreement, in particular Adjustment Payments, would reduce the price of particular DivestCo Shares to less than one (1) USD, then such payment or adjustment shall be made on the following basis:

- (a) the price of those particular DivestCo Shares shall be reduced to one (1) USD; and
- (b) the balance shall adjust the price for the other DivestCo Shares on a pro rata basis unless Sellers and Purchaser agree otherwise both acting reasonably.

The Final Purchase Price shall be apportioned to the DivestCo Shares in good faith pursuant to Schedule 4 in parallel to agreeing on the Closing Statement.

For the purposes of calculating any positions under Clause 4 which are expressed in a currency other than USD such positions shall be converted into USD at the Exchange Rate as at the Financial Closing Date.

5. Local Sellers / Local Purchasers

To the extent that any payment is made by the Purchaser under this Agreement in respect of an Initial Purchase Price or Final Purchase Price or by way of adjustment to the price of a particular DivestCo or any other payment under this Agreement to the Sellers such payment is made by the Purchaser as agent for or on behalf of the relevant Local Purchaser, or other entity acquiring the relevant DivestCo (unless the Purchaser is itself the acquirer of the DivestCo, in which case it is made by the Purchaser as principal). To the extent that any payment is made by the Sellers under this Agreement by way of or adjustment to the price of a particular DivestCo or any other payment under this Agreement to the Purchaser (e.g. for any claims) such payment is received by the Purchaser as agent for the Local Purchaser or other entity acquiring the relevant DivestCo under this Agreement (unless the Purchaser is itself the acquirer of the DivestCo, in which case it is received by the Purchaser as principal).

5. **Settlement of Inter-Company Relations**

1. Efforts to Reduce Inter-Company Payables and Inter-Company Receivables

Subject to clause 5.8, prior to Closing and subject to the Permitted Actions, Sellers shall use reasonable efforts to reduce the Inter-Company Payables and Inter-Company Receivables by concentrating and setting off the Inter-Company Payables and Inter-Company Receivables between members of Sellers' Groups and the Target Companies, in each case as permitted by applicable law. [Sellers' Groups may also choose to repay or otherwise settle any Inter-Company Receivables.](#)

2. Termination of Cash Pooling Agreements

Sellers shall procure for Linde Group and Praxair Group that no later than five (5) Business Days prior to the Closing Date, all cash pooling or inter-company netting arrangements between the Target Companies on the one hand and members of Sellers' Groups on the other hand are terminated with immediate effect (i) netting and converting any currency other than USD into USD by using the Exchange Rate as published on the Business Day preceding the termination of the cash pooling or inter-company netting arrangements [and \(ii\) converting the principal amount of both the remaining Inter-Company Payables and Inter-Company Receivables into respective term loan\(s\) maturing on the Closing Date and carrying interest at a rate prevailing at the relevant Seller's Group for such term](#)

loans. Sellers shall confirm for Linde Group and Praxair Group in writing the fulfilment of this obligation to Purchaser without undue delay following such termination, in any case, however, at the latest five (5) Business Days prior to the Closing Date . The balances arising from such termination shall be handled in accordance with clauses 5.4 through 5.7.

3. Termination of Foreign Exchange and Commodity Hedges

All foreign exchange and commodity hedges regarding the Business and concluded by Sellers' Groups with the Target Companies (but excluding forward contracts and hedging arrangements of the Target Companies with third parties) shall be terminated at market value no later than five (5) Business Days prior to the Closing Date. Such termination shall be affected by first off-setting the prospective consideration to the extent possible and settling the remaining balance via the respective cash pool prior to its freezing pursuant to clause 5.2.

4. Final Inter-Company Payment Amount

Subject to clause 5.8, Sellers shall pay to Purchaser on behalf of the relevant members of Sellers' Groups an amount equal to the Inter-Company Receivables and Purchaser shall pay to Sellers on behalf of the Target Companies an amount equal to the Inter-Company Payables, all as at the Financial Closing Date and as shown in the Closing Statement pursuant to clause 6 .

Settlement of the aforementioned payments shall occur by way of a net payment equal to the Inter-Company Payables (including interest accrued) as at the Financial Closing Date minus the Inter-Company Receivables (including interest accrued) as at the Financial Closing Date (" **Final Inter-Company Payment Amount** "). If the Final Inter-Company Payment Amount is positive, it shall be added to the Final Purchase Price and, if it is negative, it shall be deducted from the Final Purchase Price.

5. Initial Inter-Company Payment Amount

Subject to clause 5.8, at Closing, the Inter-Company Payables and the Inter-Company Receivables shall be settled in an amount equal to an estimate of the Final Inter-Company Payment Amount established on the basis of the Estimated Closing Statement pursuant to clause 6 (" **Initial Inter-Company Payment Amount** "). Such settlement shall occur in the same way as set out in clause 5.4, by adding to or deducting from the Initial Purchase Price and making a corresponding payment by Purchaser to Sellers at Closing.

6. Adjustment Payments to the Initial Inter-Company Payment Amount

The Initial Inter-Company Payment Amount shall be adjusted following Closing pursuant to clause 6.

7. Acknowledgement and Novation

- (a) Sellers and Purchaser agree that the settlement of the Inter-Company Payables and Inter-Company Receivables in accordance with the provisions of clauses 5.4 through 5.6 shall:
 - (i) constitute a settlement and discharge on behalf of the members of Sellers' Groups of the Inter-Company Receivables with effect from Closing, which will be acknowledged by the Target Companies at Closing; and
 - (ii) constitute a settlement and discharge of the Inter-Company Payables on behalf of the Target Companies with effect from Closing, which will be acknowledged by the relevant members of Sellers' Groups at Closing.
- (b) With effect from Closing, as a consequence of the settlement on behalf of the respective debtor, by way of novation:
 - (i) the respective Target Companies that held the Inter-Company Receivables shall hold against Purchaser a receivable on substantially the same economic terms and conditions as were applicable to the settled Inter-Company Receivable; and
 - (ii) the respective Target Companies that owed the Inter-Company Payables shall owe to Purchaser a payable on substantially the same economic terms and conditions as were applicable to the settled Inter-Company Payable.
- (c) The Parties acknowledge that as of Closing, in the relationship between the Sellers' Groups on the one hand, and the Purchaser Group on the other hand, other than for agreements referred to in clause 15.6 there shall not be any further Inter-Company Receivables or Inter-Company Payable other than those that have been considered for the purpose of this clause 5 and shall procure that no member of the Sellers' and Purchaser's Groups, respectively, asserts against any member of the other Party's group, any such Inter-Company Receivables or Inter-Company Payable.

8. Linde LLC Receivable

The Parties agree that a receivable of Linde LLC vis-à-vis Linde Gas North America LLC (if any) that may be created as part of step 9 of the Carve Out which will be implemented prior to Closing as described in Schedule 13 following concentration and setting-off (the "**Linde LLC Receivable**"), shall not be subject to the provisions in clauses 5.1 through 5.7, but shall be treated as follows:

- (a) For the avoidance of doubt, the Linde LLC Receivable including any interest accrued shall constitute Cash and shall be included in the Closing Statement but be deferred and not paid with the Initial Purchase Price pursuant to clause 4.2(c).
- (b) No later than ten (10) Business Days prior to Closing, the Sellers, acting reasonably, shall determine, and notify in writing Purchaser of, an estimate of the outstanding amount of the Linde LLC Receivable including any accrued interest (the "**Initial Linde LLC Receivable Amount**").
- (c) The payment of the Initial Linde LLC Receivable Amount shall be deferred and not paid with the Initial Purchase Price pursuant to clause 4.2(c), and:
- (i) the Sellers shall procure that as soon as practically possible, at the latest, however, three (3) Business Days after the Closing Date, Linde Gas North America LLC makes a first settlement payment on the Linde LLC Receivable by way of payment of the Initial Linde LLC Receivable Amount to Linde LLC;
 - (ii) the Purchaser shall procure that as soon as practically possible, at the latest, however, within three (3) Business Days following the first settlement payment on the Linde LLC Receivable pursuant to clause 5.8(c)(i), Linde LLC makes available an amount equal to the Initial Linde LLC Receivable Amount to the Purchaser by way of a term loan carrying interest at a rate prevailing at the Purchaser's Group for such term loans terms and conditions (the "**Linde LLC Term Loan**"); and
 - (iii) the Purchaser shall as soon as practically possible and in any event on the same Business Day on which the making available of the Linde LLC Term Loan to the Purchaser pursuant to clause 5.8(c)(ii) has occurred, pay the deferred portion of the Initial Purchase Price (without any interest) that is equal to the Initial Linde LLC Receivable Amount to the Sellers.
 - (iv) The Parties shall procure that, for the purposes of the payments under this clause 5.8(c), Sellers, Purchaser, Linde LLC and Linde Gas North America LLC shall use bank accounts held by the same bank institute.
- (d) As soon as reasonably possible following the payment to the Sellers pursuant to clause 5.8(c)(iii), at the latest, however, until twenty (20) Business Days after the Closing, Sellers shall determine, and notify in writing Purchaser of the actual amount of the Linde LLC Receivable. Thereupon, the following settlement of the Linde LLC Receivable shall occur:
- If the actual amount of the Linde LLC Receivable exceeds the Initial Linde LLC Receivable Amount, Sellers shall pay on behalf of Linde Gas North America LLC to Linde LLC the corresponding excess amount. If the actual amount of the Linde LLC Receivable falls short
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of the Initial Linde LLC Receivable Amount Purchaser shall pay on behalf of Linde LLC to Linde Gas North America LLC the corresponding shortfall amount. Such deferred portion of the Initial Purchase Price shall not bear any interest.

9. Canada Cash Amount

The Parties agree that an amount equal to the Cash position held by Linde Canada Ltd. as of the Financial Closing Date ("**Canada Cash Amount**") shall be treated as follows:

- (a) For the avoidance of doubt, the Canada Cash Amount shall constitute Cash and shall be included in the Closing Statement.
- (b) The Canada Cash Amount shall not be paid with the Initial Purchase Price pursuant to clause 4.2 and payment shall be deferred until the earliest point in time at which Purchaser has been able to extract the Canada Cash Amount by way of a loan, at the latest, however, until five (5) Business Days after the Closing (the "**Canada Cash Extraction**"). Such deferred portion of the Initial Purchase Price shall not bear any interest.
- (c) Purchaser shall procure that Linde Canada Ltd. will be merged into Local Canadian Purchaser by way of amalgamation as soon as reasonably practical after the Closing (expected to occur with effect as of the end of the fiscal year of Linde Canada Ltd.).

6. **Closing Statement, Estimated Closing Statement and**

7. **Adjustment Payments**

1. Closing Statement

Sellers shall, or shall procure that its accountants shall, after Closing prepare a draft statement showing, as at the Financial Closing Date, the Financial Debt, Cash, Working Capital, Inter-Company Payables and Inter-Company Receivables of the Target Companies as a whole by adding the respective figures for the Linde DivestCo Business and for the Praxair DivestCo Business ("**Closing Statement**"). The Closing Statement shall set out the calculation of the Final Purchase Price and the Final Inter-Company Payment Amount and be in the form set out in Schedule 5.

Sellers shall deliver the draft Closing Statement to Purchaser within sixty (60) Business Days following Closing. The Closing Statement shall be prepared in accordance with the accounting principles and methodology set out in Schedule 4.

2. Estimated Closing Statement

At least ten (10) Business Days prior to Closing, Sellers will deliver to Purchaser a summary prepared in good faith estimating the amounts of Financial Debt, Cash and Working Capital as at the Financial Closing Date, as well as the Initial Inter-Company Payment Amount as at the Financial Closing Date pursuant to clause 5.4 and 5.5 (" **Estimated Closing Statement** "). The Estimated Closing Statement shall be prepared on the same basis as the Closing Statement. From the date of this Agreement the Sellers shall, to the extent reasonably practical, keep the Purchaser, at its reasonable request from time to time, informed (together with such supporting documentation as the Purchaser may reasonably request) about the development of the items of the Estimated Closing Statement. In the case of a Deferred Closing, the Estimated Closing Statement shall separately reference such part of the Enterprise Purchase Price that is to be allocated to the Colombian Entities.

3. Adjustment Payments

When the Closing Statement has been finalised in accordance with Schedules 4 and 5, Purchaser shall pay to Sellers any amount by which the sum of the Final Purchase Price and the Final Inter-Company Payment Amount exceed the sum of the payments made on the Initial Purchase Price and on the Initial Inter-Company Payment Amount and any additional amounts paid in accordance with clauses 5.8(c)(iii), 5.8(d), 5.9(b) and 9.5(d) or Sellers shall pay to Purchaser any amount by which the sum of such final amounts falls short of the sum of such amounts paid, as the case may be (each an " **Adjustment Payment** ", together the " **Adjustment Payments** "). The Adjustments shall be made on the basis of all DivestCos, including those that may be subject to a Deferred Closing.

The relevant due date for any Adjustment Payments shall be ten (10) Business Days following the date upon which the Closing Statement is finalised in accordance with Schedule 4.

4. VAT

The Final Purchase Price and the Final Inter-Company Payment Amount are net amounts that do not yet include the amount of any VAT. The Parties assume that the sale and transfer of the DivestCo Shares, the settlement measures regarding Inter-Company Payables and Inter-Company Receivables as well as any supplies of services under the IP Agreements are either not subject to VAT or exempt from VAT, and no Party shall with respect to any of such transactions waive any exemption from VAT. To the extent that VAT becomes chargeable on any of such transactions Purchaser shall pay to

Sellers in cash an amount equal to such VAT in addition to the Final Purchase Price and/or Final Inter-Company Payment Amount, as the case may be.

5. Payments under this Agreement

The payments pursuant to clauses 4 through 6 shall be made in full and without any deduction or withholding of or in respect of any Tax save only as required by law:

- (a) If a deduction or withholding of or in respect of any Tax (for example, of or in respect of a stamp duty or transfer Tax to be borne by Purchaser pursuant to clause 25.1, including, for the avoidance of doubt, the Imposto Sobre Operações Financeiras (financial transaction tax) in Brazil) is required by law, Purchaser shall be obliged to gross-up the relevant amount so that Sellers receive an amount which (after making such deduction or withholding) leaves an amount equal to the full payment which would have been due if no such deduction or withholding had been required ("**Gross-Up**").
- (b) No Gross-Up, but a full deduction or withholding from the payment shall apply if and to the extent the deduction or withholding is on account of or otherwise relates to a Tax which is owed or payable, or would without such deduction or withholding be owed or payable, by a Seller or any member of Sellers' Groups as taxpayer on or by reference to (i) a capital gain derived by any Seller or any member of Sellers' Groups as a result of any payment pursuant to clauses 4 through 6 (such deduction or withholding a "**Capital Gains WHT**") or (ii) Income, Profit or Gains derived by Linde as a result of any payment pursuant to clauses 4 through 6 to the extent it relates to the portion of the Enterprise Purchase Price apportioned to the rights and covenants under the IP Agreement with Linde as licensor (such a deduction or withholding a "**Royalty WHT**", and collectively with a Capital Gains WHT a "**Capital Gains Or Royalty WHT**").

The Parties assume that Capital Gains WHT becomes due on payments pursuant to clauses 4 through 6 as follows:

- (i) current Brazilian Tax Law (Law No. 10,833 of December 29, 2003) requires Purchaser to withhold Taxes on any capital gain arising to the Sellers (or their relevant Affiliate) from the sale of the shares in the Brazilian Entities, on the basis that such Seller or Affiliate is not resident for Tax purposes in Brazil (the *Imposto de Renda Retido na Fonte - IRRF*). For information purposes only, the Parties understand that Brazilian Tax law requires Purchaser to withhold an amount equal to 15% (fifteen per cent), 17.5% (seventeen point five per cent), 20% (twenty per cent) or 22.5% (twenty-two
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point five per cent) dependent on the amount of the capital gain which is to be calculated as the positive difference between the portion of the Final Purchase Price allocated to the purchase of the respective Brazilian Entity and the cost basis of the respective shares; and

- (ii) current Chilean Tax Law (*Ley sobre Impuesto a la Renta*) requires Purchaser to withhold Taxes on any capital gain arising to the Sellers (or their relevant Affiliate) from the sale of the shares in Praxair Chile Limitada, on the basis that such Seller or Affiliate is not resident for Tax purposes in Chile (the *Impuesto Adicional*). For information purposes only, the Parties understand that Chilean Tax Law requires Purchaser to withhold an amount equal to 10% (ten per cent) of the portion of the Final Purchase Price allocated to the purchase of Praxair Chile Limitada (*Articles 74 number 4 and 79 of the Chilean Income Tax Law*).

For the avoidance of doubt, the Parties agree that the withholding Taxes set forth in clauses 6.5(b)(i) and 6.5(b)(ii) qualify as Capital Gains WHT.

- (c) The Parties assume that no other Capital Gains Or Royalty WHT becomes due on payments pursuant to clauses 4 through 6 except for the ones mentioned above under clauses 6.5(b)(i) and 6.5(b)(ii), provided that
 - (i) the Purchaser shall have received a (i) duly executed certification, signed under the penalties of perjury, by Linde North America, Inc. and dated not more than thirty (30) days prior to the Closing Date, that satisfies the requirements of Treasury Regulations Sections 1.897-2(h) and 1.1445-2(c)(3) and confirms that Linde North America, Inc. is not, nor has it been within five (5) years of the date of the certification, a "United States real property holding corporation" as defined in Section 897 of the Code and (ii) proof reasonably satisfactory to the Purchaser that Linde North America, Inc. has provided notice of such certification to the IRS in accordance with the provisions of Treasury Regulations Section 1.897-2(h)(2). Should, contrary to the above, Purchaser not have received such certification and proof (collectively, the " **FIRPTA Certificate** ") at the latest concurrently with the delivery of the Estimated Closing Statement pursuant to clause 6.2, the Parties will assume that the Tax required to be withheld under section 1445 of the U.S. Internal Revenue Code constitutes a Capital Gains WHT required to be withheld at Closing; and
 - (ii) the Purchaser shall have received a duly executed IRS Form W-8BEN-E (Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting
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(Entities)), with Part III completed claiming entitlement to a complete exemption from US withholding tax on royalty income from Linde (a " **W-8BEN-E Certificate** "). Should, contrary to the foregoing, Purchaser not have received a duly executed and completed W-8BEN-E Certificate from Linde, at the latest concurrently with the delivery of the Estimated Closing Statement pursuant to clause 6.2, the Parties will assume that the Tax required to be withheld under section 1441 of the U.S. Internal Revenue Code constitutes a Royalty WHT required to be withheld at Closing in respect of that portion of the Enterprise Purchase Price which is allocable to the rights and covenants under the IP Agreements as set out in Schedule 3.

- (d) If any Party concludes that the Purchaser is, contrary to the assumption of the Parties, obliged to deduct and withhold Capital Gains Or Royalty WHT from any payments pursuant to clauses 4 through 6 other than in the cases described above in clauses 6.5(b)(i) and 6.5(b)(ii) and 6.5(c), such Party shall notify in writing the other Parties of its conclusion no later than forty (40) Business Days prior to the Closing Date. If the Sellers and Purchasers disagree on the obligation to deduct and withhold Capital Gains WHT, they shall within five (5) Business Days following Purchaser's or Sellers' notification (as the case may be) jointly appoint a reputable law or tax consultancy firm which is qualified to practice Tax law in the relevant jurisdiction (" **Withholding Tax Jurisdiction Advisor** ") and shall jointly instruct the Withholding Tax Jurisdiction Advisor to issue to the Parties a written opinion regarding Purchaser's obligation to withhold Capital Gains Or Royalty WHT and how such Capital Gains Or Royalty WHT shall be calculated (tax base, tax rate, etc.) to the Parties within fifteen (15) Business Days after having been so instructed. The Parties shall equally share the fees of the Withholding Tax Jurisdiction Advisor. Should the Parties be unable to agree on a Withholding Tax Jurisdiction Advisor within three (3) Business Days following Purchaser's or Sellers' written notification (as the case may be), a Withholding Tax Jurisdiction Advisor shall be appointed by the President of the Institute of Chartered Accountants in England and Wales. Should the Withholding Tax Jurisdiction Advisor, in its written opinion issued conclude, at least with a level of comfort that it is more likely than not, that a Purchaser, contrary to the assumption of the Parties, is obliged to deduct and withhold Capital Gains Or Royalty WHT from any payment pursuant to clauses 4 through 6 (" **Withholding Tax Opinion** "), the Parties agree as follows:
- (i) If Sellers have received a copy of the Withholding Tax Opinion not later than ten (10) Business Days prior to the due date of the relevant payment to be made to Sellers, Purchasers (i) shall be entitled to withhold and deduct from that payment an amount
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equal to the relevant Capital Gains Or Royalty WHT as estimated in accordance with clause 6.5(f) (meaning, for instance, that Purchaser is entitled to a withholding and deduction from the payment of the Initial Purchase Price pursuant to clause 4.2 if the Withholding Tax Opinion was received by Seller not later than ten (10) Business Days prior to the Closing Date) and (ii) shall pay an amount equal to the relevant Capital Gains Or Royalty WHT as estimated in accordance with clause 6.5(f) in a timely fashion to the applicable Governmental Entity in discharge of such Capital Gains or Royalty WHT obligation.

- (ii) If Sellers have received a copy of the Withholding Tax Opinion only at a later point in time than ten (10) Business Days before the due date of the relevant payment to be made to Sellers, then the Purchaser shall pay the Initial Purchase Price pursuant to clause 4.2 without any deduction or withholding of, or in respect of, the relevant Capital Gains Or Royalty WHT.
 - (e) If later than forty (40) Business Days prior to the Closing Date, but not later than ten (10) Business Days prior to the due date of the relevant payment to be made to Sellers, a change in law occurs as a consequence of which Capital Gains Or Royalty WHT becomes due and payable pursuant to clauses 4 through 6 and any Party becomes aware of such change, such Party shall without undue delay inform the other Party thereof, and the Parties shall use reasonably best efforts to proceed as set forth in clause 6.5(d) taking into account the limited amount of time, provided that if a Withholding Tax Opinion will be issued, it shall be sufficient that such Withholding Tax Opinion will be received by Sellers not later than seven (7) Business prior to the due date of the relevant payment to be made to Sellers.
 - (f) In respect of any Capital Gains Or Royalty WHT which becomes due according to the Parties' assumption as set out in clause 6.5(b)(i), clause 6.5(b)(ii), or - in case of the non-receipt of the FIRPTA Certificate - in clause 6.5(c) or - in case of the non-receipt of the W-8BEN-E Certificate - in clause 6.5(c)(ii) or pursuant to a timely received Withholding Tax Opinion within the meaning of clause 6.5(d)(i) or clause 6.5(e), the following shall apply:
 - (i) Concurrently with delivery of the Estimated Closing Statement pursuant to clause 6.2, Sellers will deliver to Purchasers a summary prepared in good faith estimating the amounts of the respective Capital Gains Or Royalty WHT ("**Estimated Capital Gains Or Royalty WHT**").
 - (ii) Purchasers shall be entitled to withhold and deduct an amount equal to the Estimated Capital Gains Or Royalty WHT from the Initial Purchase Price, and shall pay the amount deducted and withheld to the applicable Governmental Entity in discharge of the Estimated Capital Gains Or Royalty WHT in a timely manner, and shall deliver to the Sellers at Closing written evidence of such payment as follows:
 1. in respect of Capital Gains WHT in Brazil, a copy of the slip of payment known as the *Documento de Arrecadação de Receitas Federais* (DARF);
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2. in respect of Capital Gains WHT in Chile, a copy of Form No. 50 (*WHT return*) duly filed together with a copy of the relevant slip of payment;
3. in respect of Capital Gains WHT arising under section 1445 of the U.S. Internal Revenue Code, a copy of IRS Form 8288 (which the American Local Purchaser shall file as soon as possible within the relevant statutory deadline after Closing); and
4. in respect of Royalty WHT arising under section 1441 of the U.S. Internal Revenue Code, a copy of IRS Form 1042-S (Copy B) showing the amount withheld.

For the avoidance of doubt, Purchaser shall have no obligation to pay any additional amount to Sellers in the amount of the Estimated Capital Gains Or Royalty WHT if and to the extent it was duly paid to the applicable Governmental Entity in discharge of the Estimated Capital Gains Or Royalty WHT in a timely manner.

(g) In respect of any Capital Gains Or Royalty WHT in general, the following shall apply:

- (i) The Purchaser shall cooperate in good faith with the Sellers and use, in accordance with Sellers' reasonable and lawful instructions, reasonable efforts to mitigate the Capital Gains Or Royalty WHT or to claim a refund or credit in respect of the Capital Gains WHT. The Purchaser shall promptly deliver to the respective Seller proof of payment of any Capital Gains Or Royalty WHT together with copies of all communications from or with such Tax Authority with respect thereto, and shall provide such other information and documents as the Sellers may reasonably request in connection with efforts of the Sellers to claim the Tax benefits associated with such payments.
 - (ii) Sellers shall indemnify and hold harmless Purchasers from any liability of a Purchaser for a Capital Gains WHT (and any related interest and penalties), but not for a Royalty WHT, unless and to the extent that the Purchaser fails to fulfill its obligation to pay to the applicable Governmental Entity the Capital Gains WHT in discharge thereof which Purchaser was entitled to withhold and deduct pursuant to clause 6.5(f)(ii)1 through 6.5(f)(ii)3. If and to the extent that such liability (i) results from or is increased by Purchaser's non-compliance with any other of its obligations pursuant to clause 6.5, and (ii) could not have been avoided by the Sellers, the indemnification shall be limited to the amount of the Capital Gains WHT which the Seller can reasonably be expected to recover or otherwise utilize (e.g. as a refund or a credit against capital gains taxes assessed for the relevant transaction). Purchaser's indemnification claim becomes due and payable within ten (10) Business Days after Sellers have received (x) a copy of the Withholding Tax Opinion or (y) proof that Purchaser is held liable for such Capital Gains WHT (e.g. by providing the relevant Capital Gains WHT assessment), provided,
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however, that Seller shall not be obliged to make any payment earlier than five (5) Business Days before the respective liability of Purchaser becomes due and payable to the applicable Governmental Entity.

- (h) If and to the extent that:
- (i) the Purchaser or a Local Purchaser assigns, transfer or charges all or some of its rights under this Agreement to a member of the Purchaser German TopCo Group as provided for in clause 25.2; and
 - (ii) as a result of such assignment, transfer or charge, the Purchaser or a Local Purchaser (including for the avoidance of doubt a designated additional Local Purchaser as provided for in clause 3.3) would be obliged to withhold or deduct an amount in respect of a Capital Gains Or Royalty WHT from any payment pursuant to clauses 4 through 6 of this Agreement (other than a Capital Gains WHT as provided for in clauses 6.5(b)(i) and 6.5(b)(ii)), which Purchaser or Local Purchaser would not have been obliged to withhold or deduct had such assignment, transfer or charge not occurred,
- then the Purchaser shall be obliged to gross-up the relevant amount so that Sellers receive an amount which (after making such deduction or withholding) leaves an amount equal to the amount they would have received if no such assignment, transfer or charge had occurred.

Any payments to be made under this Agreement shall be made in USD by irrevocable wire transfer of immediately available funds to a bank account in the United States, the United Kingdom or in a member state of the European Union specified in writing by the relevant Party or Parties to the other Party or Parties, provided that (i) such specification has been made at least ten (10) Business Days prior to the relevant due date and (ii) Sellers may jointly specify the relevant bank account and shall have the right to jointly specify that payments to be made by Purchaser shall be made to separate accounts for Linde and Praxair and to request Purchaser to make separate payments to these specified accounts according to an apportionment of the payment amount as specified by Sellers, it being understood that absent such joint specification Purchaser may withhold any relevant payments until a joint specification is made and without Sellers being released from their obligations to procure the Closing of the Transaction. Any such payment shall be deemed to have been duly made only upon the irrevocable and unconditional crediting of the amount payable (without deduction of any Costs) to the relevant bank account. Any payment made by a Party to the relevant bank account of the other Party or Parties shall have debt-discharging effect (in the amount credited to such bank account).

Any payments to be made by Sellers under this Agreement shall be deemed to be made on behalf of, and shall have a discharging effect for, the relevant member of, Sellers' Groups. Any payments made

under this Agreement to Sellers shall be deemed to be made to, and shall have discharging effect in respect of, the relevant member of Sellers' Groups.

If a Party defaults in making any payment when due of any sum payable under this Agreement, it shall pay interest on that sum from and including the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of 4.00% (four per cent) above the base rate from time to time of the Federal Reserve, which interest shall accrue from day to day and be compounded monthly.

Otherwise than expressly provided in this Agreement, no amount due and payable by one Party to any other Party pursuant to this Agreement shall be set-off against any other amount due and payable or alleged to be due and payable by that other Party to the first Party whether pursuant to this Agreement or otherwise.

8. **Replacement of Third Party Assurances**

1. Release of Sellers' Groups from Third Party Assurances

Purchaser shall use reasonable endeavours to ensure that at Closing, and shall procure in any event that within three (3) months of Closing, each member of Sellers' Groups is released in full from all Third Party Assurances listed in Schedule 9 given by any such member of Sellers' Groups in respect of obligations of any Target Company or JVCo and that replacements satisfactory to Sellers acting reasonably, are put in place. In addition, Purchaser shall, after Closing, use its reasonable endeavours to ensure that, as soon as reasonably practicable after becoming aware of any other Third Party Assurance given by any such member of Sellers' Groups in respect of any obligations of any Target Company or JVCo, but it shall procure in any event that within three (3) months of the later of (i) Closing and (ii) the date of becoming aware of the respective Third Party Assurance, each member of Sellers' Groups is released in full from such Third Party Assurance. As an alternative to obtaining the release of a member of Sellers' Groups from any Third Party Assurance, Purchaser may, in its sole discretion, elect to instead provide the relevant member of Sellers' Groups with cash collateral or a back-to-back bank guarantee issued by an Acceptable Bank issued in favour of such relevant member of the Sellers' Groups.

Pending release of any Third Party Assurance referred to in this clause 7.1, Purchaser shall indemnify and hold harmless Sellers and each member of Sellers' Groups from and against any and all claims, actions, proceedings, losses and Costs arising after Closing under or by reason of that Third Party Assurance.

2. Release of Target Companies and JVCo's from Third Party Assurances

Sellers shall use reasonable endeavours to ensure that at Closing each Target Company and JVCo is released in full from all Third Party Assurances listed in Schedule 10 given by any such Target Company or JVCo in respect of obligations of any member of Sellers' Groups and that replacements satisfactory to Purchaser acting reasonably, are put in place. In addition, Sellers shall use their reasonable endeavours to ensure that, as soon as reasonably practicable after becoming aware of any other Third Party Assurance not listed in Schedule 10 given by any such Target Company or JVCo in respect of any obligations of any member of Sellers' Groups, each Target Company or JVCo is released in full from such Third Party Assurance.

Pending release of any Third Party Assurance referred to in this clause 7.2, Sellers shall indemnify and hold harmless the Purchaser and the Target Companies from and against any and all claims, actions, proceedings, losses and Costs arising after Closing under or by reason of that Third Party Assurance.

3. Assistance for Releases

Each of Sellers and Purchaser shall provide such assistance as the other may reasonably request in order to comply with this clause 7.

9. **Closing Conditions**

1. Closing Conditions

Closing shall be conditional on the following conditions (" **Closing Conditions** ") having been fulfilled or waived in accordance with this Agreement:

- (a) Completion of the transactions contemplated by the BCA having occurred;
 - (b) Sellers having received confirmation from the FTC, the Administrative Council for Economic Defense for Brazil and the Canadian Competition Bureau in writing that such Governmental Entities (i) approve Purchaser as a suitable purchaser of the Business or do not object to the identity of Purchaser and (ii) approve the sale of the Target Companies pursuant to this Agreement as an adequate commitment in the BCA merger clearance process (together " **BCA Clearance Condition** "); and
 - (c) The Transaction having received competition approvals for or the statutory waiting periods having expired in the European Union (European Commission), Albania, Brazil, Canada,
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China (PRC), Macedonia, Serbia, Bosnia & Hercegovina and the Ukraine (" **SPA Clearance Condition** ").

2. Commitments and Processes regarding Closing Conditions

(a) Commitments and Process regarding BCA Clearance Condition

While Sellers shall have the primary responsibility for obtaining the BCA Clearance Condition, Purchaser, shall and shall procure that each member of Purchaser Group shall, at Purchaser's cost, use its best efforts to cooperate with Sellers to satisfy the BCA Clearance Condition to the extent it relates to the Business or Purchaser's acquisition thereof as soon as reasonably practicable and in any event no later than 24 October 2018 (" **Long-Stop Date** ").

Such efforts shall include, if Sellers or Purchaser become aware, or it becomes reasonably apparent, that according to the FTC, the European Commission, the Administrative Council for Economic Defense for Brazil and the Canadian Competition Bureau, the BCA Clearance Condition can only be met subject to further conditions, obligations or undertakings to the extent they relate to the Business (but not to the extent they relate to the European perimeter) or Purchaser's acquisition thereof (the " **BCA Commitments** "), Purchaser shall promptly offer (and not withdraw) such BCA Commitments (and their respective implementation) to such competent Governmental Entity and to Sellers as Sellers consider reasonably necessary to satisfy, as soon as possible and by no means later than the Long-Stop Date, the BCA Clearance Condition, all, other than Perimeter Changes, against appropriate and fair compensation to be agreed in good faith and, in case of Perimeter Changes in accordance with clause 8.2(c).

If the Parties do not timely agree on the consideration, the independent experts shall decide (also for matters that do not constitute Perimeter Changes) in accordance with clause 8.2(c) and provided that this shall in no event delay Closing. Any undisputed amount shall be paid at Closing and any further amounts shall be paid once the experts have decided.

Subject to the following sentence, such BCA Commitments may include without limitation any condition, obligation, undertaking or modification or any divestment in any manner whatsoever relating to

- (i) any undertaking or business, activities or assets directly or indirectly Controlled by Purchaser,
 - (ii) the Messer Group Western European business to be contributed to Purchaser, or
 - (iii) any DivestCo or any DivestCo Subsidiaries, activities or assets,
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or any acquisition of additional businesses or assets (or customer or supply contracts) to be divested by Sellers for a purchase price calculated in accordance with clause 8.2(c) (such acquisitions " **Perimeter Changes** "), such Perimeter Change always subject to any regulatory approvals required by law. Nothing in this Agreement shall require the Purchaser to offer any BCA Commitment or any other commitment (A) that is not, or could reasonably be expected not to be, in compliance with applicable laws or (B) that requires any member of the CVC Network to make any divestment of the assets owned or held by them directly or indirectly, other than any assets of the Target Companies or (C) in respect of acquiring or disposing of businesses or assets (as opposed to customer and supply contracts) outside of the United States, Canada, Brazil, Colombia and Chile.

Purchaser shall cooperate in good faith with Sellers in relation to the satisfaction of the BCA Clearance Condition to the extent it relates to the Business or Purchaser's acquisition thereof. Such cooperation shall include (subject to appropriate protection in respect of confidential information) the provision of information, the communication of documents and the submission of arguments in good time for the purpose of making any submissions, notifications, filings to or other communication with any competent Governmental Entity, to the extent that such information and documents are available to Purchaser acting reasonably. If requested by Sellers, Purchaser shall assist in any preparatory steps in advance of initiating any discussions with or responding to any requests from any competent Governmental Entity. Purchaser undertakes to use best efforts to maintain the agreed scope of the Business and shall not suggest to any competent Governmental Entity or any third parties to extend or amend such scope prior to Closing. Purchaser shall also keep Sellers fully informed of any material written or oral contact which Purchaser may have with any competent Governmental Entity in relation to the merger clearance process relating to the BCA or the process of obtaining the BCA Clearance Condition (whether instigated by Purchaser or any competent Governmental Entity). In this context, Purchaser shall, to the extent legally permitted and reasonably practicable, promptly notify Sellers sufficiently in advance of any submission, response or other communication which it proposes to make or submit to any competent Governmental Entity and, to the extent legally permitted and reasonably practicable, at the same time provide Sellers with copies of such communication and any supporting documentation or information. For the avoidance of doubt, Purchaser shall also comply with any requirement or request by any monitoring trustee (or similar) appointed by or on the request of a Governmental Entity in connection with obtaining the BCA Clearance Condition or the SPA Clearance Condition

(as set out in clause 8.2(b), below), and shall, to the extent legally permitted and reasonably practicable, keep Sellers fully informed of any material written or oral contact Purchaser has with the monitoring trustee (or similar).

(b) Commitments and Process regarding SPA Clearance Condition

Purchaser shall have the primary responsibility for obtaining the SPA Clearance Condition and shall ensure that the necessary notifications in respect of the SPA Clearance Condition shall be made to the relevant Governmental Entity. In those jurisdictions where a pre-notification phase is part of standard proceeding, a first draft of the notification shall be submitted no later than five (5) Business Days after the date hereof. In those jurisdictions where a pre-notification phase is not part of standard proceeding, the actual notification shall be submitted no later than five (5) Business Days after the date hereof. The notifications shall not be withdrawn subsequently unless agreed otherwise by Sellers and Purchaser.

Purchaser shall and shall procure that each member of Purchaser Group shall, at Purchaser's cost, use best efforts to ensure that the SPA Clearance Condition is fulfilled as soon as reasonably practicable and in any event no later than at the Long-Stop Date.

Subject to the following sentence, such efforts shall include proposing, negotiating, offering to commit, not withdrawing any offer to commit (unless agreed otherwise by Sellers and Purchaser) and agreeing, as soon as possible, in each case where necessary to ensure that the SPA Clearance Condition is satisfied prior to the Long-Stop Date, with a Governmental Entity to effect (and if any proposal or offer is accepted, commit to effect) by agreement, order or otherwise, the sale, divestiture, licence or disposition of any assets or businesses of the Target Companies, Purchaser or any member of Purchaser Group as soon as reasonably practicable. Nothing in this Agreement shall, however, require the Purchaser to offer any commitment (A) that is not, or could not reasonably be expected to be, in compliance with applicable laws, or (B) that requires any member of the CVC Network to make any divestment of the assets owned or held by them directly or indirectly, other than any assets of the Target Companies (for the avoidance of doubt, clause 8.2(a)(ii)(C) does not apply to commitments regarding the SPA Clearance Condition).

Purchaser shall, to the extent legally permitted, promptly notify Sellers sufficiently in advance of any notification, submission, response or other communication (excluding communications of an administrative nature) which it proposes to make or submit to any competent

Governmental Entity and prior to such notification, submission, response or other communication provide, to the extent legally permitted, Sellers with copies of such communication and any supporting documentation or information requested by Sellers. However, Purchaser shall not be required to provide Sellers with any information to the extent that in Purchaser's reasonable assessment such information constitutes or contains confidential information or business secrets of Purchaser Shareholders Group, such information shall be provided to Sellers' counsel on a counsel-to-counsel basis, only. Purchaser undertakes to take into account and reflect any comments which Sellers may have in relation to any such notification, submission, communication or response to a request for further information prior to making the relevant notification, submission, communication or response. Purchaser further agrees to keep Sellers fully informed as to the material progress of any notification and shall permit Sellers or its advisers to attend all meetings and telephone calls with any competent Governmental Entity (unless prohibited by the competent Governmental Entity) and to make, to the extent legally permitted, oral submissions at such meetings and in such telephone calls.

Sellers shall cooperate in good faith with Purchaser in relation to the satisfaction of the SPA Closing Condition and with regard to any (other) regulatory filings Purchaser will make in the context of the Transaction, including foreign investment filings with the Committee on Foreign Investment in the United States (*CFIUS*). Such cooperation shall include, (subject to appropriate protection in respect of confidential information) the provision of information, the communication of documents and the submission of arguments in good time for the purpose of making any submissions, notifications, filings to or other communication with any competent Governmental Entity, to the extent that such information and documents are available to Sellers acting reasonably. However, Sellers shall not be required to provide Purchaser, or its counsel, with any information to the extent that in Sellers' reasonable assessment such information constitutes or contains confidential information or business secrets of Sellers' Groups, such information shall be provided to Purchaser's counsel on a counsel-to-counsel basis, only. If requested by Purchaser, Sellers shall assist in any preparatory steps in advance of initiating any discussions with or responding to any requests from any competent Governmental Entity. Sellers shall also keep Purchaser fully informed of any material written or oral contact which Sellers may have with any competent Governmental Entity in relation to the merger control process to satisfy the SPA Closing Condition (whether instigated by Sellers or any competent Governmental Entity) and in relation to the process regarding the foreign investment filing with the Committee on Foreign Investment in the

United States (*CFIUS*). In this context, Sellers shall, to the extent legally permitted and reasonably practicable, promptly notify Purchaser sufficiently in advance of any submission, response or other communication which they propose to make or submit to any competent Governmental Entity and, to the extent legally permitted and reasonably practicable, at the same time provide Purchaser with copies of such communication and any supporting documentation or information. However, Sellers shall under no circumstances be required to provide Purchaser, or its counsel, with any information which in Sellers' reasonable assessment constitutes or contains confidential information or business secrets of Sellers' Groups or pertains to any proceedings in relation to the BCA or in relation to any transactions other than the Transaction.

(c) **Perimeter Change Valuation**

For the purposes of calculating the purchase price for a Perimeter Change, the following valuation principles shall apply (the equity purchase price agreed between the Parties or determined in accordance with this clause 8.2(c) the "**Perimeter Change Equity Value** "):

- (i) If the business acquired in the course of a Perimeter Change ("**Perimeter Change Business** ") relates to the same lines of business as the Business (including, bulk, ASUs, noble gases, specialty gases and rare gases) and does not relate, in aggregate, to more than USD 25,000,000 normalised EBITDA in the financial year 2017 ("**Small Similar Business** "), the equity purchase price shall be calculated on the basis of the enterprise value of the Small Similar Business derived by multiplying the normalised EBITDA in the financial year 2017 of the Perimeter Change Business with the average EBITDA multiple applied in the Transaction (i.e. 8.75 times), deducting Financial Debt, adding Cash and assuming a normalised level of Working Capital as well as the settlement of Inter-Company Receivables and Payables for the Small Similar Business in principle following the approach taken in this Agreement.

If the parties do not agree on the Perimeter Change Equity Value or the compensation, each party shall appoint an independent expert to render an opinion on the fair consideration by applying the principles set out above. If the experts do not agree on a joint valuation within twenty (20) Business Days, both experts will jointly appoint (or if they cannot agree, the president of the chambers of commerce in Frankfurt am Main, Germany, will appoint) a third expert who needs to be an auditor and a member of an international reputable accounting firm, who acts as arbitrator and finally decides,

applying the principles set out above, subject only to manifest errors, on the matters in dispute and shall decide within the range of the valuations provided by the Party appointed experts.

- (ii) If and to the extent the Perimeter Change Business relates to the same lines of business as the Business and relates to, in the aggregate, more than USD 25,000,000 normalised EBITDA in the financial year 2017 (" **Medium Similar Business** "), the equity purchase price shall be the lower of (i) an equity purchase price calculated in the same way as for the Small Similar Business and (ii) the fair market value determined by the independent experts, or the arbitrator (applying *mutatis mutandis* the procedural principles set out in clause 8.2(c)(i) above) , as the case may be, without having regard to the average EBITDA multiple applied for the valuation of the (initial) Transaction.
- (iii) If and to the extent the Perimeter Change Business relates to different lines of businesses than the Business or relates to a normalised EBITDA in the financial year 2017 of more than USD 100,000,000, the equity purchase price shall be the lower of (A) the price determined by the two above-mentioned independent experts and, if such experts do not agree on a valuation, by the third independent expert acting as arbitrator applying customary valuation principles (applying *mutatis mutandis* the procedural principles set out in clause 8.2(c)(i) above) or (B) the cumulated cash flows generated by the Perimeter Change Business until the end of the terms of its material customer contracts.
- (iv) If and to the extent the Perimeter Change Business relates to a plant or unit under construction, the equity purchase price shall be the arithmetic mean of (A) the book value (if necessary, subject to impairment) and (B) the price determined by the two above-mentioned independent experts and, if such experts do not agree on a valuation, by the third independent expert acting as arbitrator applying customary valuation principles (applying *mutatis mutandis* the procedural principles set out in clause 8.2(c)(i) above) .

If the Perimeter Change Equity Value established pursuant to this clause 8.2(c) for all Perimeter Changes exceeds USD 300,000,000 then a discount of 30% (thirty percent) shall apply to the amount exceeding USD 300,000,000.

In each case of Perimeter Changes pursuant to clause 8.2(c)(i) through (iv), Sellers will provide the Purchaser with the opportunity to conduct due diligence on the Perimeter Change Business.

Risks identified in the due diligence will be appropriately covered, primarily through warranties and indemnities, and the relevant parties shall enter into transaction documents, all to be reasonably agreed between the relevant parties taking into consideration the approach taken in this Agreement.

3. Waiver of Closing Conditions

- (a) The Closing Condition set out in clause 8.1(a) may be waived by Sellers by giving written notice to Purchaser.
- (b) The Closing Condition set out in clause 8.1(c) may be (i) waived jointly by the Parties or (ii) waived by Sellers unilaterally and in their sole discretion by giving written notice to Purchaser, to the extent such Closing Condition relates to the Transaction having received competition approvals for, or the statutory waiting periods having expired in, Albania, China (PRC), Macedonia, Serbia, Bosnia & Hercegovina and the Ukraine, provided, however, that Sellers may not waive such Closing Condition (in full or in part) prior to the later of (x) 1 September 2018, and (y) the date on which the Closing Conditions that cannot be unilaterally waived in full or in part are satisfied, with such waiver by Sellers becoming legally effective to allow for a Closing on or after 17 September 2018.

4. Unconditional Date

Sellers and Purchaser shall each notify the other promptly upon becoming aware that (i) any of the Closing Conditions have been fulfilled, or (ii) the satisfaction of any of the Closing Conditions is or has become impossible. The first Business Day by which all Closing Conditions have been fulfilled (or waived in accordance with clause 8.3) is the "**Unconditional Date**". Without limitation to the preceding sentence, Sellers and Purchaser shall each notify the other without undue delay when, in the respective Party's reasonable assessment, it becomes clear that the fulfilment of a Closing Condition can be expected.

5. Long-Stop Date Termination

If (i) the Unconditional Date has not occurred on or before the Long-Stop Date or, (ii) before that date, the satisfaction of any of the Closing Conditions has become impossible (such Closing Condition(s) not having been waived) this Agreement may be terminated by (x) Sellers and PLC

acting jointly or (y) by Purchaser, provided that Purchaser may only terminate in case of (i) above if Closing has not occurred within eight (8) months and twenty-five (25) calendar days after the date of this Agreement and, in case of (ii) above if the Sellers have notified Purchaser in writing that the fulfilment of the BCA Condition or the completion of the transactions contemplated by the BCA has become impossible and the Sellers shall be obliged to so notify Purchaser as soon as reasonably possible and provided further that a statement to that effect by Linde and/or PLC by official press release or capital markets communication (e.g. an ad-hoc announcement by Linde) shall have the same effect as a notification to Purchaser.

6. No Right of Termination or Rescission

The Parties agree that, following the date of this Agreement, no Party will have a right (including any right under common law, tort, statute (including under the Misrepresentation Act 1967), equity, or otherwise) to terminate or rescind this Agreement, except (i) in respect of fraud or fraudulent misrepresentation committed by the other Party (provided that Sellers and PLC shall be considered to be one party for purposes of this clause 8.6), or (ii) the contractual termination right provided in clause 8.5.

If this Agreement is terminated in accordance with clause 8.5 or by any Party in respect of fraud or fraudulent misrepresentation committed by the other Party, (i) any such termination shall have effect for all Parties and (ii) no Party (nor any member of their respective group) shall have any claim under this Agreement of any nature whatsoever against any other Party (or any member of their respective group) except in respect of any rights, liabilities or obligations which have accrued before termination or under any of the Surviving Provisions.

10. **Closing, Closing Actions**

1. Closing Date and Place

Subject to clause 8 and clause 9.2, Closing shall take place at the offices of Hengeler Mueller Partnerschaft von Rechtsanwälten mbB in Munich, or such other place as Sellers and Purchaser may agree in writing:

- (a) on the first Closing Business Day of the calendar month immediately following the Unconditional Date; or
 - (b) if the Unconditional Date falls less than five (5) Closing Business Days before the first day of such immediately following calendar month, on the first Closing Business Day of the next
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calendar month; Sellers will inform the Purchaser at least five (5) Business Days in advance of the expected Unconditional Date;

(such day the " **Closing Date** ") provided that in each case the Parties hereby agree that Closing shall be deemed to be effective from 00:00 hours local time in the respective jurisdiction of the first calendar day of the month in which the Closing Date falls (the " **Financial Closing Date** ").

2. Closing Date and Conditions

Notwithstanding clause 9.1, if a Governmental Entity or applicable law requires that Closing (or closing of the sale of any of the DivestCo Shares) must be completed on or by a certain date after the Unconditional Date in connection with the completion of the transaction contemplated by the BCA or related merger clearance approvals then Closing shall (subject to the Closing Conditions being satisfied or waived) take place on the Closing Business Day immediately prior to such date, provided, that Sellers have to notify Purchaser at least five (5) Business Days in advance of such request and such date 00:00 hours local time in the respective jurisdiction shall be the Financial Closing Date. Sellers will inform the Purchaser at least ten (10) Business Days in advance of the expected occurrence of the Closing Date.

3. Closing Actions

At Closing:

- (a) The Parties shall perform the actions to implement the Transaction, including the transfer of the DivestCo Shares, the payments as required pursuant to this Agreement to be made at Closing, and the execution of the agreements pursuant to clause 15.6(b) through (i) (unless executed before), and will cooperate together to agree such actions, each acting reasonably, as soon as practical after the date hereof; and
- (b) in case there is a Deferred Closing required, each of Purchaser and each Seller may defer the performance of the actions assigned to them in relation to the Colombian Entities, until the Deferred Closing, and Purchaser may defer the payment of an amount equalling such portion of the Enterprise Purchase Price (i.e. before any of the steps set forth in clause 4.1 (a) through (g)) as allocated to the respective Colombian Entities pursuant to Schedule 3 as set forth in clauses 4.2 and 9.5(d),

(the " **Closing Actions** ").

4. Closing Preparation and Support

Sellers and Purchaser shall negotiate in good faith with a view to agreeing before the Closing Date the final form of any Transaction Document which has not been finalised at the date of this Agreement, such agreement not to be unreasonably withheld or delayed.

5. Deferred Closing

- (a) Purchaser is aware that any direct sale or transfer of shares in Linde Colombia S.A., as foreseen under this Agreement, triggers a prior healthcare regulatory approval requirement with the Colombian healthcare regulator (*Superintendencia Nacional de Salud*) (" SNS ") to be applied for by Linde Colombia S.A. (" **Healthcare Approval** ").

Sellers shall procure that Linde Colombia S.A. will use its reasonable endeavours to obtain the Healthcare Approval as soon as possible following the date hereof and Sellers shall keep Purchaser fully informed of, and shall consult with Purchaser as regards to, any material written or oral contact which Sellers or Linde Colombia S.A. may have with SNS in relation to the process of obtaining the Healthcare Approval. The process of obtaining the Healthcare Approval does, however, not have to be completed by Closing.

- (b) If, at Closing, the Healthcare Approval has not been obtained, the closing of the sale and transfer of the Colombian Entities shall be deferred as set out below (" **Deferred Closing** "):
- (i) the transfer of the shares in the Colombian Entities from the respective Linde Sellers to Purchaser as foreseen under this Agreement, particularly according to clauses 3 and 9 shall not take place on the Closing Date, whereas the transfer of the shares in all other Target Companies from the respective Local Sellers to Purchaser as foreseen under this Agreement shall take place on the Closing Date;
 - (ii) the Parties shall procure the transfer of the shares in the Colombian Entities from the respective Linde Sellers to Purchaser as soon as reasonably possible following the date on which the Healthcare Approval is obtained (the date on which such transfer occurs the " **Colombian Transfer Date** "), provided that clauses 9.1 and 9.2 shall apply *mutatis mutandis* ;
 - (iii) the obligations of Sellers on the conduct of business foreseen under clause 15.1 shall apply with respect to the Colombian Entities, until the Deferred Closing has occurred, for as long as the Sellers can influence and exercise control over the respective entities, provided that any financing of the Colombian Entities by the Sellers during such period shall per se not constitute a violation of the covenant in clause 15.1 if (i) it is in line
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- with the budget or (ii) the Purchaser has given its prior consent (not to be unreasonably withheld or delayed), and any agreed financing shall be reversed between the Parties at the Deferred Closing;
- (iv) irrespective of the postponement pursuant to clause 9.5(b)(i) and (ii) of the transfer of the shares in the Colombian Entities, for the time period between the Closing Date and the Colombian Transfer Date, Purchaser acquires the shares in the Colombian Entities economically with effect as of the Financial Closing Date;
 - (v) the Sellers shall for the time period until the Colombian Transfer Date, put in place adequate arrangements to comply with hold separate requirements if requested by competent Governmental Entities, which may include the involvement of a trustee to be appointed by or upon request by such Governmental Entities, provided that in such case Sellers shall use commercially reasonable efforts to have the trustee pursue the business in the ordinary course; and
 - (vi) the Parties shall, all acting reasonably, agree on the conclusion of appropriate additional transitional services and product supplies to be entered into by the relevant member of Sellers' Groups or Purchaser's Group on the one hand, and the Colombian Entities on the other hand, for the time period between the Closing Date and the Colombian Transfer Date.
- (c) Sellers shall indemnify and hold harmless Purchaser and the Colombian Entities, respectively, from the amount of any Leakage occurred in the time period commencing immediately after the Financial Closing Date and ending on the Colombian Transfer Date provided, that for purposes of this clause 9.5(c) the term Leakage shall refer only to Leakage from the Colombian Entities.
 - (d) At the Colombian Transfer Date (i) each Seller shall perform or procure performance of the actions with respect to the Colombian Entities as per clause 9.3; and (ii) Purchaser shall perform or procure performance of the actions with respect to the Colombian Entities as per clause 9.3, provided that the payment of the Purchase Price shall, for the Deferred Closing mean the payment of such part of the Purchase Price that has been deferred by Purchaser on Closing (without any interest).
 - (e) Should the Colombian Transfer Date not have occurred within eight (8) months and twenty-five (25) calendar days after the date of this Agreement, each Party may request that the sale and acquisition for the DivestCos pertaining to Colombia pursuant to this Agreement is terminated and the steps that have been taken to implement such sale and transfer are unwound, unless the respective Party requesting the termination and unwinding wilfully prevented the
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Deferred Closing to occur. Unwinding for the purposes thereof shall mean that the Parties shall (i) no longer be obliged to perform the sale and acquisition for the DivestCos pertaining to Colombia pursuant to this Agreement, and (ii) repay any Adjustment Payments that have been made pursuant to clause 4.1 (a) through (g) in respect of the Colombian Entities, for which the transaction is terminated, that have been included in the calculation of the Purchase Price and as shown in the Closing Statement.

11. **Sellers' Warranties**

1. Warranties

Sellers warrant to Purchaser that, except as Disclosed:

- (a) as at the date of this Agreement, the warranties set out in Schedule 7 (" **Warranties** ") are true and accurate in all material respects; and
- (b) immediately before Closing, the Fundamental Warranties and the Warranties under paragraph 1.6 of Schedule 7 will be true and accurate in all material respects by reference to the then existing facts and circumstances.

The Warranties and all Warranty Claims are subject to the limitations set out in this Agreement, in particular, in Schedule 8.

2. Basis of Claim

The Purchaser acknowledges and agrees that the only Warranties given in relation to:

- (a) Intellectual Property Rights and information technology or any related claims, liabilities or other matters are set out in paragraphs 1.12(a) to 1.12(e) of Schedule 7 and no other Warranty in this regard is given;
- (b) real estate and planning and zoning matters or any related claims, liabilities or other matters are those set out in paragraphs 1.13(a) to 1.13(d), paragraph 1.7 and paragraph 1.17 of Schedule 7 and no other Warranty in this regard is given;
- (c) environment or any related claims, liabilities or other matters are those set out in paragraphs 1.14(a) to 1.14(c) of Schedule 7 and no other Warranty in this regard is given; and
- (d) the employment of any past or present employee of any Target Company or any member of Sellers' Groups or any related claims, liabilities or other matters are set out in paragraphs 1.15(a) to 1.15(j) of Schedule 7 and no other Warranty in this regard is given;

provided, however, that the clauses 10.2(a) through (d) do not exclude any claim the Purchaser may have in relation to matters set out in paragraph 1.2 of Schedule 7 (*Carve Out Measures*), paragraph

1.3 of Schedule 7 (*Financial Matters*), paragraph 1.4 of Schedule 7 (*Financial Debt*), paragraph 1.6 of Schedule 7 (*Special Regulatory Matters*), paragraph 1.8 of Schedule 7 (*Insurances*), paragraph 1.10 of Schedule 7 (*Litigation and Investigations*) or in relation to any covenants or indemnities under this Agreement, the Transaction Documents and the Carve Out Agreements.

3. No Further Warranties

Except for the Warranties and except otherwise provided for in this Agreement, any Transaction Document (other than the Local Transfer Agreements) or in a Carve Out Agreement, Purchaser agrees to accept the DivestCo Shares, the Target Companies and the JVCos in the condition they are in on the Closing Date, based upon its own inspection, examination and determination with respect thereto (including, in particular, the due diligence investigation conducted by Purchaser), without relying upon any express or implied representations or warranties, guarantees, declarations or statements of any nature by any members of Sellers' Groups, or any officer, director, employee, advisor, agent or other representative of any members of Sellers' Groups (" **Sellers' Representatives** "). The Local Transfer Agreements shall not provide for additional warranties, and if by mandatory law they do, this Agreement shall overrule such warranties.

Purchaser acknowledges that, except as set out in the Warranties and except otherwise provided for in this Agreement, any Transaction Document (other than the Local Transfer Agreements) or Carve Out Agreement, members of Sellers' Groups and Sellers' Representatives make no representations, warranties or guarantees and assume no disclosure or similar obligations in connection with this Agreement and the Transaction, and further assume no obligation regarding the completeness and accuracy of any information provided by any members of Sellers' Groups or any Sellers' Representatives, to any Purchaser, members of Purchaser Group, or any officer, director, employee, advisor, agent or other representative of Purchaser or any members of Purchaser Group or any other person retained by Purchaser, any member of Messer Group or CVC Network, regarding the Transaction, this Agreement or the Transaction Documents (" **Purchaser's Representatives** ").

12. **Sellers' Indemnifications**

1. Welding Fumes Indemnification

With respect to any Welding Fumes Case the provisions of Schedule 14 shall apply.

2. Prepayment Amounts Indemnification

Subject to Closing, Sellers shall indemnify and hold Purchaser and the Target Companies harmless from and against any Prepayment Amount in respect of any Financial Debt (excluding pension liabilities) which is retired, prepaid, discharged, redeemed, closed out or otherwise extinguished in the period beginning on and from the Closing Date to and including the date falling 30 (thirty) calendar days after the Closing Date or, in respect to the Financial Debt relevant to the Colombian Entities only, 30 (thirty) calendar days after a Deferred Closing, as the case may be, in each case, to the extent such Prepayment Amount has not been (or will not be) subtracted from the Enterprise Purchase Price pursuant to clause 4.1.

3. Further Indemnifications

Subject to Closing,

- (a) Sellers shall indemnify and hold Purchaser and the Target Companies harmless from and against any awards, damages, fines, penalties, settlement awards, losses, Tax, costs, fees, expenses, claims, obligations or other liabilities, including reasonable legal, expert witness and other expenses incurred in investigating and defending, arising out of, or resulting from, or relating to the Siess v. Linde AG case filed by Charles P. Siess, III against, inter alia, the Target Companies as well as any other claims potentially alleged by Charles P. Siess in relation to the same subject matter;
- (b) Sellers shall indemnify and hold Purchaser and Linde Gases Ltda. or Linde-BOC Gases Limitada, as the case may be, harmless from and against any awards, damages, fines, penalties, settlement awards, losses, Tax, costs, fees, expenses, claims, obligations or other liabilities, including reasonable legal, expert witness and other expenses incurred in investigating and defending, arising out of, or resulting from, or relating to (i) the administrative proceeding initiated in Brazil by CADE (the Administrative Council for Economic Defense) in 2003/2004 to investigate an alleged cartel in the supply of industrial and medical gases to the Brazilian market and (ii) any other proceeding or law suits whether civil or brought by any governmental authority that will be based on the same set of facts that gave rise to the proceedings set forth in "(i)";

(such matters the "**Proceedings**").

Such indemnifications shall exclude any internal costs and charges of Purchaser or any Target Company incurred in relation to or arising in connection with any Proceedings.

The Parties acknowledge and agree that with respect to the conduct of the Proceedings, including any related proceedings, investigations, potential settlement or other resolution and the provisions in paragraphs 3, 4 and 7 of Schedule 14 shall apply *mutatis mutandis* .

4. **Sole Remedy**

Notwithstanding any other provisions of this Agreement, the indemnification obligations provided for in this clause 11 shall be the respective indemnified party's exclusive and sole remedy for any Costs, damages or liabilities relating to or arising in connection with any Proceedings and/or matters specifically referred to in this clause 11, and all other claims against any member of Sellers' Groups relating to the Proceeding and/or matters referred herein, regardless of their legal basis, shall be excluded. For the avoidance of doubt, nothing in this clause 11 shall exclude any Warranty Claim or other claim Purchaser may have under this Agreement, the Transaction Documents or the Carve Out Agreements unless it is based on the same set of facts to which the indemnifications set forth in clause 11 specifically relate.

13. **Taxes**

1. **Tax Covenant**

Under a covenant on the terms set out in this clause 12.1 and subject to clause 12.2 and subject to Closing, Sellers shall be jointly and severally liable to pay to Purchaser an amount equal to:

- (a) any Actual Tax Liability of the Target Companies that arises:
 - (i) as a consequence of an event that occurred on or before the Financial Closing Date, provided that this clause 12.1(a)(i) shall not apply to any Tax arising in respect of, by reference to or in consequence of Income, Profit or Gains; for the purposes of this clause 12.2(a)(i) any stamp duty or transfer or registration tax that would be payable on any document, provided such document is either necessary to establish the title of a Target Company to any asset or is a document in the enforcement or production of which a Target Company is interested, and any interest, fine or penalty relating to any such duty or tax, will be deemed to be an Actual Tax Liability of a Target Company arising in consequence of an event occurring on the last date it would have been necessary to pay such duty or tax to avoid any liability to interest or penalties on paying it, but in all events no later than the Financial Closing Date;
 - (ii) in respect of, by reference to or in consequence of Income, Profits or Gains earned, accrued or received in a Tax assessment period (including a portion of a Straddle
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- Period) ending on or before the Financial Closing Date (including as a consequence of the Carve Out); or
- (iii) in respect of or by reference to the value of any asset or assets, the value or amount of any capital or liabilities or the net asset value or market capitalization of any Target Company, in each case by reference to a time or period falling on or before the Financial Closing Date; provided that this clause 12.2(a)(iii) shall not apply to Tax arising in respect of, by reference to or in consequence of Income, Profits or Gains, or events and for the avoidance of doubt shall not apply to deferred tax assets and deferred liabilities;
 - (b) any Deemed Tax Liability;
 - (c) any Actual Tax Liability of any Target Company arising after the Financial Closing Date as a consequence of the (i) Carve Out (including without limitation (x) any Actual Tax Liability arising with respect to Carve Out Steps completed prior to the Financial Closing Date, but only crystallized after the Financial Closing Date as a result of the completion of the remaining Carve Out Steps after the Financial Closing Date or the sale of the DivestCo Shares (e.g., Tax on Income, Profits or Gain triggered only upon the consummation of the Transaction) and (y) any Tax owed or payable by any Target Company under the Carve Out Agreements) or (ii) the spin-off (or any other form of transfer) of the business of Praxair Chile Limitada to a Chilean new entity (" **Chilean Spin-Off** ") (including without limitation (x) any Actual Tax Liability arising with respect to steps relating to the Chilean Spin-Off completed prior to the Financial Closing Date, but only crystallized after the Financial Closing Date as a result of the completion of any remaining steps relating to the Chilean Spin-Off after the Financial Closing Date or the sale of the DivestCo Shares (e.g., Tax on Income, Profits or Gain triggered only upon the consummation of the Transaction and (y) any Tax owed or payable by any Target Company under the spin-off agreement) (each (i) and (ii) (a " **Carve Out Tax** "), but excluding (i) any Actual Tax Liability of any Target Company arising only indirectly as a consequence of the Carve Out or the Chilean Spin-Off which may reduce the amount of any Relief available to any Target Company in respect of any accounting period following completion of the Closing (e.g. a reduction of depreciation expenses resulting from a lower Tax basis of an asset) and (ii) any Tax Liability to the extent it is triggered by the Purchaser's failure to comply with its obligation pursuant to clause 2.1 paragraph 2 sentence 3;
 - (d) any Actual Tax Liability of any Target Company or any other member of Purchaser German TopCo Group arising in consequence of or in connection with (i) the settlement of the Linde LLC Receivable as provided for in clause 5.8, (ii) any (actual or constructive) dividend or
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distribution used to directly or indirectly settle the Linde LLC Term Loan within one (1) year after the Closing (it being understood that Purchaser shall consult in good faith with Sellers in order to agree on the efficient way of such settlement) or (iii) the Canada Cash Extraction;

- (e) any Actual Tax Liability of a Target Company arising as a result of the termination of any Tax Group between a Target Company and a member of Linde Group or Praxair Group in the form of a degrouping charge, deemed disposal or realisation or write-up by any Target Company of any asset or liability for any Tax purpose, or withdrawal of Relief; and
- (f) any Tax Liability for which any of the Target Companies or member of the Purchaser German TopCo Group is liable in consequence of:
 - (i) any member of Sellers' Groups which is primarily liable for such Tax Liability failing to discharge such Tax Liability; or
 - (ii) a Target Company at any time being a member (or the parent) of the same Tax Group as any past or present member of Sellers' Groups, where the Tax is attributable to any past or present member of Sellers' Groups and not to any Target Company or other member of Purchaser German TopCo Group.

2. Exclusions

- (a) Sellers shall not be liable under clause 12.1 if and to the extent that:
 - (i) the aggregate amount of all Tax Claims pursuant to clause 12.1 (after having taken into account all exclusions and limitations applicable to such Tax Claims under this Agreement) does not exceed the aggregate amount of all liabilities, provisions or reserves for Taxes (generally only for liabilities, provisions or reserves included in a line item described or identified as tax liability, tax provision or tax reserve in Schedule 2, however, in case of payroll tax, irrespective of whether such liability, provision or reserve is included in a line item described or identified as tax liability, tax provision or tax reserve in Schedule 2) which have been taken into account in calculating Working Capital in the Closing Statement, meaning that Sellers' liability is limited to the excess of the aggregate amount of all Tax Claims pursuant to clause 12.1 over the aggregate amount of all liabilities, provisions or reserves for Taxes (generally only for liabilities, provisions or reserves included in a line item described or identified as tax liability, tax provision or tax reserve in Schedule 2, however, in case of payroll tax, irrespective of whether such liability, provision or reserve is included in a line item described or identified as tax liability, tax provision or tax reserve in Schedule 2) which have been taken into account in calculating Working Capital in the Closing Statement;
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- (ii) a saving arises to or for the benefit of any member of Purchaser German TopCo Group or Purchaser's Tax Group as a consequence of the Tax Liability (for example, due to the lengthening of any amortization or depreciation periods or higher depreciation allowances, a credit or allowance, a shift of any item relevant for Tax purposes to another period, or the deductibility of certain Taxes or non-recoverable input VAT for income Tax purposes) (the " **Tax Saving** "). The Tax Saving shall be taken into account in this context: (i) in the full nominal amount if and to the extent the Tax Saving arises in any period prior to and including the date on which the claim pursuant to clause 12.1 becomes due and payable (or would have become due and payable save for this clause 12.2(a)(ii)) (the " **Indemnification Due Date** ") and/or (ii) in the amount of the net present value of the Tax Saving if and to the extent the Tax Saving is allocable to any period after such date; the net present value within the meaning of the preceding (ii) shall be calculated on a purely abstract and lump-sum basis (x) by applying the Tax rate applicable at the Indemnification Due Date, (y) by applying a discount factor of three per cent (3 %) p.a. over the anticipated period of time during which the Tax Saving is estimated to arise, and (z) by ignoring the actual Tax situation of any member of Purchaser German TopCo Group, in particular, all other tax attributes of the relevant entity and, in case of a Tax Saving relating to Taxes on income, assuming that the relevant entity is profitable and not part of a Tax Group;
 - (iii) the Tax Liability results from any increase in rates of Tax that comes into force after the Financial Closing Date, or of any other change in law or regulations that comes into force after the Financial Closing Date;
 - (iv) the Tax Liability arises or is increased by an act, omission or transaction (other than such acts, omissions or transactions specifically dealt with in clauses 12.2(a)(v), (x), (xi), (xii) and (xiv)) of any member of Purchaser German TopCo Group except where such act, omission or transaction was: (v) carried out in circumstances where Purchaser did not know and could, acting diligently and after due inquiry (in particular with the relevant Target Company concerned), not have known that it could give rise to the Tax Liability in question, (w) carried out or effected under a legally binding obligation entered into on or before Closing by any Target Company or any member of Sellers' Groups, (x) required by mandatory law, (y) required to effect a Carve Out Step or otherwise required to effect the Carve Out in accordance with clause 2 and Schedule 13 or required to effect any measure contemplated in the Transaction Documents or (z) carried out with the prior written consent of Sellers;
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- (v) the Tax Liability arises or is increased by a change after Closing in the accounting reference date of any Target Company or in the taxation or accounting principles of the Target Company (other than a change made in order to comply with mandatory law);
 - (vi) discharge of the Tax Liability has been made prior to or on the Financial Closing Date;
 - (vii) the Tax Liability arises or is increased as a consequence of the failure of Purchaser to comply with or procure the compliance of the Target Companies with any of their obligations under clause 12.10;
 - (viii) a Relief (other than an Accounts Relief or Purchaser's Relief) is available at no cost (or is made available by Sellers at no cost to Purchaser) to offset the Tax Liability;
 - (ix) the Tax Liability has been recovered or is, using reasonable efforts, reasonably likely to be recovered within a reasonable time frame in cash or by way of set-off from a third party; if Purchaser, despite reasonable efforts, fails to recover the Tax Liability within a reasonable time frame, Purchaser shall assign, or shall Procure that the relevant Target Company assigns, the claim to Sellers, and Sellers shall properly pay the amount of such Tax Liability to Purchaser;
 - (x) the Tax Liability arises or is increased (y) by reason of a failure to make an election, claim or relief which has been taken into account in the Closing Statement or (z) by the disclaimer by Purchaser or by a Target Company after the Closing of any election, claim or relief the claim for which was taken into account in the Closing Statement, but in each case of (y) and (z) only if and to the extent Purchaser had been notified of the relevant election, claim or relief by the Sellers in writing at least ten (10) Business Days prior to the last date on which such election, claim or relief can be validly made or, as the case may be, disclaimed, it being understood that nothing hereunder shall exclude or limit Purchaser's obligations under clause 12.10;
 - (xi) the Tax Liability arises or is increased by the disclaimer by Purchaser or by a Target Company after the Closing of any election, claim or relief claimed by the Target Company before the Financial Closing Date, except this exclusion shall not apply where any such disclaimer: (x) is carried out or effected under a legally binding obligation entered into on or before Closing by any Target Company or any member of Sellers' Groups, (y) is required by mandatory law or (z) is carried out with the prior written consent of Sellers;
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- (xii) the Tax Liability arises or is increased by the cessation (after the Closing) of, or any major change (after the Closing) in, the trade or business carried on by a Target Company before the Closing;
 - (xiii) recovery in respect of the Tax Liability has been made under any other provision of the Agreement;
 - (xiv) the Tax Liability results from an election filed on or after Closing by Purchaser German TopCo Group or any Target Company under (x) section 336 or section 338 of the U.S. Internal Revenue Code (or any comparable applicable provision of state, local or non-US law) with respect to the acquisition of a Target Company or (y) section 301.7701-3 of the U.S. Treasury Regulations with respect to any Target Company, unless, in each case, such election is so filed upon instruction, request or direction of Sellers; or
 - (xv) the Tax Liability is to be borne by Purchaser pursuant to any other provision of this Agreement (e.g. clause 6.4 or clause 25.1).
- (b) The Purchaser may raise a Tax Claim pursuant to clause 12.1 by delivering to Sellers a written claim notice ("**Tax Claim Notice**"). In the Tax Claim Notice Purchaser shall, to the extent reasonably predictable, specify an estimate of the amount of the Tax Claim and describe the underlying facts and circumstances in reasonable detail. The Tax Claim Notice shall include a copy of the relevant Tax assessment (if any) and related documents to the extent reasonably necessary to understand and evaluate the claim provided and to the extent that these documents are available to any member of the Purchaser German TopCo Group.
- (c) The Tax Claim pursuant to clause 12.1 becomes due and payable within ten (10) Business Days after Sellers have received the Tax Claim Notice, provided, however, that, in case of an Actual Tax Liability, the Sellers shall not be obliged to make any payment earlier than five (5) Business Days before the respective Tax becomes due and payable to the competent Tax Authority. In case of an appeal and/or lawsuit being filed against the relevant Tax assessment, the Tax Claim does not become due and payable by Sellers before the assessment of the relevant Tax has become unappealable, provided and to the extent that the Tax Authority or Tax court has granted a preliminary relief from the assessed Tax payment obligation by way of suspension of payment until the final assessment. Unless explicitly requested by Sellers in writing Purchaser is under no obligation to apply for any preliminary relief (e.g. a suspension of payment) and in case of an application upon the request of Sellers, any collateral potentially requested by the Tax Authorities shall be provided by Sellers.
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3. Linde Canada Investments LLC Dissolution

- (a) Sellers shall be jointly and severally liable to pay to Purchaser an amount equal to any Tax Liability (together with any associated Costs) of a Target Company arising from or in connection with the dissolution of Linde Canada Investments LLC as set out in Schedule 18 (the " **Linde Canada Investments LLC Dissolution** ") regardless of whether the events giving rise to such Tax (including, the effects of any Tax election) occur before or after the Financial Closing Date.
- (b) Purchaser shall fully cooperate, and shall cause its representatives to fully co-operate, with Seller regarding the Linde Canada Investments LLC Dissolution and shall comply with, and shall cause any member of Purchaser German TopCo Group to comply with, any written instructions given by Sellers in connection with the Linde Canada Investments LLC Dissolution (to the extent permitted by law).
- (c) The liability of the Sellers pursuant to clause 12.3(a) shall only be excluded if and to the extent the Purchaser (or any member of the Purchaser German TopCo Group) failed (i) to implement the LLC Dissolution in accordance with Schedule 18 or (ii) to comply with any written instruction of the Sellers to the extent required by clause 12.3(b) (unless and to the extent Purchaser demonstrates that the liability was not caused or increased by such failure).
- (d) Clauses 12.2(a)(ii), 12.2(a)(viii), 12.2(b) and 12.2(c) shall apply *mutatis mutandis* to any claim pursuant to clause 12.3(a).

4. Tax Refunds

- (a) Subject to Closing, Purchaser shall pay to Sellers an amount equal to any Tax Refund (less any Tax on any Tax Refund or any interest included therein calculated on the basis of the applicable statutory tax rate at the time of receipt) which is received by any Target Company after the Financial Closing Date for amounts paid in respect of any Tax or Taxes paid or otherwise settled by such Target Company prior to or on the Financial Closing Date (including by way of a prepayment), or, in case of a Tax credit for payments made prior to or at the Financial Closing Date. Purchaser shall not be liable for any amount of any Tax Refunds to the extent that:
 - (i) the aggregate amount of such Tax Refunds does not exceed the aggregate amount of assets and receivables for Taxes (generally only for assets or receivables included in a line item described or identified as tax asset or tax receivable in Schedule 2, however, in case of payroll tax, irrespective of whether such asset or receivable is included in a line item described or identified as tax asset or tax receivable in Schedule 2) which have been taken into account in calculating Working Capital in the Closing Statement,
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meaning that Purchaser's liability is limited to the excess of the aggregate amount of Tax Refunds over the aggregate amount of all such assets and receivables for Taxes which have been taken into account in calculating Working Capital in the Closing Statement; or

(ii) the circumstances underlying the Tax Refund have excluded or reduced a Tax Claim pursuant to clause 12.

- (b) Purchaser shall use, and shall procure that the Target Companies will use, reasonable efforts to comply with any formal requirements to be met after the Financial Closing Date for the recovery of any Tax Refund. Purchaser shall promptly notify Sellers in writing of the receipt of the Tax Refund. Any amount payable to Sellers pursuant to this clause 12.4 shall be due and payable within ten (10) Business Days after the Tax Refund has been received by the relevant Target Company. Purchaser shall deliver, for the next ten (10) calendar years following the Financial Closing Date, to Sellers within six (6) months following the end of a calendar year a written statement stating whether and to what extent payment obligations of Purchaser pursuant to this clause 12.4 have arisen during the previous calendar year. Sellers shall be entitled to review such statement at its own Costs and Purchaser shall, and shall procure that the Target Companies will, provide to Sellers upon Sellers' request all information and documentation reasonably requested by Sellers for such review.

5. Overprovisions

- (a) If any member of Purchaser German TopCo Group becomes aware that any liability, provision or reserve for Taxes (generally only for liabilities, provisions or reserves included in a line item described or identified as tax liability, tax provision or tax reserve in Schedule 2, however, in case of payroll tax, irrespective of whether such liability, provision or reserve is included in a line item described or identified as tax liability, tax provision or tax reserve in Schedule 2) which have been taken into account in calculating Working Capital in the Closing Statement is likely to be an Overprovision (other than to the extent the Overprovision would arise or be increased as a result of any retrospective change in the law after the Financial Closing Date or any Purchaser's Relief) Purchaser shall promptly give details of such likely Overprovision by written notice to Sellers.
- (b) Purchaser shall deliver, for the next ten (10) calendar years following the Financial Closing Date to Sellers within six months following the end of a calendar year a written statement stating whether and to what extent Overprovisions have arisen during the previous calendar year. Sellers shall be entitled to review such statement, and Purchaser shall, and shall procure that the Target Companies will, provide to Sellers upon Sellers' request such information and
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documentation reasonably requested by Sellers in order to verify the amount of the relevant Overprovision.

- (c) If an Overprovision has arisen, the amount of such Overprovision shall be:
 - (i) set off against any payment then due from Sellers to Purchaser under this clause 12; and
 - (ii) (to the extent there is any excess) promptly paid by Purchaser to Sellers.

For the avoidance of doubt, such amounts which were already set off or paid out shall reduce the aggregate amount of specific liabilities and provisions that limits the Sellers' liability pursuant to clause 12.2(a)(i).

- (d) Any amount payable to the Seller pursuant to clause 12.5(c)(ii) shall be due and payable within twenty (20) Business Days after receipt of the relevant written statement pursuant to clause 12.5(b) by Sellers but at the latest within seven (7) months following the end of the respective calendar year.

6. Tax Covenants of Purchaser; Reverse Tax Indemnification; Reverse Tax Saving

- (a) The Purchaser shall - without Sellers' prior written approval - not take, and shall procure that after Closing no member of Purchaser German TopCo Group will take, any action, or omit to take any action, including the making of any Tax elections, the effect of which could give rise to any Tax Liability (including any Tax Claim pursuant to clause 12.1) of any member of Sellers' Groups, or result in any increase thereof, or in the reduction of any Tax Saving, including any action or omission of action:
 - (i) performed after Closing with retroactive effect to a period before the Financial Closing Date; or
 - (ii) with respect to Tax accounting methods not consistent with Sellers' Groups practice prior to the Closing Date; unless such action or omission of action, as the case may be, is (v) required by mandatory law, (w) carried out in circumstances where Purchaser did not know and could, acting diligently and after due inquiry (in particular with the relevant Target Company concerned), not have known that it could give rise to the Tax Liability in question, (x) carried out or effected under a legally binding obligation entered into on or before Closing by any Target Company or any member of Sellers' Groups, or (y) required to effect a Carve Out Step or otherwise required to effect the Carve Out if and to the extent it is required to be implemented under an obligation pursuant to clause 2, Schedule 13 or required to effect any measure contemplated in the Transaction Documents, and (z) provided that in the case of a failure to make an election,
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claim or relief which has been taken into account in the Closing Statement or the disclaimer by Purchaser or by a Target Company after the Closing Date of any election, claim or relief the claim for which was taken into account in the Closing Statement, this clause shall apply to the extent the relevant election, claim or relief has been notified by the Sellers in writing at least ten (10) Business Days prior to the last date on which such election, claim or relief can be validly made or, as the case may be, disclaimed, it being understood that nothing hereunder shall exclude or limit Purchaser's obligations under clause 12.10.

- (b) Unless requested otherwise by the Sellers in writing, Purchaser shall not, and shall procure that after Closing none of the Target Companies shall make any election under (x) section 336 or section 338 of the U.S. Internal Revenue Code (or any comparable applicable provision of state, local or non-US Law) with respect to the acquisition of a Target Company or (y) section 301.7701-3 of the U.S. Treasury Regulations with respect to any Target Company that is effective on or before the day after Closing.
 - (c) Purchaser shall pay Sellers an amount equal to any Tax Liability for which any member of Sellers' Groups is liable in consequence of:
 - (i) any member of Purchaser German TopCo Group which is primarily liable for such Tax Liability failing to discharge such Tax Liability; or
 - (ii) a Target Company being at any time a member (or the parent) of the same Tax Group as any past or present member of Sellers' Groups, where the Tax is attributable to any Target Company and not to any past or present member of the Sellers' Groups,provided that the covenant in this clause shall not apply to the extent that Purchaser could claim payment in respect of the relevant Tax Liability under clause 6.5(g)(ii), 12.1 or 12.3 (taking into account the exclusions pursuant to clause 12.2 and any other exclusions that would be applicable to such claim).
 - (d) Purchaser shall pay to Sellers an amount equal to any Tax Saving (calculated in accordance with the principles set out in clause 12.2(a)(ii)) which has arisen to or for the benefit of any member of Purchaser German TopCo Group after the Financial Closing Date, but only if and to the extent that such Tax Saving:
 - (i) arises as a consequence of a Target Company being a member of the same Tax Group as any member of Sellers' Groups on or before the Financial Closing Date;
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- (ii) arises from the same event or Income, Profits or Gains that have given rise or have increased an Actual Tax Liability of any member of Sellers' Groups due to a Tax assessment issued after the date hereof;
- (iii) has not been taken into account in calculating Working Capital in the Closing Statement; and
- (iv) for the avoidance of doubt, has not reduced a claim of the Purchaser pursuant to 12.2(a)(ii).

Clause 12.5(b) shall apply accordingly to Tax Savings within the meaning of clause 12.6(d).

- (e) If and to the extent Purchaser fails to comply with any of its obligations under clause 12.6(a), clause 12.6(b), or clause 12.10, and such failure has the effect that a Tax Liability arises or is increased Purchaser shall indemnify Sellers for all and any direct damages of any member of Sellers' Groups in connection with such Tax Liability to the extent it is caused or increased by such failure, unless and to the extent Purchaser provides reasonable evidence that the Tax Liability was not caused or increased by such failure.
- (f) Any amount payable to Sellers pursuant to this clause 12.6 other than clause 12.6(d) shall be due and payable within ten (10) Business Days after Purchaser has received Sellers' notice or written statement, provided that Purchaser shall not be required to make any payment earlier than five (5) Business Days before the relevant Tax becomes due or the relevant damage has arisen. Clause 12.2(a)(ii) through 12.2(a)(xv) shall apply *mutatis mutandis* . In respect of claims under clause 12.6(d), clause 12.5(d) shall apply *mutatis mutandis* .

7. Tax Groups or Similar Consolidation Schemes

The subsidiary of Purchaser that acquires all the stock of Linde North America, Inc. shall (i) be treated as a corporation for U.S. Federal income tax purposes, and (ii) either (a) be a member of a group that joins in filing a consolidated return for U.S. federal income tax purposes as of the Closing Date or (b) elect to file a consolidated return for a new group that includes Linde North America, Inc. for the tax year that includes the day after the Closing Date. Purchaser shall procure that Target Companies that are U.S. corporations shall become members of such consolidated return group immediately upon the acquisition of all the stock of Linde North America, Inc. by such subsidiary of Purchaser.

8. As-if Assessment

Any Tax assessment period starting prior to the Financial Closing Date and ending thereafter (" **Straddle Period** ") shall be deemed to be split into one Tax assessment period ending on the Financial Closing Date and another Tax assessment period starting after the Financial Closing Date for the

purpose of allocating Taxes which are assessed in respect of a Tax assessment period under this clause 12. The Taxes which are deemed to relate to the Tax assessment period ending on the Financial Closing Date shall be determined as follows:

- (a) In case of any Taxes based upon or related to income, gains, sales, gross receipts, wages, capital expenditures, expenses or any similar Tax base, the amount of such Taxes shall be deemed to be the amount that would be assessed under the applicable Tax laws of the relevant jurisdiction if the relevant Tax assessment period and the relevant fiscal year of the Target Company ended on the Financial Closing Date (including the amount of Income, Profits or Gains that under such laws is deemed to be earned, accrued or received in such a notional Tax assessment period). Facts and circumstances reducing or increasing the amount of Tax payable that can be exclusively allocated to the time period before or after the Financial Closing Date, under the applicable Tax laws, shall be attributed accordingly, while other amounts which cannot be exclusively attributed to the time period before or after the Financial Closing Date, e.g., periodic Tax allowances like ordinary depreciations, shall be split up on the basis of an appropriate allocation key, being generally understood, unless Sellers and Purchaser agree on a more suitable allocation key, as the pro rata portion of the time of the taxable period or fiscal year elapsed on Closing. If a Target Company is a subsidiary of a Tax Group, its income shall be apportioned in accordance with the foregoing principles and an amount equal to the amount that would be assessed if the relevant Tax period ended on the Financial Closing Date shall be deemed to be attributed to the Tax Group parent and be taken into account when calculating the Tax Group parent's obligations prior to the Financial Closing Date.
 - (b) In case of Taxes other than Taxes based upon or related to income, sales, transfers, gross receipts, wages, capital expenditures, expenses or any similar Tax base, the amount of such Taxes shall be deemed to be the amount that would be assessed under the applicable Tax laws of the relevant jurisdiction for the entire Tax assessment period multiplied by a fraction, the denominator of which is the number of days of the entire Tax assessment period and the numerator of which is the number of days of the portion of such Tax assessment period ending on the Financial Closing Date.
 - (c) For the avoidance of doubt, the indemnities pursuant to clauses 12.1(c), 12.1(d), 12.1(e), 12.1(f) and 12.3 are not limited to Taxes which according to the foregoing principles are allocated to that part of the Straddle Period that is deemed to end on the Financial Closing Date.
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9. Time Limitations

Any claims under clause 6.4, clause 6.5(g)(ii), clause 12, clause 25.1 (to the extent relating to Taxes) shall be time-barred upon expiration of a limitation period of six (6) months after the relevant assessment has become un-appealable and finally binding (i.e. cannot be changed or amended under the applicable law) (but in no event prior to six (6) month after the Financial Closing Date), provided that claims of Sellers under clauses 12.4, 12.5 and 12.6(d) shall not be time-barred earlier than six (6) months after Purchaser's notification.

10. Cooperation on Tax Matters

- (a) The Parties shall fully cooperate, and shall cause their representatives to fully cooperate, with each other in connection with all Tax matters (i) relating to any Pre-Financial Closing Date Tax Period or (ii) relating to the Straddle Period and/or (iii) which could reasonably be expected (x) to give rise to a Tax Liability of any member of Sellers' Groups or Purchaser German TopCo Group and (y) to give rise to a claim of either Party under this clause 12 or otherwise reasonably relates to this Transaction or the Carve Out, including the preparation and filing of any Tax Return or any allocation different from that set out in the Carve Out Purchase Price Allocation Schedule, Reverse Carve Out Purchase Price Allocation Schedule or Carve Out Deemed Contribution Allocation Schedule (" **Relevant Tax Matter** "). Cooperation between Purchaser and Sellers shall also include (but shall not be limited to) (i) the providing and making available by one Party to the other Party of all books, records and information, and (ii) the reasonable assistance of all officers and employees of any member of Sellers' Groups or Purchaser German TopCo Group, to the extent permitted by law and necessary or useful in connection with any Relevant Tax Matter.
- (b) After Closing, Purchaser shall prepare and file, or cause to be prepared and filed, when due all Tax Returns required to be filed on an individual or consolidated basis by any of the Target Companies, provided, however, that any Tax Returns to the extent relating to any Relevant Tax Matter (" **Relevant Tax Return** ") shall be subject to the review and instructions of Sellers, provided that in case of a Straddle Period Tax Return, this shall only apply to that portion of the Straddle Period that ends on the Financial Closing Date or any other item which can reasonably be expected to give rise to a claim of either Party under this clause 12 or otherwise reasonably relates to this Transaction or the Carve Out. Relevant Tax Returns shall be consistent with the policies, procedures, practices and election rights adopted in the financial statements of the relevant Tax period as well as the Tax Returns for previous Tax periods of the relevant Target Company submitting such Relevant Tax Return, unless the adopted policies,
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procedures, practices and election rights are not in compliance with mandatory law or applicable Tax laws require otherwise. Purchaser shall ensure that any Relevant Tax Returns to be reviewed by Sellers will be furnished to Sellers, in case of Tax Returns to be filed on a monthly basis not later than ten (10) Business Days, and all other Tax Returns, not later than thirty (30) Business Days prior to the due date of the Relevant Tax Return, that any changes and amendments to such Relevant Tax Returns requested in writing by Sellers at least five (5) Business Days prior to the due date of the Relevant Tax Return are made prior to filing, unless they are not in line with the requirements of the preceding sentence, and that all Taxes payable under such Relevant Tax Returns shall be timely paid. In case a Relevant Tax Return is due less than fifteen (15) Business Days after the expiration of the relevant Tax assessment period, the Parties shall use reasonable endeavours in order to ensure that the relevant filing deadlines are met, which includes that Purchaser shall ensure that the Relevant Tax Return is furnished to Sellers as soon as reasonably practical and Sellers shall ensure the any written request for changes and amendments are made as soon as reasonably practical. If Sellers and Purchaser acting in good faith fail to reach an agreement on the contents of the Relevant Tax Returns, the Relevant Tax Returns shall be filed according to the instructions of Sellers (unless unreasonable), except if and to the extent that these instructions do not comply with mandatory law. This clause 12.10(b) applies accordingly to the amendment of any Relevant Tax Return (irrespective of whether the Relevant Tax Return was initially filed prior to or after the Financial Closing Date).

- (c) Prior to the Closing Date, Sellers and Purchaser shall cooperate in good faith to agree on (i) an allocation schedule (the "**Carve Out Purchase Price Allocation Schedule**") allocating the Carve Out Purchase Price (and all other capitalized costs) among the Carve Out Assets and (ii) an allocation schedule (the "**Reverse Carve Out Purchase Price Allocation Schedule**") allocating the Reverse Carve Out Purchase Price (and all other capitalized costs) among the Reverse Carve Out Assets, each in accordance with section 1060 of the U.S. Internal Revenue Code and any applicable provisions of law. To the extent Sellers and Purchaser fail to agree on such allocation of the Carve Out Purchase Price or the Reverse Carve Out Purchase Price, the disagreement shall be resolved by an accounting firm of international reputation mutually agreeable to Sellers and Purchaser (the "**Tax Accountant**") and Section 4(b) through (f) of Schedule 4 shall apply *mutatis mutandis* to the engagement of the Tax Accountant and its determination of the Carve Out Purchase Price Allocation Schedule and the Reverse Carve Out Purchase Price Allocation Schedule. All relevant members of Sellers' Groups and Purchaser German TopCo Group shall file all U.S. federal, state, and local income Tax Returns
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(including, but not limited to Internal Revenue Service Form 8594) and determine all U.S. Federal, state, and local income Taxes in a manner consistent with the Carve Out Purchase Price Allocation Schedule and the Reverse Carve Out Purchase Price Allocation Schedule, unless required to do so by applicable law. Neither Sellers nor Purchaser shall take any position (including, without limitation, in any audit or judicial or administrative proceeding or otherwise) that is inconsistent with the Carve Out Purchase Price Allocation Schedule, unless required to do so by applicable law. In the event that the Carve Out Purchase Price Allocation Schedule or the Reverse Carve Out Purchase Price Allocation Schedule is disputed, in whole or in part, by any Tax Authority, the Parties shall proceed in accordance with clauses 12.10(e) and 12.10(f).

- (d) Prior to the Closing Date, Sellers shall deliver to Purchaser an allocation schedule (the "**Carve Out Deemed Contribution Allocation Schedule**") allocating the gain recognized by Linde Delaware Investments, Inc. among the assets deemed transferred to Linde Gas North America LLC as a consequence of Linde Gas North America LLC electing under section 301.7701-3 of the U.S. Treasury Regulations to be treated as an association taxable as corporation for U.S. federal tax purposes. All relevant members of Sellers' Groups and Purchaser German TopCo Group shall file all U.S. federal, state, and local income Tax Returns and determine all U.S. federal, state, and local income Taxes in a manner consistent with the Carve Out Deemed Contribution Allocation Schedule. Neither Sellers or any member of the Sellers' Groups nor Purchaser or any member of Purchaser German TopCo Group shall take any position that is inconsistent with the Carve Out Deemed Contribution Allocation Schedule. In the event that the Carve Out Deemed Contribution Allocation Schedule is disputed, in whole or in part, by any Tax Authority, the Parties shall proceed in accordance with clauses 12.10(e) and 12.10(f).
- (e) If, after Closing, any Tax Authority informs any member of Purchaser German TopCo Group in written form of a proposed audit, assessment, dispute or other material circumstance relating to any Relevant Tax Matter ("**Relevant Tax Proceeding**"), Purchaser shall notify Sellers of such Relevant Tax Proceeding in reasonable detail and make available to them copies of the received documents and upon written request other relevant documents of the Target Companies reasonably pertaining thereto. Purchaser shall give such notice and deliver copies of such documents without undue delay, at the latest within five (5) Business Days in the case of Tax issues which a statutory limitation period is connected to, and within ten (10) Business Days if no statutory limitation period is connected therewith, after any member of Purchaser German TopCo Group has received such written information and documents.
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- (f) Purchaser shall not, and shall cause any member of Purchaser German TopCo Group not to, apply for or initiate any audits, disputes, administrative, judicial or other proceedings related to any Relevant Tax Proceeding without the prior written consent of Sellers (not to be unreasonably withheld or delayed). Purchaser agrees, and shall cause any member of Purchaser German TopCo Group:
- (i) to give Sellers the opportunity to participate in any audits, disputes, administrative, judicial or other proceedings related to any Relevant Tax Proceeding;
 - (ii) to comply with any reasonable written instructions given by Sellers in relation to the conducting of such proceedings;
 - (iii) not to settle any Relevant Tax Proceeding without Sellers' written consent (not to be unreasonably withheld or delayed); and
 - (iv) to challenge and litigate any Tax assessment or other decision of any Tax Authority related to such Relevant Tax Proceeding if reasonably requested and as reasonably instructed by Sellers in writing.

Any external Costs reasonably incurred in connection with such proceedings shall be borne by Sellers who bear their own (internal and external) Costs. For the avoidance of doubt, this shall include any external Costs reasonably incurred in connection with any Tax proceeding and/or Tax litigation of any of the Brazilian Entities relating to the Pre-Financial Closing Date Tax Period or that of portion of the Straddle Period that ends on the Financial Closing Date.

11. No additional rights or remedies

- (a) Unless explicitly provided otherwise in this Agreement, Taxes shall be exclusively governed by clause 12.
 - (b) The Parties agree that the allocation of responsibility in respect of Taxes as contemplated in this Agreement shall not be undermined, circumvented or overruled by any covenants, indemnities, or other claims which any member of Sellers' Groups, Purchaser German TopCo Group or any Target Company may have on the basis of other agreements or any other legal basis. In order to achieve this goal, the Parties agree that in cases where any such claim would economically result in an allocation which departs from the allocation as foreseen in this Agreement, the Parties will put each other in a position as if no such other claim existed to the extent such other claim would lead to an allocation which is not consistent with the allocation as foreseen in this Agreement. The Parties are aware that there will be certain other agreements which will govern the relations between Sellers' Groups on the one hand and Purchaser German TopCo Group on the other hand with respect to the period from the Financial
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Closing Date onwards (such as the Transitional Services Agreements, the IP Agreements or the Product Supply Agreements but for the avoidance of doubt not including the Carve Out Agreement) and agree that any clause that is dealing with the tax treatment of the underlying supplies and services provided for in these agreements shall remain unaffected by the foregoing principles.

12. Miscellaneous

- (a) The determination and calculation of any claims under clause 12 is to be made in a manner which avoids any economic double-counting effect that could lead to an overcompensation or undercompensation for Taxes, Tax Savings, Tax Refunds, Overprovisions or any other points of reference for such payment claims (which may, for instance, result from the interaction with the calculation of the Final Purchase Price and/or Final Inter-Company Payment Amount).
 - (b) Any claims under clause 12 shall be calculated on a *pro rata* -basis which reflects, as the case may be on a look through basis, the percentage of the direct or indirect ownership in the respective Target Company or JVCo as it is acquired by Purchaser under this Agreement.
 - (c) Other than set out in this clause 12, nothing in this Agreement constitutes an express or implied guarantee or creates any liability of Sellers of or for any future Tax treatment of a Target Company or the existence of any Tax attribute available to any Target Company, for instance, the application of a preferential Tax rate, the availability or amount of any Tax loss carry forwards, the Tax basis of any asset, the volume of depreciation.
 - (d) If, after any Party has made a payment to the other Party on account of any claim under clause 12, it turns out that such payment was an overpayment (e.g., on the basis of a subsequent reassessment of the relevant Tax or a Tax Refund underlying such claim), the payee shall pay to the payer an amount equal to the overpayment (plus an amount equal to any net interest received or, as the case may be, interest payable by any member of Sellers' Groups or Purchaser German TopCo Group).
 - (e) For the avoidance of doubt, Tax Claims related to a Target Company will continue to exist and not be affected if such Target Company ceases for any reason to be a member of Purchaser German TopCo Group.
 - (f) The Seller shall take all commercially reasonable efforts to cause each of Cliffside Helium, LLC and Cliffside Refiners, LP to make an election under Section 754 of the U.S. Internal Revenue Code to adjust the basis of their property upon transfer of interests such entities in connection with the Carve Out.
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13. Interpretation

In this clause 12 and as regards the determination of Taxes in Working Capital:

- (a) any reference to Income, Profits or Gains *earned, accrued or received* on or before a particular date or in respect of a particular period shall include Income, Profits or Gains which for Tax purposes are deemed to have been or are treated or regarded as earned, accrued or received on or before that date or in respect of that period;
- (b) any reference to an act, omission, transaction, potential knowledge or knowledge of the Purchaser shall include an such act, omission, transaction, potential knowledge or knowledge of the Local Purchasers;
- (c) Tax is *attributable* to a person (the " **Attributed Entity** ") and not to another person if and to the extent that it is Tax which is payable by reference to the Income, Profits or Gains, transaction, activities, assets, capital or liabilities of the Attributed Entity and not of the other person.

14. **Purchaser Warranties**

Purchaser warrants to Sellers that as at the date of this Agreement, the warranties set out in clauses 13.1 through 13.6 are true and accurate in all material respects ("**Purchaser's Warranties** "). Purchaser's Warranties shall be deemed to be repeated immediately before Closing (except for the Purchaser's Warranty under clause 13.5(b)) by reference to the then existing facts and circumstances.

1. Incorporation

Purchaser is validly incorporated, in existence and duly registered under the laws of its jurisdiction and has the power to conduct its business as conducted at the date of this Agreement.

2. Corporate Authorisations

- (a) Purchaser has obtained all corporate authorisations and (other than to the extent relevant to the Closing Conditions) all other governmental, statutory, regulatory or other consents, licences and authorisations required to empower it to enter into and perform its obligations under this Agreement where failure to obtain them would adversely affect to a material extent its ability to enter into and perform its obligations under this Agreement.
 - (b) This Agreement and each of the Transaction Documents to which Purchaser is or will be a party will, when executed, constitute legal, valid and binding obligations of Purchaser in accordance with their terms.
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3. No Breach

Entry into and performance by Purchaser of this Agreement and/or any Transaction Document to which it is party will not (i) breach any provision of its memorandum and articles of association, by-laws or equivalent constitutional documents or (ii) (subject, where applicable, to fulfilment of the Closing Conditions) result in a breach of any laws or regulations in its respective jurisdiction of incorporation or of any order, decree or judgment of any court or any Governmental Entity or regulatory authority, where (in either case) failure to obtain them would adversely affect to a material extent its ability to enter into and perform its obligations under this Agreement and/or any Transaction Document to which it is a party.

4. Insolvency

Purchaser is neither insolvent nor bankrupt under the laws of its jurisdiction of incorporation, unable to pay its debts as they fall due nor has entered into any arrangement (whether by court process or otherwise) with its creditors or any class of its creditors (except as set forth in the Debt Commitment Letter). The Purchaser has not received any written notice concerning or is otherwise aware of the appointment of an administrator or a receiver (including any administrative receiver or the equivalent to a receiver or administrative receiver in the relevant jurisdiction) in respect of the whole or any material part of the property, assets and/or undertaking of the business of Purchaser as carried on as at the date of this Agreement. No order has been made or resolution has been passed for the winding up of Purchaser and no petition presented for that purpose.

5. No Delay regarding Closing Conditions

- (a) Purchaser is not subject to any order, judgment, direction, investigation or other proceedings by any Governmental Entity which will, or are likely to, prevent or delay the fulfilment of any of the Closing Conditions.
 - (b) As of the date hereof to the knowledge of Dr. Christian Daniel Pindur and Memet Can Toygar neither any entity of the CVC Portfolio Companies nor other portfolio companies of funds advised by any CVC Persons nor any entity Controlled by the Purchaser, either directly or indirectly, has any undertakings operating in an industry the control of which may, in the reasonable and carefully analysed opinion of such persons, be expected to prevent the satisfaction of the SPA Clearance Condition. As of the date hereof, Dr. Christian Daniel Pindur and Memet Can Toygar are not aware of any intention of any entity of the CVC Portfolio Companies or of any other portfolio company of funds advised by any CVC Persons or any entity Controlled by the Purchaser to acquire directly or indirectly control
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in any undertakings which give rise to an opinion deviating from the opinion in the preceding sentence.

6. Available Funds

Purchaser has equity commitments and committed loan facilities which will at Closing provide in immediately available funds the necessary cash resources to pay the Initial Purchase Price and the Initial Inter-Company Payment Amount and meet its other obligations under this Agreement provided that this warranty shall be subject to the terms of the Equity Commitment Letter and the Debt Commitment Letter.

15. **Intellectual Property, Branding**

1. No Rights in Sellers' Trademarks

Save as provided for in clause 14.2 or in the Transitional Services Agreements, nothing in this Agreement shall give to any member of Purchaser Group any rights (including with respect to Intellectual Property Rights) in any Sellers' Trademarks or Sellers' Images. All such rights owned by Sellers Groups shall continue to vest in the relevant member of Sellers' Groups.

2. Restrictions on Use of Sellers' Trademarks and Sellers' Images by Purchaser

- (a) Subject to this clause 14.2 and save as provided for in the Transitional Services Agreements, from the Closing Date, Purchaser shall, and shall procure that each member of Purchaser Group will,
- (i) in any form and manner refrain from
 - 1. using and displaying and, if used prior to the Closing Date, cease to use and display, and remove, (i) any Names which include (in whole or in part) any of Sellers' Trademarks, including as corporate mark, business name or as name affix, and (ii) any Sellers' Images;
 - 2. using the custom fonts used by Sellers at Closing other than in the context of informational, promotional or marketing materials of the Business existing on the Closing Date (for which clause 14.2(a)(ii) shall apply); or
 - 3. holding itself out as having any current affiliation with any member of either of Sellers' Groups; and
 - (ii) take, at its own cost, all actions reasonably necessary to ensure the discontinuation of the use of the Names including (in whole or in part) any of Sellers' Trademarks, as well as any Sellers' Images, for, or in relation to, the operations of the Business
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without undue delay, including any actions necessary to eliminate the use of such Names and such Sellers' Images within six (6) months of the Closing Date from

1. stationery (including letterhead, business cards, schedules, inventories, agreements, customer agreements, publicity releases and forms), informational, promotional or marketing materials, websites, e-mails and any other communication or documents (print or electronic) of, used in connection with, or related to, the Business;
 2. buildings, interior décor items, fixtures and furnishings, displays, signs and signage on or at buildings and on street signs providing directions to the sites of the Business; and
 3. from tools and products relating to the Business and any materials (print or electronic) used in connection with, or related to, any products or services of the Business, provided that any Names including (in whole or in part) any of Sellers' Trademarks, if any,
 - (A) - subject to clause 14.2(b)(ii) - on any neckring of cylinders (but, for the avoidance of doubt, not the shoulder) being part of the Business, but on the Closing Date not located at a site of the Business, shall have to be removed only upon the first cylinder testing of the cylinder at a cylinder testing facility undertaken in the regular cylinder testing period in accordance with the regular course of business (occurring after a transition period of at least one (1) month) by, or on behalf of, any member of Purchaser Group after the Closing Date (but, in any event, within five (5) years of the Closing Date);
 - (B) - subject to clauses 14.2(a)(ii)3.(A) and 14.2(b)(ii) - on any cylinders being part of the Business, but on the Closing Date not located at a site of the Business, shall have to be removed only upon the first filling of the relevant cylinder by, or on behalf of, any member of Purchaser Group after the Closing Date (but, in any event, within fifteen (15) months of the Closing Date); and
 - (C) on any freezers, tanks or other installations being part of the Business, but not located at a site of the Business on the Closing Date, shall have to be removed only upon the first routine inspection or other visit (e.g. for maintenance or re-filling) of the relevant freezer, tank or other
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installation by, or on behalf of, any member of Purchaser Group after the Closing Date (but, in any event, within twelve (12) months of the Closing Date).

- (b) The Sellers acknowledge and agree that:
- (i) Purchaser is permitted to continue making use of Sellers' Trademarks (excluding any logos, designs or stylised versions of Sellers' Trademarks) and the Seller's Images:
 - 1. with respect to such Sellers' Trademarks, when accurately describing any products or services as having been originated by the relevant Sellers' Group in its operation of the Business prior to Closing;
 - 2. with respect to such Sellers' Trademarks, in the framework of Purchaser Group being allowed to sell out or otherwise dispose of any branded inventory of the relevant Seller's private label hard goods (in line with the exclusion of any representations and warranties), during a reasonable period of time (which shall in no case exceed twelve (12) months) from the Closing Date; and
 - 3. with respect to such Sellers' Trademarks contained in URLs, to the extent Purchaser is not in a position to procure, by the Closing Date, the availability of an alternative URL that does not include (in whole or in part) any of Sellers' Trademarks, during a reasonable period of time (which shall in no case exceed six (6) months) from the Closing Date.
 - (ii) with respect to cylinders of the Business in Canada only, except for any cylinders which are used for healthcare regulated gases, no member of Purchaser Group shall be obliged to remove or obliterate any Sellers' Trademarks engraved in, or otherwise permanently affixed to, the cylinders (i) not containing "Linde"; and/or (ii) from the neck (but, for the avoidance of doubt, not the shoulder) of any cylinders; and
 - (iii) no member of Purchaser Group shall be obliged to remove or obliterate any Sellers' Trademarks:
 - 1. from any executed agreements or copies thereof, in existence prior to the Closing Date; or
 - 2. from any internal documents, not customer-facing, in existence prior to the Closing Date that are used for internal purposes only.
- (c) Purchaser shall, and shall procure that each member of Purchaser Group will, to the extent not effected before the Closing Date, transfer with effect as of the Closing Date to the relevant
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Seller for no consideration any rights the Business might have acquired by its use of a Name or otherwise in any of Sellers' Trademarks.

- (d) Purchaser shall, in exercising any of its rights under this clause 14.2 always act in accordance with fair market practices and considering to the fullest extent the good name, reputation and goodwill of Sellers' Groups, their products and services.
- (e) Purchaser recognises the value of the publicity and goodwill associated with Sellers' Trademarks, acknowledges that Sellers' Trademarks have acquired secondary meaning, and that all related rights and goodwill belong exclusively to the relevant member of Sellers' Group.
- (f) Purchaser shall, and shall procure that each member of Purchaser Group will, only use Sellers' Trademarks in accordance with Sellers Groups' trademark policies established by the relevant member of Sellers' Group, which policies may be amended from time to time. Purchaser shall not use, display, advertise or promote any other mark, brand name, trade name, label, seal or symbol in any manner that, in the opinion of the relevant member of Sellers' Group, may be confusingly similar to or an imitation of Sellers' Trademarks.
- (g) Upon reasonable notice, one or more Sellers may make inspections during Working Hours of all Purchaser Group's records regarding use of Sellers' Trademarks and may inspect all operations and practices to the extent related to the use of Sellers' Trademarks including the selling or disposing of branded inventory under clause 14.2(b)(i)2.

3. Ownership: No Further Obligations

The Purchaser acknowledges that:

- (a) subject to any (contemplated) transfers under the Carve Out Agreements in accordance with Schedule 13, as between Sellers and their Affiliates on the one hand, and Purchaser and the members of the Purchaser Group on the other hand, Sellers (or any of their respective members of Sellers' Groups) own Sellers' Trademarks and Sellers' Images, and neither Purchaser nor any member of Purchaser Group shall contest such ownership allocation as between Sellers and Purchaser (and the respective members of Sellers' Groups and Purchaser's Group);
 - (b) Sellers and their Affiliates have no obligation to maintain or enforce any of Sellers' Trademarks; and
 - (c) Sellers and their Affiliates have no obligation to provide to Purchaser:
 - (i) any assistance, training, advice, maintenance or services of any kind with respect to Sellers' Trademarks or Sellers' Images; or
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- (ii) any physical or tangible materials in any form or media containing any of Sellers' Trademarks or Sellers' Images.

4. **Specific Indemnification**

The Purchaser agrees and undertakes to indemnify Sellers, PLC and/or its respective Subsidiaries for any and all Costs and Liabilities incurred by any member of Sellers' Groups arising from, or in connection with any third party claims arising out of, or relating to any use of Sellers' Trademarks and/or Sellers' Images by any member of Purchaser Group after the Closing Date other than in compliance with this clause 14.

5. **Joint Notice**

On or as soon as possible after the Closing Date, Purchaser and Sellers shall send out a joint notice in a form and to a list agreed between Sellers and Purchaser, such agreement not to be unreasonably withheld or delayed, of the suppliers, customers and clients of the Business advising them of the transfer of the Business.

16. **Pre-Closing Covenants**

1. **Conduct of Business**

- (a) From the date of this Agreement until Closing, Sellers shall procure that the Business is carried on, in all material respects, in the ordinary course (including continuation of making capital expenditures and expenditures re the US projects in accordance with the budget), except
 - (i) for the actions, agreements, commitments, payments, transactions or other measures foreseen, permitted or reflected under this Agreement, the Transaction Documents or the Carve Out Agreements;
 - (ii) any measures, actions or omissions to act aimed at, in connection with or relating to the separation of the Target Companies or JVCos from Sellers' Groups in the context of the Transaction and the Carve Out;
 - (iii) any action or measure pursuant to requirements or requests of a Governmental Entity in connection with obtaining the BCA Clearance Condition;
 - (iv) any action or measure pursuant to requirements or requests of a Governmental Entity in connection with obtaining of the SPA Clearance Condition or the Healthcare Approval;
 - (v) any action, measure, omission to act, requirement or request by any monitoring trustee (or similar) appointed in connection with obtaining the BCA Clearance Condition, the SPA Clearance Condition or the Healthcare Approval;
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- (vi) any action or measure to comply with requirements or requests by any Colombian Governmental Entity regulating the healthcare sector, or otherwise required to comply with Colombian Law regulating the healthcare sector in connection with obtaining the Healthcare Approval; or
- (vii) for decisions outside the ordinary business course, with the prior consent in writing by Purchaser, such consent not to be unreasonably withheld, conditioned or delayed, and deemed to be granted if Purchaser has not responded to a request from a Seller for consent within ten (10) Business Days following the date of such request

((i) through (vii) the "**Permitted Actions**").

(b) From the date of this Agreement until Closing, Sellers shall further procure that except for Permitted Actions:

- (i) there is no change of the articles of association of a Target Company;
 - (ii) there is no merger, spin-off, change of legal form or similar measures involving or otherwise directly affecting any Target Company;
 - (iii) no Target Company declares or pays any dividend or other distribution other than to another Target Company (whether in cash, stock or in kind), or reduces its paid-up share capital;
 - (iv) between the Financial Closing Date and Closing (or the Deferred Closing, as the case may be) no direct or indirect distribution nor any other Leakage occurs and that no Target Company enters into any agreement or commitment resulting in a Leakage after the Financial Closing Date;
 - (v) no Target Company creates, allots or issues or agrees to create, allot or issue any share capital (other than to another Target Company);
 - (vi) no Target Company creates any Third Party Rights over share capital held by it (other than for the benefit of another Target Company);
 - (vii) no Target Company sells or purchases or disposes of (other than to another Target Company) any interest in any share or loan capital or other security or interest in a company or business with a value in excess of five million (5,000,000) USD;
 - (viii) unless included in the budget, (i) no Target Company sells or purchases or disposes of other than to another Target Company any fixed assets (including Properties or rights in relation to pipelines) with a value in excess of five million (5,000,000) USD and (ii) the Target Companies, taken as a whole, do not sell or purchase or dispose of
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other than to another Target Company any fixed assets with an aggregate value in excess of five million (5,000,000) USD;

- (ix) unless included in the budget, no Target Company sells or disposes of any of the Properties or terminates any rights to use for any of the Properties, except to the extent such sale or disposal (a) occurs in the ordinary course of business or (b) does not negatively materially affect the use of the respective pipeline;
 - (x) unless included in the budget, no Target Company makes any investments or capital expenditures in excess of five million (5,000,000) USD (exclusive of VAT) in the case of any single item;
 - (xi) no Target Company enters into or terminates any contract or incurs any commitment which has a value or is likely to involve expenditure in excess of five million (5,000,000) USD per annum (excluding VAT) which cannot be terminated or performed within its terms within one (1) year after the date on which it is entered into; the requirement for consent shall, however, not apply if such expenditures occur in the ordinary course of business (for example, but not limited to, a tender for an on-site plant);
 - (xii) no Target Company enters into any guarantee, indemnity or other agreement to secure any obligation of a third party (other than another Target Company);
 - (xiii) no Target Company (i) institutes or settles any litigation where that action is likely to result in a payment to or by a Target Company of five million (5,000,000) USD or more (except for collection in the ordinary course of trading debts) (ii) settles an insurance claim in excess of five million (5,000,000) USD materially below the amount claimed;
 - (xiv) no Target Company makes any change to its accounting practices or policies, except as required by applicable law or applicable generally accepted accounting principles;
 - (xv) no Target Company changes its residence for any Tax purpose (including for the purpose of a double taxation arrangement), or creates a permanent establishment in a jurisdiction in which it is not so resident;
 - (xvi) no Target Company changes the conduct of its Tax affairs, including its methods, policies, principles or practices of Tax accounting or methods of reporting or claiming any amounts for Tax purposes, in a manner which is inconsistent with such conduct prior to the date of this Agreement, unless required by Law;
 - (xvii) no Target Company enters into any agreement with any Tax Authority if such agreement also relates to periods after the Financial Closing Date;
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(xviii) no Target Company agrees, conditionally or otherwise, to do any of the foregoing.

- (c) For the purposes of applying a reference to a monetary threshold expressed in USD with respect to clause 15.1, an amount in a different currency shall be deemed to be an amount in USD translated at the Exchange Rate at the relevant date on which the respective action is taken.

2. Regulatory Permits

Sellers shall, and shall procure that the relevant Local Seller and the relevant Target Company will, between the date of this Agreement and the Closing Date (i) apply, upon Purchaser's reasonable and detailed request and at Purchaser's Cost, for any regulatory permit, license or authorisation (" **Regulatory Permit** ") for the relevant Target Company (or any amendment of existing Regulatory Permits) which it does not already have and is required for the Target Company to carry on the Business in a manner consistent with past practice, and use reasonable efforts to obtain such Regulatory Permit prior to Closing and, (ii) in case (i) cannot be completed by Closing, agree with Purchaser upon appropriate transitional arrangements to be entered into by the relevant member of Sellers' Groups and the relevant Target Company for a transition period between Closing and the date the required Regulatory Permit will have been obtained, such agreement not to be unreasonably withheld or delayed.

3. Insurance

From the date of this Agreement until (and including) the Closing Date, members of Sellers' Groups shall and shall procure that the Target Companies ensure that all material policies of insurance maintained by them in respect of the Business continue in full force and effect and take no action / grant no consent that any JVCo reduces the scope of insurance other than required by law or fiduciary duties.

Upon Closing, all insurance cover arranged in relation to the Business by the Sellers' Groups, other than insurance cover held by the Target Companies and JVCos with a third party and being unrelated to group insurance policies arranged by the Sellers' Groups, shall cease and no member of the Purchaser Group shall make any claim under any such policies in relation to insured events arising after Closing. Sellers and any members of Sellers' Groups shall be entitled to make arrangements with its insurers to reflect this clause.

4. Financing cooperation

Prior to Closing, the Sellers shall use and shall (subject to any legal limitations) cause the Target Companies to use commercially reasonable endeavours to provide to the Purchaser, at the Purchaser's sole expense, such cooperation as the Purchaser may reasonably request for the purposes of assisting the Purchaser in respect of (i) the preparation of its debt financing (including syndication) arrangements and (ii) the preparation of the refinancing of the existing financing (including hedging), bank guarantee or similar requirements of the Target Companies which have to be refinanced upon Closing due to change of control or similar provisions or need to be repaid by Closing under the terms of the Purchaser's debt financing or such other financing which is to be repaid and/or cancelled within 30 (thirty) calendar days of the Closing Date or, with respect to the Colombian Entities, within 30 (thirty) calendar days of a Deferred Closing, as the case may be, including any change of control or similar waivers, security releases, and the submission of prepayment and other notices, in connection with the transactions contemplated under this Agreement and the other Transaction Documents.

The Sellers and the Purchaser shall cooperate (each acting reasonably) prior to the Closing Date to identify the Financial Debt that is subject to any cancellation right of the financing party due to a change of control or similar provision that may be triggered by virtue of the transactions contemplated by this Agreement or other Transaction Documents or shall otherwise be repaid and/or cancelled within 30 (thirty) days of the Closing Date or, with respect to the Colombian Entities, within 30 (thirty) days of a Deferred Closing, as the case may be, and to identify any Prepayment Amounts in respect thereof.

Nothing in this clause 15.4 shall require any member of the Sellers' Groups or any Target Company to take any action under this clause 15.4 to the extent doing so would (A) interfere or disrupt unreasonably with the business or operations of any member of the Sellers' Groups or any Target Company or (B) require any member of the Sellers' Groups or any Target Company to take any action that would conflict with or violate any such entity's (x) constitutional documents, (y) any of its contracts or duties of confidentiality unless each recipient of the information agrees to back-to-back confidentiality agreements or (z) any laws or (C) result in any member of the Sellers' Group or any Target Companies or any of their respective officers, directors, employees, advisors, agents or other representatives incurring or exposing itself to any personal liability or (D) require any member of the Sellers' Groups or any Target Company to enter into any documentation or to make any declarations or statements or to assume, incur or exposing itself to any liability or obligations (other than (i) any prepayment and/or cancellation notices in connection with any Financial Debt which can effectively be made and are so made explicitly subject to Closing having occurred and / or (ii) any documentation

by the Target Companies (including release documentation) which is only released and effective as from the Closing).

Purchaser shall indemnify, defend and hold each member of the Sellers' Groups, each Target Company and each of their respective representatives (*i.e.* , employees, officers, directors, advisers and other representatives) harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) incurred by such member of the Sellers' Groups or Target Company and their respective representatives in connection with any action or support granted under this clause 15.4 except to the extent that such liabilities, losses, damages, costs, and expenses arise out of gross negligence or wilful misconduct by a member of Sellers' Groups or a Target Company.

The Sellers shall only be liable for a breach of the obligations under this clause 15.4 in case of wilful misconduct and/or gross negligence.

5. Deferred Payment

To the extent

- (a) the Cash as set forth on the Estimated Closing Statement, other than Cash due to the LLC Receivable (if any) and an amount of CAD 150,000,000 due to the Canada Cash Amount, exceeds an amount of USD 75,000,000, (any such excess amount "**Cash Excess Amount**"), at the written request of Purchaser to be provided to Sellers at least five (5) Business Days prior to the Closing, an amount equal to the Cash Excess Amount shall not be due and payable at Closing, but shall be deferred by Sellers for a period of up to six (6) months following the Closing Date as determined by Purchaser in its written request without bearing any interest; and
 - (b) - acknowledging that notwithstanding any other provisions of this Agreement no member of the CVC Network or Messer Group or Purchaser Group shall be obliged to contribute additional capital or assets, other than contributed to the Purchaser and up to USD 43,750,000 to the Sister Company in accordance with the Equity Commitment Letter - in case of a Perimeter Change the Perimeter Change Equity Value exceeds an amount of USD 25,000,000 up to USD 125,000,000 (any such excess amount "**Perimeter Change Excess Amount I**"), at the written request of Purchaser to be provided to Sellers prior to the Closing, an amount equal to the Perimeter Change Equity Value Excess Amount I shall not be due and payable at Closing, but shall be deferred by Sellers for a period of six (6) months following the Closing Date as determined by Purchaser in its written request without bearing interest; and
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- (c) - acknowledging that notwithstanding any other provisions of this Agreement no member of the CVC Network or Messer Group or Purchaser Group shall be obliged to contribute additional capital or assets, other than contributed to the Purchaser and up to USD 43,750,000 to the Sister Company in accordance with the Equity Commitment Letter - in case of a Perimeter Change the Perimeter Change Equity Value exceeds an amount of USD 125,000,000 (any such excess amount " **Perimeter Change Excess Amount II** "), at the written request of Purchaser
- (i) to be provided to Sellers prior to Closing, together with
 - (ii) the specification of the acquiring company (ringfenced, including financially from Purchaser's debt financing for the period until the simultaneous payment of the full deferred amount under this clause 15.5(c)), a direct or indirect Subsidiary of Purchaser German TopCo other than Platin 1597. GmbH (commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Frankfurt am Main, Germany under registration number HRB 111627) and its Subsidiaries, (such acquiring company " **Sister Company** "), to acquire the assets or businesses underlying the Perimeter Change Excess Amount II, and
 - (iii) proof of the funding of the Sister Company with capital equal to 25% (twenty five per cent) of the Perimeter Change Excess Amount II, but not exceeding USD 43,750,000,
- the assets or businesses underlying the Perimeter Change Excess Amount II shall be acquired by the Sister Company and an amount equal to the Perimeter Change Excess Amount II minus the funding set forth in (iii) shall not be due and payable at Closing, but shall be deferred by Sellers for a period of six (6) months following the Closing Date without bearing interest.

The Purchaser may determine the allocation of Perimeter Changes between Purchaser and its Subsidiaries on the one hand and Sister Company and its Subsidiaries on the other hand in its discretion, acting reasonably, with the objective to obtain the necessary financing to pay the deferred amount to the Sellers, provided that no more Perimeter Changes shall be allocated to Purchaser Group than lead to a deferred amount in excess of USD 100,000,000 owed by Purchaser Group. The Purchaser shall, until the deferred amounts have been paid, maintain such allocation, unless a change of such allocation does not materially negatively effect the repayment risk profile of the Sellers.

Any deferred amount under this clause 15.5 may be paid at any time before the end of the term of the deferral.

6. Agreements as of Closing

Subject to the necessary exceptions and adjustments to allow for a Deferred Closing, in particular according to clauses 9.5(b) (iii), (v) and (vi), the Parties agree that, after the Closing Date, the relationships between members of Sellers' Groups, PLC or Persons Controlled by PLC on the one side and the Target Companies on the other side shall be exclusively governed by the terms of:

- (a) this Agreement;
- (b) the Carve Out Agreements and the documents entered into for the implementation of the Carve Out;
- (c) the Transitional Services Agreements;
- (d) the IP Agreements;
- (e) the Product Supply Agreements;
- (f) the product agreement for liquid nitrogen between Linde LLC and Cryostar USA LLC dated 10/30 January 2002;
- (g) the partnership or shareholders' or members' agreements relating to Brandon CO2 LLC, Cliffside Helium, LLC and Cliffside Refiners, LP;
- (h) the collaboration agreement between Linde (*Engineering Division*) and/or Linde Engineering North America Inc. on the one hand and the relevant Linde DivestCos;
- (i) any (other) agreements to be entered into pursuant to this Agreement; and
- (j) any agreements which may be entered into between members of Sellers' Groups, PLC or Persons Controlled by PLC on the one side and the Target Companies on the other side after the Closing Date.

All other (i) agreements existing between members of Sellers' Groups on the one side and the Target Companies on the other side, and (ii) services provided by members of Sellers' Groups to the Target Companies (or vice versa), and (iii) charges charged or claims claimed by members of Sellers' Groups to the Target Companies (or vice versa), in the case of (i) to (iii) prior to or until and including the Closing Date (the " **Non-Surviving Inter-Company Relations** "), shall be terminated with effect from Closing.

The treatment of Inter-Company Payables and Inter-Company Receivables and any underlying agreements or other arrangements in relation thereto shall be governed exclusively by the provisions set out in clause 5.

Subject to clause 5.8, the Parties shall and shall procure that the relevant parties to the respective Non-Surviving Inter-Company Relations, to the extent they are member of the Sellers' Groups or of the Purchaser's Group respectively, enter into a termination agreement or accept a termination notice with regard to such Non-Surviving Inter-Company Relations as of the date after the Closing Date without any obligation of any party to the Non-Surviving Inter-Company Relations to make compensation or similar payments in connection with the termination, even if the respective Non-Surviving Inter-Company Relations provide for any of the aforementioned.

Any trading relationships in the ordinary course shall remain unaffected and any Trade Receivables and Trade Payables will be settled in the ordinary course of business.

17. **Post-Closing Covenants**

1. Access to Information of Target Companies

For the longer of (i) the retention period under applicable laws and (ii) the period of seven (7) years following the Closing Date, Purchaser shall procure that:

- (a) The Target Companies shall provide, subject to applicable laws, Sellers and Local Sellers (at the respective Sellers' or Local Sellers' Cost) with reasonable access during Working Hours to the personnel of the Target Companies and to (and the right to take copies of) the books and accounts and all other data held by them after Closing to the extent that they relate to the Business, or the Sellers' Groups' business (if any), in the period up to Closing and are required for formal third party investigations and reviews such as tax or regulatory investigations or for preparation of accounts or in connection with any Claim or information reasonable required in connection with third party proceedings ("**Records**").
- (b) The members of Purchaser Group shall (at the respective Sellers' Cost) also give such assistance to any member of Sellers' Groups as Sellers may reasonably request in relation to any third party proceedings by or against any member of Sellers' Groups so far as they relate to the Business, including proceedings relating to employees' claims or Taxes. No member of Purchaser Group shall be under the obligation to become a party to such proceedings.

2. Access to Information of Sellers

For the longer of (i) the retention period under applicable laws and (ii) the period of seven (7) years following the Closing Date, Sellers shall procure that:

- (a) The members of Sellers' Groups, PLC or Persons Controlled by PLC shall provide, subject to applicable laws, Purchaser with reasonable access during Working Hours to (and the right to take copies of) the books and accounts and all other data held by them after Closing to the extent that they relate to the Business in the period up to Closing and are required for formal third party investigations and reviews such as tax or regulatory investigations or for preparation of accounts or in connection with third party proceedings.
- (b) The members of Sellers' Groups, PLC or Persons Controlled by PLC shall (at Purchaser's Cost) also give such assistance to any Target Company as Purchaser may reasonably request in relation to any third party proceedings by or against, any Target Company so far as they relate to the Business in the period up to Closing, including proceedings relating to employees' claims or Taxes. No member of Sellers' Groups nor PLC or Persons Controlled by PLC shall be under the obligation to become a party to such proceedings.

3. Cooperation

Each of the Parties shall for no additional consideration or payment execute (or procure the execution of) such further documents and take such further action as may be required by law or be necessary to implement and give effect to this Agreement.

4. Retention Letters

Purchaser is aware that after Closing, Target Companies will remain liable for any obligations arising from any retention letters issued or bonus plans or commitments made to Employees, or any person who would have been an Employee had he or she not ceased to be an employee prior to the Closing Date, by Linde, companies of the Linde Group or Target Companies, including the "STIP", "MTIP" and "LTIP", entered into prior to the Closing Date (together, the " **Retention Letters** " and such employees " **Bonus Employees** ").

- (a) Sellers shall (i) fully and timely pay on behalf of the relevant Target Companies, or (ii) provide the relevant Target Companies with the required funds to fully and timely pay the amounts due under the Retention Letters to the Bonus Employees and to any competent authorities any deductions for wage tax or other withholding tax and social security contributions (including, as the case may be, any employer's social security contribution), as required to be made under applicable law with respect to the payment under the Retention Letters, if and to the extent that such payments exceed any specific write-off, value adjustment, liability or other provision made in the Closing Statement.
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- (b) Purchaser shall procure that following Closing, Sellers are without undue delay provided by the Target Companies with such information as Sellers reasonably request relating to the Bonus Employees (subject to the requirements of applicable data protection legislation and any other applicable laws).
- (c) Purchasers shall procure that the relevant Target Companies will use any funds provided by Sellers to such Target Companies pursuant to this clause 16.4 to fully and timely pay to the Bonus Employees the amounts due under the Retention Letters and to any competent authorities any deductions for wage tax or other withholding tax and social security contributions (including, as the case may be, any employer's social security contribution), as required to be made under applicable law with respect to the payment under the Retention Letters. Purchasers shall procure that the Target Companies comply with their reporting and notification obligations towards the competent authorities under mandatory law in respect of any Retention Letter.
- (d) Sellers and Purchaser will cooperate together to implement the provisions of this clause 16.4.

18. **Debt and Equity Commitment**

The financial institutions named therein have issued a letter dated 13 July 2018 (the "**Debt Commitment Letter**") setting out the terms of an unconditional irrevocable debt financing commitment, subject only to (i) the fulfilment of the Closing Conditions (ii) the obligation of Purchaser to fund the equity portion of the Final Purchase Price, and (iii) the terms of the Debt Commitment Letter a copy thereof and of the form of interim facility being attached as Schedule 11;

and

(A) CVC Capital Partners VII (A) L.P., CVC Capital Partners VII Associates L.P. and CVC Capital Partners Investment Europe VII L.P. have issued an equity commitment letter, and (B) Messer Group GmbH has issued a commitment letter, copies of such commitment letters being attached as Schedule 12 (jointly the "**Equity Commitment Letter**").

Purchaser undertakes following the date of this Agreement and until Closing has taken place to not amend, alter or modify any of the Debt Commitment Letter (including any annexes or schedules thereto) or Equity Commitment Letter in a manner which would adversely affect the Purchaser's ability to fulfil its payment obligations pursuant to this Agreement.

19. **Liability, PLC Guarantee**

1. Joint and Several Liability

- (a) Any obligation, undertaking, Warranty or indemnity of Sellers under this Agreement (including in respect of contractual and quasi contractual liability claims) shall be construed as a joint obligation, undertaking, Warranty or indemnity of Sellers, with the liability of the Sellers under this Agreement being joint and several.
- (b) Any obligation, undertaking, warranty or indemnity of Purchaser and a Local Purchaser under this Agreement (including in respect of contractual and quasi contractual liability claims) shall be construed as a joint obligation, undertaking, warranty or indemnity of Purchaser and the Local Purchasers, with the liability of the Purchaser and the Local Purchasers under this Agreement being joint and several.

2. PLC Guarantee

PLC hereby unconditionally and irrevocably guarantees as of the completion of the BCA to Purchaser by means of an independent guarantee promise the full, due and timely performance of any obligations of Sellers under this Agreement and the Transaction Documents (" **PLC Guarantee** ").

Purchaser may, as between the Parties without effecting the validity of any payment request, call upon the PLC Guarantee if the due date for a respective Sellers' obligation has passed for more than thirty (30) Business Days and Purchaser's claim has not been settled within such period by Sellers, provided that the only remedy of Purchaser for a claim under the PLC Guarantee shall be damages.

20. **Conflict with other Agreements**

1. Conflict

If there is any conflict between the terms of this Agreement and any other Transaction Document, this Agreement shall prevail (as between the Parties to this Agreement and as between any members of Sellers' Groups, PLC or Persons Controlled by PLC and any members of Purchaser Group) unless (i) such other Transaction Document expressly states that it overrides this Agreement in the relevant respect and (ii) Sellers and Purchaser are either also parties to that other Transaction Document or otherwise expressly agree in writing that such other agreement shall override this Agreement in that respect.

2. No Conflicting Claims

Without prejudice to clause 19.1, Purchaser undertakes that no claim shall be made by any member of Purchaser Group or by any Target Company or any JVCo against any member of Sellers' Groups under any of the Local Transfer Agreements for breach of any warranty, representation, undertaking, covenant or indemnity relating to the sale of any of the Target Companies or JVCos other than those which are required to implement the transfer of those DivestCo Shares which are to be transferred on the basis of the relevant Local Agreement. Should, nevertheless, such claims be made, Purchaser shall indemnify and hold harmless all relevant members of Sellers' Groups in respect of any claims, actions, proceedings, losses and Costs arising in respect of the same.

21. **Responsibility after Closing**

1. Assumption of Responsibility

Purchaser assumes as of the Closing Date full responsibility as owner of the DivestCo Shares and the Target Companies and, except for claims arising under this Agreement, the Transaction Documents or the Carve Out Agreements, or claims which according to these agreements are otherwise allowed to be pursued, shall and shall procure that each member of Purchaser Group, including the Target Companies: (i) waives, with effect as of Closing or as soon as permitted under applicable law, and (ii) abstains from pursuing, (in each case) any claim against any member of Sellers' Groups and any Sellers' Representative in connection with the Business or with the direct or indirect shareholding or ownership interest of any member of Sellers' Groups in any of the Target Companies before the Closing.

2. Indemnification of Members of Sellers' Groups and Sellers' Representatives

If, after Closing has taken place, any member of Sellers' Groups or any Sellers' Representative is held liable for any existing or future claims, actions, proceedings, losses and Costs or obligations (on whatever legal grounds, and whether known or unknown, actual or contingent, accrued or not accrued):

- (a) of any Target Company, other than for breach of law, fraud and fraudulent misrepresentation committed by such Target Company prior to the Closing Date;
 - (b) arising out of, or in connection with, any claim brought by any Target Company against any member of Sellers' Groups or any Sellers' Representative;
 - (c) arising out of, or in connection with, Sellers' or other members of Sellers' Groups, shareholding or ownership interest in, or any action taken as shareholder, holder of any ownership interest,
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or member of any corporate body of any Target Company, or the conduct of the business of any Target Company unless, in case of claims by third parties, such existing or future claims, actions, proceedings, losses and Costs or obligations relate to a breach of law prior to Closing or Deferred Closing; or

(d) any claims relating to Inter-Company Payables and Inter-Company Receivables,

then Purchaser shall indemnify and hold harmless each member of Sellers' Groups and any Sellers' Representative in respect of any claims, actions, proceedings, losses and Costs arising in respect of the same. The Parties acknowledge and agree that with respect to all indemnification claims Sellers, any member of Sellers' Groups or any Sellers' Representative may have under this Agreement (the " **Sellers' Indemnification Claims** ") the provisions in paragraphs 6 to 10, 12, 16 to 20 of Schedule 8 shall apply *mutatis mutandis* . Sellers' Indemnification Claims shall exclude any internal costs and charges of Sellers and members of Sellers' Groups as well as of PLC and its Affiliates. The aggregate amount of the liability of the Purchaser for indemnification claims under this clause 20.2 shall not exceed the Final Purchase Price. Nothing in this clause 20.2 shall limit the right of the Purchaser or any member of the Purchaser Group to assert any claims or obligations against Sellers provided for under another provision of this Agreement (including the trading relationships referred to in clause 15.6), any of the Transaction Documents or the Carve Out Agreements or any other agreement entered into between the Parties following the date hereof.

3. Time Limitation

The claims under this clause 20 shall become time-barred at the expiry of the statute of limitation applicable under statutory law.

22. **Announcements, Confidentiality**

1. Announcements

No Party (nor any of their respective Affiliates) shall make any external public announcement or issue any external circular in connection with the occurrence of the Transaction or the existence or subject matter of this Agreement (or any other Transaction Document) without the prior written approval of Purchaser or Sellers, as the case may be (such approval not to be unreasonably withheld or delayed). The Parties will cooperate and act in good faith to align their communications to employees, customers and suppliers of the Business in relation to the Transaction.

The restriction in this clause 21.1 shall not apply to the extent that the announcement or circular is required by law, by any stock exchange or any regulatory or supervisory body or authority of competent jurisdiction, whether or not the requirement has the force of law. If this exception applies, the Party making the announcement or issuing the circular shall use its reasonable efforts to consult with the other Parties in advance as to its form, content and timing.

2. Confidentiality

- (a) The confidentiality agreements concluded between Sellers on the one hand and CVC Capital Partners (Deutschland) GmbH, Messer Group GmbH as of 19/22 January 2018, respectively, on the other hand (the "**Confidentiality Agreements**") shall remain in full force and effect in accordance with their terms. If there is a conflict between the terms of the Confidentiality Agreements and the terms of this Agreement, the provisions of this Agreement shall prevail.
 - (b) Subject to clauses 21.2(d) and 21.2(e), Sellers shall (and shall procure that each member of their Seller's Group, and, in respect of the period up to the Closing, each Target Company, and each such person's advisers and connected persons, shall) and Purchaser shall (and shall procure that each member of Purchaser Group, including, in respect of the period from the Closing, each Target Company, and each such person's advisers and connected persons, shall) keep confidential the provisions and subject matter of, and the negotiations relating to, each Transaction Document.
 - (c) The Purchaser:
 - (i) shall, and shall procure that each other member of Purchaser Group for the time being shall, keep confidential all information provided to it by or on behalf of Sellers or otherwise obtained by it in connection with this Agreement which relates to a Seller or any other member of a Seller's Group; and
 - (ii) shall procure that, if after the Closing any Target Company holds confidential information relating to a Seller or any other member of a Seller's Group, that Target Company shall after Closing keep that information confidential and, shall return that information to the relevant Seller or destroy it without retaining copies.
 - (d) Nothing in clauses 21.2(b) or 21.2(c) prevents any confidential information being disclosed:
 - (i) where such confidential information disclosed comprises only information set out in an announcement in the Agreed Form;
 - (ii) with the written approval of the other Parties; or
 - (iii) to the extent required by law, by any stock exchange or any regulatory or supervisory body or authority of competent jurisdiction, whether or not the requirement has the
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force of law, but if a person is so required to disclose any confidential information, the relevant party shall promptly notify the other Parties, where practicable and lawful to do so, before the disclosure occurs (as the case may be) and shall co-operate with the other Parties regarding the timing and content of such disclosure (as the case may be) or any action which the other parties may reasonably elect to take to challenge the validity of such requirement.

- (e) Nothing in clauses 21.2(b) or 21.2(c) prevents any confidential information being disclosed to the extent:
- (i) required to enable any person to enforce its rights under any Transaction Document or for the purpose of any judicial proceedings;
 - (ii) that the information is disclosed on a strictly confidential basis by a person to its professional advisers, auditors or actual or potential lenders or other providers of debt finance and rating agencies (including their directors, officers, personnel and advisors);
 - (iii) that the information is disclosed by a Seller on a strictly confidential and need to know basis to the other Seller and/or another member of a Seller's Group or by Purchaser on a strictly confidential and need to know basis to another member of Purchaser Shareholders Group, CVC Person, current or prospective investors in CVC Funds and/or members of the Credit Partners Group as well as other investors in the Purchaser; or
 - (iv) that the information is in or comes into the public domain except through breach of the provisions of this Agreement or through breach of any other duty of confidentiality relating to that information.

23. **Non-Solicit**

1. Sellers' Non-Solicit Undertaking

Sellers and PLC agree and undertake that between the date of this Agreement and Closing and, further, for a subsequent period of two (2) years from the Closing Date they will not, and will procure that no member of Sellers' Groups will (for as long as it is a member of Sellers' Groups), offer employment to, enter into a contract for the services of, or attempt to entice away any Key Employee.

2. Purchaser Non-Solicit Undertaking

Purchaser agrees and undertakes that between the date of this Agreement and Closing and, further, for a subsequent period of two (2) years from the Closing Date it will not, and will procure that no member of Purchaser German TopCo Group will (for as long as it is a member of Purchaser German

TopCo Group) offer employment to, enter into a contract for the services of, or attempt to entice away any persons who are then employees of Sellers or Sellers' Groups with whom Purchaser or Purchaser's Representatives have come in contact in the course of analysing or negotiating the Transaction.

3. Exemptions

Nothing in this clause 22 shall prevent PLC or persons Controlled by PLC, any member of Sellers' Group, or Purchaser German TopCo Group, respectively, from offering to employ, entering into a contract for the services or attempting to entice any person away where such employee has not been approached by or on behalf of any member of PLC, persons Controlled by PLC or Sellers' Groups or Purchaser German TopCo Group, as applicable, but has responded to a public advertisement open to employees' generally which has not been drawn to that employee's attention by or on behalf of Sellers' Groups, PLC, persons Controlled by PLC or Purchaser German TopCo Group, as applicable.

4. Sellers' Customer Non-Solicit Undertaking

- (a) As from Closing and from a period of eighteen (18) months thereafter ("**Non-Solicitation Period**"), Sellers and PLC shall not, and PLC shall procure that neither of its Affiliates will, directly or indirectly
- (i) sell, or solicit the sale of, a Restricted Product to any Exclusive Location of a customer of the Business that has been a customer in one or several transactions in the last 12 (twelve) months before the Closing Date (the "**Relevant Period**", and each such customer a "**Restricted Customer**"). "**Restricted Product**" shall mean any product (and related services and/or equipment) which is the same or substantially similar to those which the customer purchased (or contracted or committed to purchase) during the Relevant Period for delivery to the Exclusive Location. "**Exclusive Location**" shall mean such location of a Restricted Customer to which deliveries have been made (or contracted or committed to be made to such location) during the Relevant Period from the Business but not within the Relevant Period and prior to Signing from any other businesses of any of the Sellers' Groups (whether sold individually or as part of a "bundle" of products and/or services and equipment) (the "**Initial Exclusive Location**") and (ii) any location to which the Restricted Customer may during the Non-Solicitation Period relocate its place of delivery from the Initial Exclusive Location due to a relocation of such place of delivery within a one hundred (100) mile radius of the Initial Restricted Location;
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(ii) solicit the reduction or discontinuation of purchase volumes of a Restricted Product by a Restricted Customer to a Shared Location. " **Shared Location** " shall mean such location of a Restricted Customer to which deliveries have been made (or contracted or committed to be made to such location) in the Relevant Period from the Business and also within the Relevant Period and prior to Signing from any other businesses of the Sellers' Groups (whether sold individually or as part of a "bundle" of products and/or services and equipment).

This clause 22.4(a) shall not restrict Sellers or any member of Sellers' Groups or PLC or any of its Affiliates from selling or soliciting the sale of:

- (A) any product, service, equipment, asset or right to any customer that is not a Restricted Customer or where the product is not a Restricted Product;
- (B) any Restricted Product to any Restricted Customer at any location that is neither an Exclusive Location nor a Shared Location, or, in the case of a Shared Location, any volume that has not been contracted to such Location by the Business at the Closing Date;
- (C) any Restricted Products to third party distributors which may re-package and/or resell such products to any Restricted Customer provided that neither the Sellers nor any member of the Sellers' Groups nor PLC or persons Controlled by PLC (w) direct such third party distributors to such Restricted Customer, (x) direct such Restricted Customer to such third party distributor, (y) engage in joint marketing efforts targeted specifically at such Restricted Customer, or (z) take any other action that is intended to circumvent the protections provided by this clause 22.4, and
- (D) in respect of clause 22.4(a)(ii), any product, service, equipment, asset or right to Shared Location in case the Restricted Customer initiated communication without solicitation or acts as a response to an advertising in newspapers, trade publications, or other media in a manner not targeted specifically or directly at such Restricted Customer.

(b) The undertakings in this clause 22.4 are intended for the benefit of Purchaser and each Target Company and apply to actions carried out by Sellers or any member of the Sellers' Groups, PLC or persons Controlled by PLC in any capacity whatsoever, and whether directly or

indirectly, on a Seller's or any member of the Sellers' Groups', PLC's or persons' Controlled by PLC own behalf, on behalf of any other person or jointly with any other person.

- (c) The Sellers agree that the undertakings contained in this clause 22.4 are reasonable and necessary for the protection of the Purchaser's legitimate interests in the goodwill of the Target Companies and shall be construed as separate and independent undertakings. If any such undertaking is held to be void or unenforceable, the validity of the remaining undertakings shall not be affected. If any such undertaking is found to be void or unenforceable but would be valid and enforceable if some part or parts of the undertaking were deleted or modified, such undertaking shall apply with such deletion or modification as may be necessary to make it valid and enforceable.
- (d) Without prejudice to clause 22.4(c), if any undertaking in this clause 22.4 is found by any court or other competent authority to be void or unenforceable the parties shall negotiate in good faith to replace such void or unenforceable undertaking with a valid provision which, as far as possible, has the same commercial effect as the provision which it replaces.
- (e) The consideration for the undertakings contained in this clause 22.4 is included in the Final Purchase Price.

24. **Notices**

1. Notices

Any notice in connection with this Agreement shall be in writing in English and delivered by hand, fax, registered post or courier using an internationally recognised courier company. A notice shall be effective upon receipt and shall be deemed to have been received (i) at the time of delivery, if delivered by hand, registered post or courier or (ii) at the time of transmission if delivered by fax provided that in either case, where delivery occurs outside Working Hours, notice shall be deemed to have been received at the start of Working Hours on the next following Business Day.

From the date of this Agreement until Closing, notices delivered in accordance with clause 15.1(a) (and only for the purposes of clause 15.1(a)) may be delivered by Email, the applicable Email addresses (for those purposes only) are set out below.

The addresses and fax numbers of the Parties for the purpose of clause 23 are:

- (a) If to Linde, to:
Linde AG
Klosterhofstraße 1
80331 Munich
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Germany

Attention: Head of M&A

Fax: + 49 89 35757-1255

Email: christian.ortenburg@linde.com

with a copy (which shall not constitute notice) to Praxair (as per clause 23.1(b)) and to:

Linde AG

Klosterhofstraße 1

80331 Munich

Germany

Attention: Head of Group Legal and Compliance

Fax: +49 89 35757-1475

Email: christoph.hammerl@linde.com

(b) If to Praxair, to:

Praxair, Inc.

10 Riverview Dr.

Danbury, CT 06810

United States of America

Attention: General Counsel

Fax: +1 (203) 837 2515

Email: guillermo_bichara@praxair.com

with a copy (which shall not constitute notice) to Linde (23.1(a)).

(c) If to PLC, to:

Linde Public Limited Company

The Priestley Centre

10 Priestley Road, The Surrey Research Park

Guildford, Surrey GU2 7XY

United Kingdom

Attention: Company Secretary

Fax: +44 1483 242300

with a copy (which shall not constitute notice) to Linde and Praxair (as per clauses 23.1(a) and (b)).

(d) If to Purchaser, to:

MG Industries GmbH

Attention: Dr Hans-Gerd Wienands (CFO) / Dr Daniel Pindur

Messer Platz 1

65821 Bad Soden

Germany

Fax: +49 061967760512

Email: hans-gerd.wienands@messergroup.com / dpindur@cvc.com

with a copy (which shall not constitute notice) to:

CVC Capital Partners (Deutschland) GmbH

Attention: Dr Daniel Pindur - Senior Managing Director

WestendDuo, Bockenheimer Landstraße 24

60323 Frankfurt am Main

Germany

Fax: +49 69 9758 3511

Email: dpindur@cvc.com

with a copy (which shall not constitute notice) to:

Freshfields Bruckhaus Deringer LLP

Attention: Dr Stephan Waldhausen

Feldmühleplatz 1

40545 Düsseldorf

Germany

Fax: +49 211 497965373

Email: stephan.waldhausen@freshfields.com

2. Service of Process Agent for Purchaser

Purchaser shall maintain an agent for service of process and any other documents in proceedings in England or any other proceedings in connection with this Agreement and any other Transaction Document. Such agent shall initially be TMF Global Services (VK) Ltd., 6 St Andrew Street, 5th Floor, London, EC4A 3AE, United Kingdom. Any claim form, judgment or other notice of legal process shall be sufficiently served on Purchaser if delivered to such agent at its address for the time being. The Purchaser undertakes not to revoke the authority without giving at least ten (10) Business Days' notice in writing to Sellers of such proposed revocation and to appoint another such agent with an address in England upon such revocation. If, for any reason, Sellers reasonably request Purchaser to do so, it shall promptly appoint another such agent with an address in England and advise Sellers. If, following such a request, Purchaser fails to appoint another agent, Sellers shall be entitled to appoint one on behalf of Purchaser at the expense of Purchaser.

3. Service of Process Agent for Sellers

Sellers shall maintain an agent for service of process and any other documents in proceedings in England or any other proceedings in connection with this Agreement and any other Transaction Document. Such agent shall initially be Linde Public Limited Company at The Priestley Centre, 10 Priestley Road, Surrey Research Park, Guildford, Surrey, GU2 7XY, England. Any claim form, judgment or other notice of legal process shall be sufficiently served on any of Sellers if delivered to such agent at its address for the time being. Sellers undertake not to revoke the authority without giving at least ten (10) Business Days' notice in writing to Purchaser of such proposed revocation and to appoint another such agent with an address in England upon such revocation. If, for any reason, Purchaser reasonably requests Sellers to do so, they shall promptly appoint another such agent with an address in England and advise Purchaser. If, following such a request, Sellers fail to appoint another agent; Purchaser shall be entitled to appoint one on behalf of Sellers at the expense of Sellers.

25. **Whole Agreement, Remedies**

1. Whole Agreement

This Agreement and the other Transaction Documents contain the whole agreement between the Parties relating to the transactions contemplated by this Agreement and the other Transaction Documents and supersede all previous agreements (whether oral or written) between the Parties relating to these transactions, other than the Confidentiality Agreements.

2. Remedies

It is agreed between the Parties that:

- (a) no Party shall have any claim or remedy in respect of any statement, representation, warranty or undertaking made by or on behalf of any other Party or Parties (or any of the members of Sellers' Groups or Sellers' Representatives or members of Purchaser Group or Purchaser's Representatives (as the case may be)) in relation to the Transaction which is not set out in this Agreement or any other Transaction Document;
 - (b) in entering into this Agreement and the Transaction Documents, Purchaser has not relied and is not relying upon any express or implied representation, statement, assurance, or warranty whether oral or written of any person (whether Party to this Agreement or not) other than the Warranties or as set out in the Transaction Documents and neither the members of Sellers' Groups, nor Sellers' Representatives have given or made any express or implied representation, warranty, statement, assurance or undertaking in relation to the Target Companies, JVCos, or Target Companies' or JVCos' businesses, assets, liabilities, operations, prospects, or condition (financial or otherwise), including with respect to merchantability or fitness for any particular purpose of any assets, the nature or extent of any liabilities, the prospects of its business, the effectiveness or the success of any operations, other than as set out in the Warranties or elsewhere in the Transaction Documents or the Carve Out Agreements;
 - (c) any terms or conditions implied by law in any jurisdiction in relation to the Transaction (including any right under common law, tort, statute (including under the Misrepresentation Act 1967), equity, or otherwise) are excluded to the fullest extent permitted by law or, if incapable of exclusion, any right, or remedies in relation to them are irrevocably waived;
 - (d) except for any liability in respect of a breach of this Agreement or any other Transaction Document, no Party (or any of the members of Sellers' Groups or Sellers' Representatives or members of Purchaser Group or Purchaser's Representatives (as the case may be)) shall owe any duty of care or have any liability in tort or otherwise to any other Party or Parties (or any
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of the members of Sellers' Groups or Sellers' Representatives or members of Purchaser Group or Purchaser's Representatives (as the case may be)) in relation to the Transaction;

- (e) the only right or remedy of a relevant Party in relation to the Transaction, any provision of this Agreement or any other Transaction Document shall be, unless specifically stated otherwise herein, for breach of this Agreement or the relevant Transaction Document;
- (f) Purchaser shall not have any remedy in respect of any misrepresentation or untrue statement made by or on behalf of members of Sellers' Groups or Sellers' Representatives (whether made carelessly, negligently, or not) unless, and to the extent only that, a claim lies in damages for breach of contract for a breach of the Warranties;
- (g) except as stated otherwise in this Agreement or any other Transaction Document, no member of Sellers' Groups, nor Sellers' Representatives (having only a right but not an obligation to make certain disclosures hereunder) have given or made any representation or warranty as to the accuracy or completeness of the Disclosure Letter, the contents of the Data Room, any management presentations, any management accounts or financial statements (other than the Combined Carve Out Financial Statements), any financial fact book, tax fact book, carve-out report, legal fact book, environmental fact book, information memorandum and any other information, or of the forecasts, estimates, projections, statements of intent or statements of opinion provided to Purchaser or Purchaser's Representatives on or prior to the date of this Agreement, including anything contained in or derived from any of the foregoing;

provided that nothing in this clause shall exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation by a Party.

The provisions set out in Schedule 8 shall, to the extent set forth in this Agreement including Schedule 8, apply to all claims under or in connection with this Agreement.

Each Party agrees to the terms of this clause 24.2 on its own behalf and as agent for each of the members of Sellers' Groups and Sellers' Representatives or members of Purchaser Group and Purchaser's Representatives (as the case may be).

26. **Miscellaneous**

1. Costs

Except as otherwise provided in this Agreement or any other Transaction Document, each party shall be responsible for its own Costs (including those of its Affiliates) incurred in connection with the Transaction.

Purchaser shall bear all notarisation fees, stamp duties, transfer Taxes, any fees of courts or Governmental Entities or regulatory authorities with respect to notifications, filings or regulatory proceedings concerning the consummation of the Transaction and any related interest or penalties arising as a result of this Agreement or of any of the other Transaction Documents, excluding, however, any such costs caused by the Carve Out or by pursuing the BCA Clearance Condition.

2. Assignment

Subject to the provisions of this clause 25.2, unless Sellers and Purchaser agree in writing, no party shall assign, transfer or charge all or any of its rights under this Agreement or under any Transaction Document nor grant, declare, create or dispose of any right or interest in it.

Purchaser as well as the Local Purchasers shall be permitted to assign, transfer or charge all or some of their rights under this Agreement to each member of the Purchaser German TopCo Group, provided that (i) such assignment, transfer or charge shall not diminish the rights or increase the obligations of the Sellers hereunder and (ii) any such assignee shall be entitled to bring claims or assert rights under or in connection with this Agreement only through Purchaser acting as sole authorized representative (clause 23.2 remains unaffected), provided that in each case clause 15.5 shall remain unaffected.

Any member of the Purchaser German TopCo Group shall, subject to applicable laws, be permitted to at any time assign, transfer, pledge or otherwise delegate all but not less than all of its rights or claims under this Agreement to any lenders or providers of finance to it or any of its Affiliates (or in each case any agents or trustees on their behalf) as required solely for the purposes of debt financing the Transaction or the Purchaser German TopCo Group, provided that such assignment, pledge, transfer or delegation shall not diminish the rights or increase the obligations of the Sellers hereunder. The Sellers undertake to execute such agreements and/or notices for or in connection with such assignment, pledge, transfer or delegation as the Purchaser may reasonably request promptly upon the Purchaser's request, provided that in each case clause 15.5 shall remain unaffected.

Any purported assignment in contravention of this clause 25.2 shall be void.

3. Contract (Rights of Third Parties) Act 1999

Except as otherwise stated in this Agreement, a person who is not a Party to this Agreement may not enforce any of its terms under the Contract (Rights of Third Parties) Act 1999.

4. Waivers, Rights and Remedies

Except as provided in this Agreement, no failure or delay by any party in exercising any right or remedy relating to this Agreement or any of the Transaction Documents shall affect or operate as a waiver or variation of that right or remedy or subject to applicable limitation periods preclude its exercise at any subsequent time. No single or partial exercise of any such right or remedy shall preclude any further exercise of it or the exercise of any other remedy.

5. Counterparts

This Agreement may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

6. Joint Negotiations

The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event of any ambiguity or question of intent or interpretation arising, this Agreement shall be construed as jointly drafted by the Parties hereto and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any provision of this Agreement. Furthermore, prior drafts of this Agreement or the fact that any clauses have been added, deleted or otherwise modified from any prior drafts of this Agreement shall not be used as a basis of construction or otherwise constitute evidence of the intent of the Parties hereto; and no presumption or burden of proof shall arise favouring or disfavouring any Party hereto by virtue of such prior drafts. In addition, the Parties have each received independent legal advice relating to all matters provided for in this Agreement, and agree that the provisions of this Agreement are fair and reasonable.

7. Variations

No amendment of this Agreement (or of any other Transaction Document) shall be valid unless it is in writing and duly executed by or on behalf of all of the Parties to it.

8. Legal Succession

In this Agreement (including any defined terms used therein), references to any person include the person's successor in title and permitted assignees.

27. **Invalidity**

Each of the provisions of this Agreement and the Transaction Documents is severable. If any provision is held to be or becomes invalid or unenforceable in any respect under the law of any jurisdiction, it shall have no effect in that respect and the Parties shall use all reasonable efforts to replace it in that respect with a valid and enforceable substitute provision the effect of which is as close to its intended effect as possible.

28. **Governing Law, Jurisdiction**

1. Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by English law.

2. Arbitration

Subject to the expert determination provisions set out in this Agreement, any dispute (including claims for set-off and counterclaims) arising out of or in connection with this Agreement, including disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this Agreement and (ii) any non-contractual obligations arising out of or in connection with this Agreement, which cannot be amicably resolved between the Parties within thirty (30) Business Days, or such further period as the Parties agree in writing, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator agreed upon by the Parties or, in case such agreement cannot be achieved within ten (10) Business Days, by three arbitrators whereby the claimant or claimants together, and respondent or respondents together, shall each be entitled to nominate one arbitrator, the third arbitrator being appointed by the two-party-nominated arbitrators. The seat of the arbitration proceedings shall be London, United Kingdom. The language of the arbitration shall be English. The decision of the arbitrator (or of the tribunal, as the case may be) shall be final and binding upon the Parties. No Party shall be required to give general discovery of documents, but may be required only to produce specific, identified documents which are relevant to the dispute.

3. Interim Relief

Clause 27.2 shall be without prejudice to the right of any Party to apply to the English courts to seek interim relief, at any time before and after the arbitrator (or of the tribunal as the case may be) has been appointed, up until when the arbitrator (or of the tribunal as the case may be) has made its final

award, to prevent the continuation of an actual breach or a threatened breach of this Agreement and the Parties hereby submit to the non-exclusive jurisdiction of such courts for such purposes.

[*Signatures to follow*]

schedule 7 - SELLERS' WARRANTIES

1. Corporate Authorisations, No-Breach, Incorporation, Sellers' Groups and Shares

- (a) Each Seller has and as of the Closing Date each Local Seller will have obtained all corporate authorisations (other than to the extent relevant to the Closing Conditions) required to empower it to enter into and perform its obligations under this Agreement, where failure to obtain them would adversely affect its ability to enter into or perform its obligations thereunder.
 - (b) Entry into and performance by each member of Sellers' Groups and PLC of this Agreement, any Transaction Document and/or any Carve Out Agreement to which it is a party will not breach any provision of its memorandum and articles of association, by-laws or equivalent constitutional documents.
 - (c) Subject to fulfilment of the Closing Conditions, entry into and performance by each member of Sellers' Group of this Agreement, any Transaction Document and/or any Carve Out Agreement to which it is a party will not result in a breach of any laws or regulations or of any order, decree or judgment of any court or any Governmental Entity or regulatory authority, where (in either case) the breach would adversely affect its ability to enter into or perform its obligations under this Agreement, a Transaction Document and/or a Carve Out Agreement, as applicable.
 - (d) This Agreement, each of the other Transaction Documents and each of the Carve Out Agreements to which Sellers and Local Sellers are or will be party will, when executed, constitute legal, valid and binding obligations of Sellers in accordance with their terms.
 - (e) The particulars relating to the Target Companies and JVCo's in Schedule 1 will as of the Closing Date be true and accurate in all material respects.
 - (f) Each Seller, each Local Seller, each Target Company and each JVCo is validly incorporated, in existence and duly registered under the laws of its jurisdiction of incorporation and has full power to conduct its business as conducted at the date of this Agreement.
 - (g) Sellers have made available in the Data Room to Purchaser copies of the constitutional documents of each of the Target Companies and JVCo, and no action has been taken to amend any of them.
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- (h) Sellers will at Closing be entitled to transfer (or procure the transfer of) the DivestCo Shares on the terms of this Agreement.
- (i) The DivestCo Shares constitute the whole of the paid-up share capital of the DivestCos. All the DivestCo Shares are fully paid and free of additional payment obligations and each Local Seller will at Closing be the sole legal and beneficial owner of the number of shares in the capital of the relevant Target Company and the relevant JVCo set out for it in Schedule 1 free from any Third Party Rights and from any Permitted Encumbrances.
- (j) No member of Sellers' Groups nor any of the Target Companies or JVCos has entered into any agreement whereby any person (other than a Target Company) has the right to call for the issue of any share or loan capital in any Target Company or JVCo or for any Third Party Right or any other encumbrance in the Target Company shares and the JVCo shares held by a Target Company.
- (k) Other than as set out in Schedule 1, no Target Company or JVCo holds any ownership interests, partnership interest or similar instrument in any other legal entity, partnership or any other person.

1. Carve Out Measures

The Carve Out Steps and the measures contemplated to implement the Carve Out pursuant to the Carve Out Agreements are in material compliance with all applicable laws and regulations.

2. Financial Matters

- (l) The Combined Carve Out Financial Statements were prepared in accordance with the requirements of all relevant laws and the relevant accounting principles then in force save as disclosed therein and subject to the basis of preparation and the assumptions made therein to reflect the separation of the respective business and, on the basis of the knowledge of the respective management when they were prepared, present fairly, in all material respects, the combined carve-out financial position of the respective Target Companies as of the date to which they relate, and the respective Target Companies' combined carve-out financial performance and such companies' combined carve-out cash flows for the periods to which they relate, provided that they do not take into account the changes in the helium perimeter set out in Schedule 16.
 - (m) From 1 January 2018 until the date of this Agreement and except for Permitted Actions:
 - (i) each Target Company has carried on business in the ordinary course (including continuation of making capital expenditures and expenditures re the US projects in accordance with the budget);
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- (ii) except for any dividends or distributions provided for in the Combined Carve Out Financial Statements, no Target Company has declared, paid or made any dividend or other distribution;
 - (iii) no Target Company has repaid, repurchased or reduced any of its issued share capital;
 - (iv) no share or loan capital has been issued or agreed to be issued by a Target Company; and
 - (v) other than in the ordinary course of business : (A) no capital commitment has been entered into by a Target Company to spend monies in excess of ten million (10,000,000) USD (in respect of each individual commitment) and (B) no Target Company has acquired or agreed to acquire any fixed asset with a value in excess of ten million (10,000,000) USD.
- (n) The statutory books of each Target Company required to be kept by applicable laws in its jurisdiction of incorporation as well as other material books and records relating to the Business have been maintained in all material respects in accordance with such laws.

1. Financial Debt

No Target Company owes any Financial Debt to any person outside Sellers' Groups or has any loan agreements and other loan commitments including bonds (with the exception of customary extensions of the due date of trade receivables or payables agreed in the ordinary course of business and of inter-company agreements to be terminated prior to or at Closing) exceeding ten million (10,000,000) USD, in each case, other than (i) Financial Debt owing pursuant to agreements or instruments the details of which are set out in the Data Room, (ii) Financial Debt which will be repaid on or before the Financial Closing Date or (iii) Financial Debt to be taken into account in the Closing Statement and reducing the Final Purchase Price.

2. Compliance with Law

- (o) Each Target Company has to Sellers' Knowledge in the last two (2) years prior to the date of this Agreement conducted its respective business in material compliance with all applicable laws.
 - (p) There has in the last three (3) years prior to the date of this Agreement been no material default by any Target Company under any order, decree or judgment of any court or any Governmental Entity or regulatory authority in the jurisdiction in which it is incorporated which applies to the Business.
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- (q) Each Target Company has conducted its business and corporate affairs in all material respects in accordance with its memorandum and articles of association, by-laws or other equivalent constitutional documents.

1. Special Regulatory Matters

- (r) Neither the Sellers nor a Target Company nor Cliffside Helium, LLC and/or Cliffside Refiners, LP, nor any of their directors, officers, employees or other persons for whom they could be liable nor any other person acting on their behalf has, within the three (3) years prior to the date hereof, engaged in any activity or conduct in relation to the Business that has resulted or will result in a material breach of:
 - (i) any applicable laws relating to money laundering and the combat of terrorism financing; and
 - (ii) any Anti-Corruption Laws and competition laws,provided however, that with respect to Cliffside Helium, LLC and/or Cliffside Refiners, LP, such Warranty is given only on the basis of the actual knowledge, as at the date of this Agreement, of the directors of BOC Holdings after due inquiry of Nick Haines without any further inquiry (and without the obligation to do so) and no knowledge of any member of Seller' Group or Sellers' Representatives (whether actual or constructive) shall be imputed to Sellers for the purpose of the statement concerned.
 - (s) The Target Companies have in place a reasonably adequate monitoring and compliance system to ensure compliance with the relevant laws and regulations set out in paragraph 1.6(a)(i) through (ii).
 - (t) None of the Target Companies in relation to the Business:
 - (i) is a Sanctioned Person;
 - (ii) is subject to any applicable Sanctions
 - (iii) has within the last two (2) years prior to the date hereof, been engaged in any transaction, activity or conduct that could reasonably be expected to result in its being designated as a Sanctioned Person;
 - (iv) has within the last two (2) years prior to the date hereof, been engaged or is currently engaging in any transaction, activity or conduct in relation to the Business that has resulted or could result in a violation of Sanctions;
 - (v) has received notice of, or is otherwise aware of, any pending claim, action, suit, proceedings or investigation involving it with respect to Sanctions; and/or
 - (vi) is acting on behalf of or at the direction of any Sanctioned Person.
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- (u) To Sellers' knowledge, the Sellers have not, within the last two (2) years prior to the date hereof, received any written correspondence from any governmental entity indicating or alleging any breach of Sanctions.

1. Material Assets

- (v) The Target Companies own or are entitled, or will at Closing own or be entitled, except for Permitted Encumbrances, to use all the respective material assets (including the material sites, properties and pipelines) reflected in the Combined Carve Out Financial Statements prepared as of 31 December 2017 other than those disposed of or replaced in the ordinary course of business, and such material assets owned or with the entitlement to use as of the Closing Date are all of the material assets required to carry on the Business as currently conducted, taking into account the contemplated Carve Out.

For purposes only of this paragraph 1.7(a) and (b) and for paragraphs 1.12(a) and (c) of Schedule 7, Purchaser's knowledge of the Carve Out Agreements shall not limit the scope of any Warranty Claim and the Carve Out Agreements shall not be considered Disclosed.

- (w) The Target Companies own, or will at Closing own fifty (50) helium containers which are considered by Sellers as the number required to carry on the Business as presently conducted.
- (x) The material assets of the Business are, except for Permitted Encumbrances, in the possession or under the control of the respective Target Companies (save where in the possession or under the control of a third party in the normal course of business).

1. Insurances

The Data Room contains a summary of the insurance agreements in place on the date hereof maintained by or covering each Target Company. To Sellers' Knowledge, all corresponding premiums have been duly paid when due, to the extent required to maintain the insurance coverage under said insurance agreements and said insurance agreements are in full force and effect. No individual or related claims under the insurance agreements for amounts in excess of one million (1,000,000) USD are outstanding.

2. Contractual Matters

- (a) To Sellers' Knowledge, there are no material unremedied breaches by the Target Companies or the counterparties of the Material Agreements and all Material Agreements are in full force and effect.
 - (b) No Material Agreement contains terms, whereby as a result of the entry into and performance of this Agreement, any other Transaction Document, or any Carve Out Agreement (x) any other party to such Material Agreement will be entitled to be relieved of any material obligation
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or become entitled to exercise any material right (including any termination or pre-emption right or other option) or (y) any Target Company will be in material default, it being understood, that consent requirements for the assignment, novation, or split of Material Agreements shall be excluded from this Warranty.

- (c) To Sellers' Knowledge, there are no material unremedied breaches by the Sellers Groups or the Target Companies or the counterparties of the Helium Contracts to the extent it would effect the back-to-back agreements. To Sellers' Knowledge, all Helium Contracts subject to the terms specified in Schedule 16, are in full force and effect. For the purposes of this warranty under Schedule 7 paragraph 1.9(c) reference to Sellers' Knowledge in relation only to the Helium Contracts means the actual knowledge as of the date hereof of Linde's Head of Global Helium and Rare Gases without any further inquiry.

3. Litigation and Investigations

- (a) No Target Company is involved as a party in any litigation, arbitration or administrative proceedings and to Sellers' Knowledge no such proceedings have been threatened in writing by or against a Target Company, where the proceedings (if successful) are likely to result in a Cost, benefit or value to the Business of ten million (10,000,000) USD or more.
- (b) No Target Company has received written notice in the two (2) years prior to the date of this Agreement or is to Sellers' Knowledge otherwise aware of any current or pending material investigation by a Governmental Entity concerning any Target Company or any person for whom it would be liable.

4. Insolvency

- (a) No Target Company is insolvent or bankrupt under the laws of its jurisdiction of incorporation, unable to pay its debts as they fall due or has proposed or entered into any arrangement (whether by court process or otherwise) with its creditors or any class of its creditors.
- (b) No Target Company has received any written notice concerning or is otherwise aware of the appointment of an administrator or a receiver (including any administrative receiver or the equivalent to a receiver or administrative receiver in the relevant jurisdiction) in respect of the whole or any material part of the property, assets and/or undertaking of the Business.
- (c) No order has been made and no resolution has been passed for the winding-up of any Target Company and, to Sellers' Knowledge, no petition has been presented for that purpose.

5. IP/IT

- (a) The Target Companies own or have licensed to them or may legally use all material Intellectual Property Rights necessary to carry on the Business as currently carried on (" **Business Intellectual Property** ").
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- (b) The licences of Intellectual Property Rights granted to, or by, any Target Company, and which are material to the Business (other than licenses to rights in computer software), are disclosed in the Data Room.
- (c) To Sellers' Knowledge, the Business Intellectual Property (i) has not been and is not being violated by any third party and (ii) will not be lost, or rendered liable to termination, by the performance of the Transaction Documents or the Carve Out Agreements.
- (d) To Sellers' Knowledge, in the two (2) years prior to the date of this Agreement, the Target Companies have not violated and do not violate third parties' Intellectual Property Rights by the production, marketing, sale or distribution of their current products or by any other actions in the conduct of the Business as currently carried on, in each case, in a manner that would reasonably have, if the relevant third party were to enforce its Intellectual Property Rights, a material adverse effect on the Business.
- (e) All licences (other than off-the-shelf licenses) and leases relating to the material IT Systems being available to the Business after Closing have been disclosed in the Data Room, unless such IT Systems are only licensed or leased after the date of this Agreement as part of the Carve Out or otherwise.

6. Real Estate

- (a) Details in respect of the Properties are contained in the Data Room.
- (b) A Target Company has a valid legal title or a right to use each of the Properties and there is no Third Party Right in or over or affecting any of the owned Properties.
- (c) In relation to those Properties which are leasehold or otherwise used there are no unremedied breaches, material to the Business, of any covenants, conditions and agreements contained in the relevant leases, on the part of the tenant.
- (d) No member of the Sellers' Groups nor any Target Company have, with respect to the Business, in the past three (3) years received any notice of a third party or any public authority alleging a lack of right to use any of the pipeline networks or a lack of right to build on any property on which a pipeline network (or parts thereof) is located and which resulted, or will result, in any relocation requirement or payment obligation in excess of one million (1,000,000) USD or more.

7. Environmental

- (a) To Sellers' Knowledge no Target Company is in material breach of any Environmental Laws relating to any activities or operations carried on at any Property owned or used by any Target Company in relation to the Business. There are no material claims or proceedings, pending
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or threatened, in each case, in writing against any Target Company with respect to any breach of Environmental Laws relating to the Business.

- (b) Each Target Company has all requisite Environmental Licences necessary to carry on its business as currently carried on (all of which are valid and subsisting) and no Target Company has received written notice that it is materially in default under any such Environmental Licence.
- (c) No Target Company is engaged in any litigation, arbitration or administrative proceedings concerning any Environmental Law which is in progress and which is material in relation to the Business.

8. Employment

- (a) The Data Room identifies the number of Employees employed or engaged by each Target Company, together with the country or territory in which they normally work.
 - (b) The Data Room contains copies of the contracts of employment (including amendments, etc.) for all Key Employees and, to Sellers' Knowledge, neither the Target Companies nor the Key Employees (nor any person who would have been a Key Employee had he or she not ceased to be an employee prior to the Closing Date) are in material breach of such contracts.
 - (c) The Data Room contains template copies of the standard terms and conditions of employment typically applicable to Employees of the relevant Target Companies. The principal terms and conditions of the contracts of employment of the Employees do not materially deviate from said standard terms and conditions contained in the Data Room.
 - (d) No Key Employee, nor any person who would have been a Key Employee had he or she not ceased to be an employee prior to the Closing Date, has given or received notice of termination of his/her employment or has entered into a termination agreement with any of the Target Companies.
 - (e) No offer of employment has been made by a relevant Target Company to an individual who would be entitled to a fixed salary of greater than two hundred and fifty thousand (250,000) USD if such offer were accepted, which has not yet been accepted or which has been accepted but where the employment has not yet started.
 - (f) No Key Employee, nor any person who would have been a Key Employee had he or she not ceased to be an employee prior to the Closing Date, is entitled to any bonus payments by any of the Target Companies as a result of this Agreement or any Transaction Document or any Carve Out Agreement, or the consummation of this Agreement or any Transaction Document or Carve Out Agreement.
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- (g) The Data Room contains a complete list and copies of all material deferred and variable remuneration schemes in which the Employees (including employees that will have ceased to be an employee prior to the Closing Date) participate as at the date of this Agreement.
- (h) The Data Room contains true and complete copies of all material collective agreements (other than those entered into by the relevant employer's association or binding on any Target Company by operation of law) with trade unions, worker's councils or similar organisations or bodies of employee representatives to which any relevant Target Company is bound, which provide for material payment obligations of a Target Company or impose any material restriction as to the future closure or downsizing of plants or other restructurings affecting the workforce.
- (i) To Sellers' Knowledge, no Target Company is experiencing (i) any strike or lockout of its employees or (ii) any dispute with any union, workers' council or other body of employee representatives pending before any court, Governmental Entity or arbitrator which relates to an alleged material breach of any of the agreements described in paragraph 1.15(h) or to any labour relations or employment matters of a general or significant nature (including mass lay-offs or unfair labour practices).
- (j) No Target Company is bound by any pension or retirement plan or commitment which obligates it to pay any pension or retirement (including early retirement) benefit to any of its current or former directors / officers and employees (other than any defined contribution plans and employer's contributions to statutory pension schemes), except for the pension or retirement plans or commitments copies of which are contained in the Data Room.

9. Finders' Fees

No Target Company has any obligation or liability to pay any fee or commission to any broker, finder or agent with respect to this Agreement or any Transaction Document or Carve Out Agreement or the consummation of the transactions contemplated thereby.

10. Regulatory Permits

No Target Company is in material breach of any Regulatory Permit where that breach would have a material adverse effect on the business of the respective Target Company.

schedule 8 - REMEDIES AND LIMITATIONS

1. General Remedy

The only remedy of Purchaser in respect of a Warranty Claim shall be (subject to paragraph 11 below) damages for breach of the Warranties. In each case, Sellers shall first have the right to cure a breach pursuant to paragraph 11 of this Schedule.

2. Specific Limitations

With respect to a Warranty Claim, neither Purchaser nor any member of Purchaser Group shall be entitled to claim for:

- (a) punitive, special, exemplary, incidental damages and indirect or consequential losses or damages;
- (b) loss of goodwill or possible business after Closing, whether actual or prospective, or loss of profits;
- (c) damage to reputation;
- (d) penalties, charges or interest arising directly or indirectly from any act, transaction or omission of Purchaser or any other member of Purchaser Group after Closing; or
- (e) legal or other professional fees, costs and expenses that are not reasonably incurred.

Any Warranty Claims shall be calculated on a *pro rata* -basis which reflects, as the case may be, the percentage of the ownership in the respective Target Company or JVCo as it is acquired by Purchaser under this Agreement.

With respect to indemnification claims of Purchaser pursuant to clause 11.2 and 11.3, Purchaser and members of Purchaser Group shall be entitled only to damages for losses (including costs), indirect or consequential losses or damages and loss of profits as well as expenses and costs as set forth under (d) and (e) above, provided, however, that Purchaser or members of Purchaser Group are entitled to all kind of damages (including punitive, special, exemplary and incidental damages) for which they are liable vis-a-vis a third party.

With respect a breach of a covenant under this Agreement the Purchaser shall in addition to seeking specific performance, however, only be entitled to damages, including, without limitation, consequential damages, loss of profits and reasonable legal or other professional fees costs and expenses in each case to the extent reasonably foreseeable, but excluding punitive and exemplary damages.

3. Disclaimer

Sellers expressly disclaim all liability and responsibility for any conclusion, opinion, forecast or evaluation contained within or derived or capable of being derived from any investigation carried out or made by or on behalf of Purchaser or Purchaser's Representatives, in the course of any due diligence or other enquiry before Purchaser entering into this Agreement or any other data, document, record or information provided by or on behalf of members of Sellers' Groups or Sellers' Representatives to Purchaser or Purchaser's Representatives.

4. Knowledge

Neither Seller shall be liable in respect of any Warranty Claim (except for breach of Fundamental Warranties) if and to the extent that the fact, matter, event or circumstance giving rise to such Warranty Claim:

- (a) has been disclosed to Purchaser or any of Purchaser's Representatives, in or by this Agreement, any other Transaction Document, the Disclosure Letter or any document or other information in the Data Room on or before the date of this Agreement in sufficient detail to enable a reasonable purchaser to identify and make a reasonably informed assessment of the nature of the fact, matter or circumstance so disclosed ("**Disclosed**"); or
- (b) is within the knowledge of a member of the management board of Purchaser or Dr. Hans-Gerd Wienands, Dr. Christian Daniel Pindur or Memet Can Toygar at the date of this Agreement, including as a result of any due diligence investigation into the Target Companies and JVCos ("**Known**").

Matters, events or circumstances that are Disclosed or Known shall not constitute or give rise to a breach of a Warranty (other than the Fundamental Warranties) and the scope of the Warranties (other than the Fundamental Warranties) shall be limited and construed accordingly.

5. Reserves in Accounts

Neither Seller shall be liable for any Claim to the extent that the fact, matter, event or circumstance giving rise to the Claim is provided for, reserved for, or accrued in the Combined Carve Out Financial Statements or is provided for, reserved for, or accrued in or otherwise properly taken into account in the Closing Statement or any Adjustment Payments and has actually reduced the Enterprise Purchase Price.

6. Recovery

Neither Seller shall be liable in respect of any Claim to the extent that the amount of such Claim is recoverable directly by Purchaser under a policy of insurance in force for the benefit of Purchaser, Purchaser Group or any Target Company or JVCo, or would be recoverable if Purchaser had maintained, following Closing, valid and adequate policies of insurance of the nature and type maintained by or in respect of the Target Companies or JVCos at the date of this Agreement.

7. Legislative Changes

Neither Seller shall be liable in respect of any Claim if and to the extent such Claim arises or is increased as a result of a change in law or any change in interpretation of law on the basis of case law, regulation, directive, requirement or any change or changes to any published administrative practice of any government, governmental department, agency or regulatory body (whether relating to rates or imposition of Tax or otherwise) made after the date hereof irrespective of whether any of the aforementioned changes were formally announced prior to or at the date hereof or not.

8. No Double Recovery

The Purchaser shall not be entitled to recover damages or obtain payment, reimbursement, restitution or indemnity more than once in respect of any one liability, loss, Cost, shortfall, damage, deficiency, breach or other set of circumstances which gives rise to more than one Claim.

9. Accounting, Taxation and Business Changes

Neither Seller shall be liable in respect of any Claim if and to the extent such Claim arises or is increased as a result of:

- (a) any change after Closing of the date to which any Target Company or JVCo prepares its accounts or in the bases, methods, principles or policies or accounting of any Target Company or JVCo other than a change which is reported by the auditors for the time being of that Target Company or JVCo to be necessary in their opinion because such bases, methods, principles or policies of accounting as at the date of Closing are not in accordance with any published accounting practice or principle then current; and
 - (b) a cessation, or any change in the nature or conduct, of any trade carried on by any Target Company or JVCo at Closing, being a cessation or change occurring on or after Closing.
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10. Contingent Liabilities

If any Claim is based upon a liability which is contingent only, neither Seller shall be liable to make any payment unless such contingent liability ceases to be contingent and gives rise to an actual obligation to make a payment, provided that any contingent liability timely notified in accordance with paragraph 15 will not be subject any more to the time limitations set forth therein.

11. Cure of Breach

If a breach of the Warranties is capable of remedy by the respective Sellers, Purchaser shall only be entitled to monetary compensation in respect of such breach if it gives Sellers written notice of the breach and the breach is not remedied by the respective Seller within twenty-one (21) Business Days after the date on which such notice is served on Sellers. Without prejudice to its duty to mitigate any loss, Purchaser shall (or shall procure that any relevant member of Purchaser Group shall) provide all reasonable assistance to Sellers at Sellers' Cost to remedy any such breach.

12. Mitigation

Neither Seller shall be liable for any Claim to the extent that it would not have arisen but for, or has been increased as a result of any voluntary act, omission or transaction carried out before Closing by any member of Sellers' Groups or any Target Company or any JVCo at the direction or request of Purchaser or any member of Purchaser Group, or any act, omission or transaction of Purchaser of any member of Purchaser Group after Closing.

Nothing in this Agreement shall be deemed to relieve Purchaser from any common law duty to mitigate any loss or damage incurred by it as a result of any Warranty being untrue or inaccurate.

13. Thresholds

Neither Seller shall be liable for any Warranty Claim (except for claims under the Fundamental Warranties) and/or Tax Claim:

- (a) unless the amount of the liability pursuant to that Warranty Claim (except for Warranty Claims that are based on a breach of the Warranties under Schedule 7 paragraph 1.7 or Schedule 7 paragraph 1.12 lit. (a) and (c)) exceeds an amount of 2,500,000 USD (two million five hundred thousand US dollars);
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- (b) unless the amount of the liability pursuant to Warranty Claims that are based on a breach of the Warranties under Schedule 7 paragraph 1.7 or Schedule 7 paragraph 1.12 lit. (a) and (c) exceeds an amount of 25,000 USD (twenty five thousand US dollars) per asset/right;
- (c) unless the amount of the liability pursuant to that Tax Claim exceeds an amount of 50,000 USD (the " **Tax De Minimis Amount** ", provided that if the aggregate amount of all Tax Claims that would be excluded by the Tax De Minimis Amount exceeds an amount of 5,000,000 USD (five million US dollars), the Purchaser shall be entitled to claim the full amount of such claims; this paragraph 13(c) of Schedule 8 shall apply *mutatis mutandis* to any claims of Sellers against Purchaser pursuant to clause 12; and
- (d) unless in the case of a Warranty Claim (not a Tax Claim) the aggregate amount of the liability of Sellers for all Warranty Claims not excluded by paragraphs (a), (b) and (c) exceeds an amount of twenty (20) million USD (USD 20,000,000) in which case the Purchaser shall be entitled to claim only the amount in excess of ten (10) million USD (USD 10,000,000).

14. Maximum Liability

- (a) The aggregate amount of the liability of Sellers for all Warranty Claims (other than Fundamental Warranty Claims) shall not exceed 460,000,000 USD.
- (b) Without prejudice to paragraph (a) above, the aggregate amount of the liability of Sellers for all claims under or in connection with this Agreement (including Fundamental Warranty Claims and Tax Claims, but excluding any claims pursuant to clause 11 and Schedule 14) and any other Transaction Documents shall not exceed the aggregate amount of the Final Purchase Price (including any amounts paid by Sellers to Purchaser for any other Claims or Tax Claims under this Agreement).
- (c) Without prejudice to paragraphs (a) and (b) above, the aggregate amount of the liability of any Seller for all Fundamental Warranty Claims relating only to a DivestCo in Colombia or Chile shall not exceed 100% of the Final Purchase Price allocated to that DivestCo pursuant to Schedule 3.

15. Time Limitations

Neither Seller shall be liable for any Claim unless Sellers receive from Purchaser written notice, such notice providing reasonable details of the relevant facts of the Warranty Claim and Purchaser's estimate (on a without prejudice basis) of the amount of the Warranty Claim. In respect to Warranty Claims neither Seller shall be liable for any Warranty Claim unless such notice is provided within:

- (a) eighteen (18) months of the Closing Date, in respect of Warranty Claims (other than Fundamental Warranty Claims and Environmental Warranty Claims);
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- (b) three (3) years of the Closing Date, in respect of Fundamental Warranty Claims; and
- (c) five (5) years of the Closing Date, in respect of Environmental Warranty Claims.

Purchase shall provide such notice as soon as reasonable and in any event within sixty (60) calendar days after Purchaser or any member of Purchaser Group becomes aware of any matter which may give rise to a Claim; provided that any delay in such notice shall not exclude Sellers liability unless and to the extent Sellers have been prejudiced or the Claim could have been mitigated by Purchaser's failure to comply with its obligation under this paragraph 15.

16. Exclusion

Any Claim shall (if it has not been previously satisfied, settled or withdrawn) be deemed to have been withdrawn and shall become fully barred and unenforceable unless legal proceedings have been validly served upon the respective defendant within six (6) months of the date on which valid notice of the Claim has been given by Purchaser to Sellers, provided, however, that in case of contingent liabilities the six (6) months period shall only commence upon such contingent liability ceasing to be contingent and giving rise to an actual obligation in accordance with paragraph 10 above.

17. Exchange Rate

For the purposes of applying a reference to a monetary threshold expressed in USD with respect to a Claim, Tax Claim, or claim of Sellers under clause 12 an amount in a different currency shall be deemed to be an amount in USD translated at the date before the day of receipt of the relevant notice by Sellers.

18. Adjustment of Purchase Price

Any payments to be made by Sellers under this Agreement with respect to Warranty Claims, Tax Claims or claims pursuant to clause 11 and Schedule 14 shall be considered an adjustment to the Final Purchase Price (to which clause 4.3 and clause 4.4 shall apply *mutatis mutandis*) and shall be made on the basis set out in clause 6.

19. Third Party Claims

1. If a Warranty Claim arises as a result of, or in connection with, a liability or alleged liability of a Target Company to a third party (a " **Third Party Claim** "), then Sellers may, at any time before any final compromise, agreement, expert determination or non-appealable decision of a court or tribunal of competent jurisdiction is made in respect of the Third Party Claim or the Third Party Claim is otherwise disposed of, give notice to Purchaser that Sellers elect to assume the conduct of any dispute, compromise, defence or appeal or the Third Party Claim and of any incidental negotiations on the following terms:
 - (a) Sellers shall indemnify Purchaser and each relevant Target Company against the Third Party Claim and all liabilities, charges, costs and expenses which they may incur by Sellers' action or in taking any such action as Sellers may request pursuant to subparagraphs (b) and (c) below;
 - (b) Purchaser shall procure that each relevant Target Company makes available to Sellers, such persons and all such information as Sellers may request for assessing, contesting, disputing, defending, appealing or compromising the Third Party Claim;
 - (c) Purchaser shall procure that each relevant Target Company takes such action to assess, contest, dispute, defend, appeal or compromise the Third Party Claim as Sellers may request and does not make any admission of liability, agreement, settlement or compromise in relation to the Third Party Claim without the prior written approval of Sellers; and
 - (d) Sellers shall keep Purchaser informed of the progress of the Third Party Claim and provide Purchaser with copies of all relevant documents and such other information in its possession as may be requested by Purchaser (acting reasonably).
 2. If a Warranty Claim arises as a result of, or in connection with a Third Party Claim, Purchaser shall, until the earlier of such time as Sellers shall give any notice as contemplated by paragraph 19.1 and such time as any final compromise, agreement, expert determination or non-appealable decision of a court or tribunal of competent jurisdiction is made in respect of the Third Party Claim or the Third Party Claim is otherwise finally disposed of:
 - (a) procure that each relevant Target Company consults with Sellers, and takes account of the requirements of Sellers, in relation to the conduct of any dispute, defence, compromise or appeal or the Third Party Claim;
 - (b) keep, or procure that each relevant Target Company keeps, without undue delay Sellers informed of the progress of the Third Party Claim and provide, or procure that each relevant Target Company provides, Sellers with copies of all relevant documents and such other
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- information in Purchaser's or a Target Company's possession as may be requested by Sellers; and
- (c) procure that no relevant Target Company shall cease to defend the Third Party Claim or make any admission of liability, agreement or compromise in relation to the Third Party Claim without the prior written consent of Sellers not to be unreasonably withheld or delayed.
3. Nothing in this paragraph 19 shall require the provision by any person of any information to the extent such provision would contravene any applicable law or regulation, would result in a waiver of privilege (using as alternative counsel to counsel communication), or would breach any duty of confidentiality owed to any third party. If any information is provided by any person (the "**Provider**") to any other person (the "**Recipient**") pursuant to this paragraph 19:
- (a) that information shall only be used by the Recipient in connection with the Third Party Claim and clause 21.2 shall in all other respects apply to that information; and
- (b) to the extent that information is privileged:
- (i) no privilege shall be waived by reason of or as a result of its being provided to the Recipient; and
- (ii) if a third party requests disclosure by the Recipient in relation to that information, if the Recipient is Sellers or Purchaser, the Recipient shall or, if the Recipient is a Target Company, Purchaser shall procure that the Recipient shall promptly notify the Provider and, to the extent it can do so, itself assert privilege in opposition to that disclosure request.

20. Recovery from third parties

If:

- (a) Sellers make a payment in respect of a Claim (the "**Damages Payment**");
- (b) at any time after the making of such payment any Target Company or Purchaser received any sum other than from Sellers which would not have been received but for the matter or circumstances giving rise to that Claim (the "**Third Party Sum**");
- (c) the receipt of the Third Party Sum was not taken into account in calculating the Damages Payments; and
- (d) the aggregate of the Third Party Sum and the Damages Payment exceeds the amount required to compensate Purchaser in full for the loss or liability which gave rise to the Claim in question (such excess being the "**Excess Recovery**")
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Purchaser shall, promptly following receipt of the Third Party Sum by it or the relevant Target Company, repay to Sellers an amount equal to the lower of (i) the Excess Recovery and (ii) the Damages Payment.

*Signature Pages
Sale and Purchase Agreement*

Date: 16 July 2018

For and on behalf of LINDE AG

/s/ Aldo Belloni

/s/ Sven Schneider

Name: Prof. Dr.-Ing. Aldo Belloni
Title: Chief Executive Officer (*Vorstand*)

Name: Dr. Sven Schneider
Title: Chief Financial Officer (*Vorstand*)

Date: 16 July 2018

For and on behalf of PRAXAIR, INC.

/s/ Stephen F. Angel

Name: Stephen F. Angel
Title: Chairman, CEO & President

Date: 16 July 2018

For and on behalf of Linde Public Limited Company

/s/ Andrew Brackfield

Name:Mr Andrew Brackfield
Title:Director

Date: 16 July 2018

For and on behalf of MG Industries GmbH

/s/ Hans-Gerd Wienands-Adelsbach

Name:Dr. Hans-Gerd Wienands-Adelsbach
Title:Managing Director (*Geschäftsführer*)

/s/ Daniel Pindur

Name:Dr. Daniel Pindur
Title:Managing Director (*Geschäftsführer*)

Date: 16 July 2018

For and on behalf of Messer Canada Inc.

/s/ Stefan Messer

Name:Mr Stefan Messer
Title:Chief Executive Officer (CEO)

Date: 16 July 2018

For and on behalf of MG Industries USA, Inc.

/s/ Carsten Knecht

Name:Mr Carsten Knecht
Title:Attorney-in-fact acting under power
of attorney dated 12 July 2018 and
sub-power of attorney dated 13 July 2018

First Amendment of the Americas Sale and Purchase Agreement

dated 21 September 2018

This First Amendment of the Americas Sale and Purchase Agreement (the "**1st Amendment**") is entered into by and between:

1. **Linde Aktiengesellschaft**, a stock corporation (*Aktiengesellschaft*) organised under the laws of the Federal Republic of Germany, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Munich, Germany under registration number HRB 169850, having its registered address (*Geschäftsanschrift*) at Klosterhofstraße 1, 80331 Munich, Germany,

- herein "**Linde**" -
2. **Praxair, Inc.**, a corporation organised under the laws of Delaware, USA, having its registered address at 10 Riverview Drive, Danbury, Connecticut, CT06810, United States of America,

- herein "**Praxair**" and together with Linde "**Sellers**" -
3. **Messer Industries GmbH** (formerly MG Industries GmbH), a private limited liability company (*Gesellschaft mit beschränkter Haftung*) organised under the laws of the Federal Republic of Germany, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Frankfurt am Main, Germany under registration number HRB 111628, having its registered address at Messer-Platz 1, 65812 Bad Soden am Taunus, Germany,

- herein "**Purchaser**" -
4. **Messer Canada Inc.**, a corporation organised under the laws of Canada, registered with the register of Corporations Canada under registration number 1083715-6 having its registered address at 199 Bay Street, Suite 5300, Commerce Court West, Toronto, Ontario M5L 1B9, Canada,

- herein "**Canadian Local Purchaser**" -
5. **Messer Industries USA, Inc.** (formerly MG Industries USA, Inc.), a company organised under the laws of Delaware, with registration number 6964345 and registered address at 251 Little Falls Drive, Wilmington, New Castle, Delaware 19808, United States of America,

- herein "**American Local Purchaser**" -

(the Canadian Local Purchaser and the American Local Purchaser herein collectively herein the "**Local Purchasers**")

and

6. **Linde Public Limited Company**, a public limited company organised under the laws of Ireland, having its business address at The Priestley Centre, 10 Priestley Road, The Surrey Research Park, Guildford, Surrey GU2 7XY, United Kingdom,

- herein "**PLC**" -

(each of Linde, Praxair, Purchaser, the Local Purchasers and PLC herein also referred to individually as a "**Party**" and collectively as "**Parties**").

RECITALS

- (A) **Whereas**, *inter alia*, Linde, Praxair, and PLC have entered into a business combination agreement as of 1 June 2017, as amended, to effect a strategic combination of the businesses of Linde and Praxair (herein " **BCA** " and the transactions contemplated by the BCA the " **Business Combination** ").
- (B) **Whereas**, the Parties have entered into a sale and purchase agreement as of 16 July 2018 to effect the sale and transfer of certain businesses (" **SPA** ") in order to meet certain regulatory concerns with a view to close the BCA.
- (C) **WHEREAS**, after the signing date of the SPA, upon further discussions with regulatory authorities, in connection with the Business Combination the Purchaser has agreed that the Perimeter Change I Businesses, the Perimeter Change I Assets and the Perimeter Change I Contracts shall be included in the Transaction under the SPA. Linde wishes to procure the inclusion of the Perimeter Change I Businesses, the Perimeter Change I Assets and the Perimeter Change I Contracts in the Transaction under the SPA and to amend the SPA as set out herein.

NOW, THEREFORE, the Parties agree as follows:

1. **Interpretations**

Unless otherwise provided herein or the context otherwise requires, words and expressions defined for the purposes of the SPA will have the same meaning in this 1st Amendment.

2. **Amendment of THE Index of SCHEDULES AND OF CLAUSE 1.1 of the SPA**

1. **Amendment of the Index of Schedules**

- (a) The Index of Schedules to the SPA shall be amended to read as follows to reflect the insertion of a new Schedule 17, a new Schedule 19, a new Schedule 20 and a new Schedule 21 to the SPA:

Schedule 1	Target Companies and Ownership Structure
Schedule 2	Financial Line Items
Schedule 3	Apportioning between DivestCo Shares
Schedule 4	Principles of Closing Statement
Schedule 5	Form of Closing Statement
Schedule 6	<i>Intentionally left blank</i>
Schedule 7	Sellers' Warranties
Schedule 8	Remedies and Limitations
Schedule 9	Third Party Assurances Sellers' Groups
Schedule 10	Target Company Third Party Assurances
Schedule 11	Debt Commitment Letter and Form of Interim Facility
Schedule 12	Equity Commitment Letter
Schedule 13	Carve Out Steps
Schedule 14	Welding Fumes Indemnification
Schedule 15	<i>Retained Business</i>
Schedule 16	Helium Perimeter Change
Schedule 17	Perimeter Change I
Schedule 18	Linde Canada Investments LLC Dissolution
Schedule 19	Financial Information
Schedule 20	Sample Helium Contract Iwatani Transfer Agreement
Schedule 21	Financial Contract Information

- (b) To reflect the inclusion of the Perimeter Change I Assets, the Perimeter Change I Businesses and the Perimeter Change I Contracts (all as defined below) in the Transaction under the SPA, the Parties agree to replace the following Schedules to the SPA by amended Schedules attached hereto as **Annex 2.1(b)** :
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- Schedule 3 (*Apportioning between DivestCo Shares*),
- Schedule 4 (*Principles of Closing Statement*),
- Schedule 13 (*Carve Out Steps*),
- Schedule 15 (*Retained Business*), and
- Schedule 16 (*Helium Perimeter Change*)

and all references in the SPA to such Schedules (or parts thereof) shall be read to refer to the revised Schedules to the SPA annexed hereto.

For Schedule 2 (*Financial Line Items*) and Schedule 5 (*Form of Closing Statement*) to the SPA the Parties acknowledge - for the avoidance of misunderstandings - that these Schedules have been prepared on the basis of the status prior to this 1st Amendment and the indicated numbers (at 31 December 2017 which were added for illustration purposes) do, therefore, not reflect this 1st Amendment.

- (c) The Parties further agree to add the following Schedules to the SPA as new Schedules attached hereto as **Annex 2.1(c)** :
- "Schedule 17 (*Perimeter Change I*)";
 - "Schedule 19 (*Financial Information*)";
 - "Schedule 20 (*Helium Contract Iwatani Transfer Agreement*)"; and
 - "Schedule 21 (*Financial Contract Information*)".

2. **Amendment of clause 1.1 of the SPA (*Definitions*)**

In clause 1.1 of the SPA the following definitions shall be amended or, as the case may be, newly introduced, in each case to read as set out below:

- (a) "**Agreed Form** means, in relation to a document, the form of that document as initialled on or prior to the date of this Agreement or on, prior to or in the context of the 1st Amendment for the purpose of identification by or on behalf of Sellers and Purchaser (in each case with such amendments as may be agreed in writing by or on behalf of Sellers and Purchaser);"
- (b) "**Back-to-Back Helium Contracts** means the following agreements:
- the Helium Sales and Purchase Agreement between Linde Gas North America LLC as seller and Linde LLC as buyer, covering parts back-to-back of the Helium Sales and Purchase Agreement between Ras Laffan Liquefied Natural Gas Company Limited, Ras Laffan Liquefied Natural Gas Company Limited (II), Qatar Liquefied Gas Company Limited, all Qatar, and BOC Group, Inc (now Linde Gas North America LLC) dated 24th March 2003 and amended 18 December 2014;
 - the Helium Sales and Purchase Agreement between Linde Gas North America LLC as seller and Linde LLC as buyer, covering parts back-to-back of the Helium Sales and Purchase Agreement between Ras Laffan Liquefied Natural Gas Company Limited (3), Qatar Liquefied Gas Company Limited (II), Qatar Liquefied Gas Company Limited (3), Qatar Liquefied Gas Company Limited (4), all Qatar, and Linde Gas North America LLC, dated 28th February 2010; and
 - the back to back letter Agreement between Linde Gas North America LLC and Linde North America, Inc. for helium sourced from a helium plant in the Amur Region owned and operated by the Gazprom Group;
 - the Transitional Product Supply Schedule to the Framework Product Supply Agreement (ID no. "04-204_Schedule_RNA_Supplemental Helium");"
- (c) "**Carve Out Agreements** means the Master Carve Out and Asset Exchange Agreement, the Carve Out Agreement, the Reverse Carve Out Agreement, the EMA, the Freezer Tunnel Transfer Agreement and the Helium Container Transfer Agreement executed or in Agreed Form (as the case may be) as well as other agreements in relation to the separation of the
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Target Companies from the respective Seller's Group entered into with the consent of Purchaser (such consent not to be unreasonably withheld or delayed), relating to the Business, a portion thereof or a business operated by any of the DivestCos which is not part of the Business;"

- (d) " **Divestiture Trustee** has the meaning given in the FTC Order;"
- (e) " **Enid Land Lease Agreement** means the land lease agreement effective as of 1 October 1987 initially entered into between Farmland Industries, Inc. as lessor and The BOC Group, Inc., Airco Industrial Gases Division (as legal predecessor of Linde LLC) as lessee;"
- (f) " **Enid Plant Operation Agreement** means the Argon Plant Operation Agreement effective as of 1 October 1987 initially entered into between Farmland Industries, Inc. and The BOC Group, Inc., Airco Industrial Gases Division (as legal predecessor of Linde LLC), as amended by the "Amendment to Argon Plant Operation Agreement" effective as of 1 October 2003 between Koch Nitrogen Company (as legal successor of Farmland Industries, Inc.) and The BOC Group, Inc., Airco Industrial Gases Division (as legal predecessor of Linde LLC);"
- (g) " **Financial Contract Information** means the financials information attached as Schedule 21 hereto;"
- (h) " **Financial Information** means the combined financial information and the description of the basis of preparation attached as Schedule 19 hereto;"
- (i) " **Freezer Tunnel Transfer Agreement** means the Asset Transfer Agreement relating to the transfer of certain freezer assets to be executed between Linde AG and Linde LLC;"
- (j) " **FTC Order** means the Decision and Order issued by the FTC in connection with the proposed merger of Linde and Praxair;"
- (k) " **Helium Contracts** means the helium contracts set forth under numbers 1 and 3 to 6 of Schedule 16;"
- (l) " **Helium Contract Iwatani** means the portion of the helium product supply agreement between Praxair, Inc., as seller, and Iwatani Corporation, as buyer, effective as of 1 February 2012 (as amended from time to time prior to signing of the 1st Amendment dated 21 September 2018 and including the envisaged split of such helium product supply agreement between Praxair, Inc., as seller, and Iwatani Corporation, as buyer to allow for the partial assignment thereof), relating to the obligation to deliver to Iwatani Corporation 100 MM scf p.a. in 2018 on a pro rata temporis basis as of Closing, 100 MM scf p.a. during 2019, 145 MM scf p.a. during 2020, 122 MM scf p.a. during 2021, 100 MM scf p.a. during 2022;"
- (m) " **Helium Container Transfer Agreement** means the Asset Transfer Agreement relating to the transfer of certain helium containers;"
- (n) " **Linde DivestCo Business** means the business currently operated by the Linde DivestCos, as reflected in the carve out combined financial statements as of 31 December 2017 which have been audited by KPMG,

which means, with respect to the United States (excluding, for the avoidance of doubt, Puerto Rico and the US Virgin Islands) it shall comprise (i) the business conducted by Linde LLC and Linde Energy Services, Inc. for the production, sale, purification, treatment and/or distribution of (A) atmospheric gases, (B) CO₂, (C) hydrogen, and (D) helium, including the remote operations centre, related plants, rail depots, truck terminals, fuelling stations, transfill stations, tractor trucks, cryo-trailers, gas depots and tanks, cylinders and customer contracts, in each case, operating from the Linde LLC locations identified in Schedule 13 hereto, as well as (ii) the shares held by entities of the Linde Group in East Coast Oxygen Company as well as in East Coast Nitrogen Company,

as *supplemented by* the facilities, membership interests and other assets and liabilities to be transferred to Linde LLC, including by Linde Gas North America LLC, pursuant to the Master Carve Out and Asset Exchange Agreement, in each case, as identified in the schedules and

annexes to such agreements, subject to clause 3.5 in respect of Cliffside Helium, LLC and Cliffside Refiners, L.P.

and as reduced by the Retained Atmospheric Gases Business and the Retained CO₂ Business to be transferred by Linde LLC to Linde Gas North America LLC pursuant to the Master Carve Out and Asset Exchange Agreement, including, without limitation, the air separation units (ASUs), liquefied natural gas (LNG) facilities, ECOVAR production systems, oil & gas supply modules (OGSMs) and packaged gas products (PGPs) business identified in the schedules and annexes thereto,

and as such business has developed and will develop up to Closing or, with respect to the Colombian Entities, a Deferred Closing, as the case may be, in the ordinary course of business.

For the avoidance of doubt, the definition of Linde DivestCo Business shall not affect the rules set forth in this Agreement relating to Cash, Financial Debt and Working Capital.

The Parties agree that (i) the addition of the Perimeter Change I Businesses, the Perimeter Change I Assets and the Perimeter Change I Contracts and (ii) the changes in the helium perimeter set out in Schedule 16 shall each adjust the Business sold under this Agreement but are each not reflected in the Combined Carve Out Financial Statements as of 31 December 2017;"

- (o) "**Linde LAR Enid Plant** means the LAR plant of Linde located at S 78th St and Market, Enid, Oklahoma 73701, USA;"
- (p) "**LMP LLC** has the meaning given in clause 12.1(g);"
- (q) "**Perimeter Change I Asset(s)** means the assets listed in Schedule 17;"
- (r) "**Perimeter Change I Businesses** means the respective businesses as conducted by each of
 - the air separation unit located at 100 Industrial Park, Columbus, Mississippi 39701, USA,
 - the air separation unit located at 4301 Hurricane Creek Boulevard Antioch (Nashville), Tennessee 37013, USA,
 - the air separation unit under construction located at 5115 US-41, Adel, Georgia 31620, USA,
 - the CO₂ plant located at 159 Andrew Chapel Road, Brandon, Mississippi 39042, USA,
 - the CO₂ depot located at Zacha Yard, Lessor's Track No. 713, Zone 15, City of Dallas, Texas, USA, and
 - the CO₂ depot located at 1500 Northeast Parkway, Fort Worth, Texas 76106, USA,

as reflected in the Financial Information as such businesses have developed and will develop up to Closing in the ordinary course of business;"

- (s) "**Perimeter Change I Contracts** means the following agreements:
 - the CO₂ FPU/purchase agreement at 11754 Road 120, Pixley, CA 93256 with Air Liquide, and
 - the Helium Contract Iwatani,

as such contracts have developed and will develop up to Closing in the ordinary course of business;"

- (t) "**Perimeter Change I Data Room** means the following folders in the electronic file room named "Project Planet - Post Signing": (i) "A. Red Data Room", subfolder "4 Additional Disposals", (ii) "B. Green Data Room", subfolder "4 Additional Disposals" and (iii) "Red Data Room Praxair", such electronic file room hosted by Linklaters LLP as at 14 September 2018, comprising the documents and other information made available by Sellers to Purchaser, the

content of which is recorded on two identical data storage devices prepared by Linklaters LLP and is listed in the data room index attached to the Perimeter Change I Disclosure Letter;"

- (u) "**Perimeter Change I Disclosure Letter** means the letter from Sellers to Purchaser in relation to the Perimeter Change I Transaction executed and delivered before the date of this 1st Amendment, and which, in case of information referred to in such letter, makes reference to (i) the Perimeter Change I Data Room or (ii) specified documents or folders of the Data Room;"
- (v) "**Perimeter Change I Transaction** means the acquisition of the Perimeter Change I Businesses, the Perimeter Change I Assets and the Perimeter Change I Contracts;"
- (w) "**Shared Facilities Agreements** means the following agreements:
 - Selkirk, New York (Lease/Shared Facilities Agreement);
 - La Porte, Texas (Lease/Shared Facilities Agreement);
 - La Porte, Texas (Easement Agreement);
 - Terrell, Texas (Lease/Shared Facilities Agreement);
 - Acton, Massachusetts (Lease/Shared Facilities Agreement);
 - Vancouver, Washington (Lease/Share Facilities Agreement);
 - Research Triangle Park, North Carolina (Lease/Shared Facilities Agreement);
 - City of Industry, California (Lease/Shared Facilities Agreement);
 - Butler, Pennsylvania (Lease/Shared Facilities Agreement);
 - Stewartsville, New Jersey (Lease Agreement);
 - Bridgewater, New Jersey (Lease Agreement);".

3. **Transfer of PERIMETER CHANGE I BUSINESSES, Perimeter Change I Assets and of the PERIMETER CHANGE I Contracts; AMENDMENT OF TRANSACTION DOCUMENTS AND CARVE OUT AGREEMENTS; AMENDMENT OF CLAUSE 2 of the SPA**

1. **Transfer of Perimeter Change I Businesses, Perimeter Change I Assets, Perimeter Change I Contracts;**

- (a) The Parties agree that after the date of this 1st Amendment the Sellers shall procure (or, in respect of contracts, use reasonable endeavours to procure) the transfer of the Perimeter Change I Businesses and the Perimeter Change I Assets as set out in Schedule 13 to the SPA from their current owners to Linde North America Inc. (or to another Target Company as agreed between Sellers and Purchaser), or, if the current owner is already a Target Company, that they are kept by such entity, all as part of the Carve Out, with an aim of implementing the necessary transfers prior to the Financial Closing Date. The Parties agree that the Carve Out Steps shall be amended accordingly by amending Schedule 13 to the SPA as set forth in Section 2.1(a) above. The Parties further agree that the definitions "Retained Atmospheric Gases Business" and "Retained CO₂ Business" do not include the Perimeter Change I Business.
- (b) The Parties agree that after the date of this 1st Amendment, the Sellers shall, to the extent such contracts are not already held by a Target Company, use reasonable endeavours to transfer the Perimeter Change I Contracts to Linde North America Inc., Linde LLC (or to another Target Company as agreed between Sellers and Purchaser) as of Closing. Only for purposes of clause 12 of the SPA and the allocation of taxes under other clauses of the SPA (such as clause 6.5 and clause 25.1 of the SPA), the transfer of the Perimeter Change I Contracts to Linde North America Inc. or another Target Company shall be deemed to be part of the "Carve Out" and not the "Transaction".
- (c) Furthermore, the Sellers shall procure that the relevant Target Company enters, with effect as of the Financial Closing Date, into the Agreed Form "Liquid Argon Sales Agreement".

2. **Amendment of Transaction Documents and Carve Out Agreements**

- (a) The Parties will separately agree in good faith and document any amendments required with respect to the Transaction Documents and Carve Out Agreements to reflect the inclusion of
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the Perimeter Change I Assets, the Perimeter Change I Businesses and of the Perimeter Change I Contracts in the Transaction under the SPA.

- (b) With respect to the transfer of the Perimeter Change I Contracts the following shall apply:
- (i) The Sellers shall assign, or shall procure the assignment of, the Perimeter Change I Contracts (including the Helium Contract Iwatani as set out in Section 2.2(l) and Schedule 16 of the SPA) with all rights and obligations relating to the period as from the Financial Closing Date but without any claims, obligation or liabilities (particularly no inventories, trade payables or trade receivables) relating to the period prior to the Financial Closing Date or relating to the parts of the helium product supply agreement between Praxair, Inc., as seller, and Iwatani Corporation, as buyer, effective as of 1 February 2012, as amended from time to time prior to signing of the 1st Amendment, that are not included in the Helium Contract Iwatani to Linde North America Inc., Linde LLC (or to another Target Company as agreed between the Parties) as of the Financial Closing Date subject to (*under the condition precedent of*) the necessary third party consents having been obtained in accordance with the provisions below; with respect to the transfer of the Helium Contract Iwatani the transfer documentation shall follow substantially the form of transfer agreement attached as Schedule 20 to the SPA; it being understood that the documentation concerning the transfers of the Perimeter Change I Contracts shall be part of the Definition of "Carve Out Agreements";
 - (ii) Sellers shall indemnify and hold the relevant Target Company harmless from and against any (A) liabilities relating to the Helium Contract Iwatani and rent liabilities under the Enid Lease Agreement, in each case relating to the period prior to the Financial Closing Date, (B) liabilities relating to such parts of the Helium Contract Iwatani which are not to be transferred pursuant to this 1st Amendment, (C) claims of customers for the return of consideration paid under the Helium Contract Iwatani or other liabilities resulting from forwarding, as the case may be, of claims and proceeds according to Section 3.2(b)(iii) below, and (D) losses or costs and expenses which the Purchaser or the relevant Target Company may suffer or incur by reason of taking any reasonable action to avoid, resist or defend against any liabilities as per item (i) or (ii), in each case (A) through (C), if and to the extent such claims, liabilities, losses, costs and expenses have not been reflected in the Closing Statement;
 - (iii) Purchaser shall (A) forward without deduction to Sellers any claims and proceeds relating to the Helium Contract Iwatani relating to the period prior to the Financial Closing Date provided that such claims and proceeds have not been reflected in the Closing Statement and (B) except if and to the extent this is caused by Sellers' Groups having breached their supply obligations under the relevant Back-to-Back Helium Contracts, indemnify and hold harmless Sellers and any members of Sellers' Groups against any (x) liabilities relating to the Helium Contract Iwatani relating to the period as from the Financial Closing Date relating to such parts of the Helium Contract Iwatani which are transferred pursuant to this 1st Amendment and (y) losses or costs and expenses which the Sellers or members of Sellers' Groups may suffer or incur by reason of them taking any reasonable action to avoid, resist or defend against any liabilities as per item (x);
 - (iv) Sellers and the respective Target Companies shall use their reasonable endeavours, both before and after the Financial Closing Date, to obtain all necessary third party consents on terms reasonably acceptable to both Sellers and Purchaser (acting reasonably) as soon as possible prior to the Financial Closing Date and, if such third party consents have not been obtained prior to the Financial Closing Date, as soon as possible after the Financial Closing Date, and to keep each other reasonably informed of progress in obtaining such consents and implementing such arrangements as soon as a consent is obtained;
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- (v) neither Sellers, nor Purchaser nor any relevant Target Company shall have, however, any obligation to enter into any undertakings or grant any guarantees, bonds or other security in favour of any relevant third party; and
 - (vi) From the Financial Closing Date until necessary third party consents have been obtained and always to the extent these consents have not yet been obtained:
 - (A) Sellers shall ensure that the relevant Target Company receives the benefits of the Perimeter Change I Contracts as if they had been transferred to the relevant Target Company as of the Financial Closing Date and Sellers shall use reasonable endeavours that the Purchaser and the relevant members of the Purchaser Group have continuous access to the relevant third party, provided that, if the FTC notifies Praxair that it is required to substitute the Helium Contract Iwatani with one or more contracts (the "**Substitute Contracts**"), Praxair may, at its sole option, terminate the obligations set out in this clause 3.2(b)(vi)(A) in respect of Helium Contract Iwatani on and from the date on which it (i) provides notification of such termination to the relevant Target Company (the "**Notification Date**") and (ii) ensures that the relevant Target Company receives the benefits of the Substitute Contracts as if they had been transferred to the relevant Target Company as of the Notification Date;
 - (B) Purchaser shall ensure that the relevant Target Company shall assume the burdens and shall assume, carry out, perform and discharge the obligations of the relevant member of the Sellers' Groups under the Perimeter Change I Contracts (as applicable) to the extent they are lawfully able to do so, as if they had been transferred to the relevant Target Company as of the Financial Closing Date, provided that Praxair may, at its sole option, terminate the obligations in relation to the Helium Contract Iwatani under this clause 3.2(b)(vi)(B) on and from the Notification Date, in which event the Purchaser shall ensure that the relevant Target Company shall assume the burdens and shall assume, carry out, perform and discharge the obligations of the relevant member of the Sellers' Groups under the Substitute Contracts to the extent they are lawfully able to do so, as if they had been transferred to the relevant Target Company as of the Notification Date; and
 - (C) Purchaser shall, except if and to the extent this is caused by Sellers' Groups having breached their supply obligations under the relevant Back-to-Back Helium Contracts, indemnify and keep indemnified the relevant member of the
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Sellers' Groups against any losses incurred by the relevant member of the Sellers' Groups arising from any failure by the relevant Target Company to assume, carry out, perform or discharge such obligations under Section 3.2(b)(vi)(B) as of the Financial Closing Date, and against any losses which a member of the Sellers' Groups may suffer by reason of a member of the Sellers' Groups taking any reasonable action to avoid, resist or defend any liability referred to in Section 3.2(b)(vi)(B).

- (vii) The Parties acknowledge and agree that the assignment of the Perimeter Change I Contracts and of the Linde LAR Enid Plant shall not constitute a transfer of employees by operation of law.
 - (c) The Parties acknowledge and agree that clause 22.4 (*Sellers' Customer Non-Solicit Undertaking*) of the SPA shall apply also in respect of (i) the Perimeter Change I Business and (ii) the Perimeter Change I Contracts .
 - (d) Linde shall procure that the buyer of the hydrogen carbon monoxide partial oxidation plant located in La Porte, Texas, USA, replaces (under assumption of all rights and obligations) the relevant company of the Seller's Group as a party to the Easement Agreement relating to the real property located at 11603 Strang Rd La Porte, Texas, USA, and the Shared Facility Agreement relating to La Porte with effect as of the closing of the sale of the hydrogen carbon monoxide partial oxidation plant located in La Porte, Texas, USA, to a third party purchaser.
3. **Amendment of clause 2 of the SPA (*Covenant to Transfer*)**
- (a) The Sellers shall procure at their own costs (i) to include the Perimeter Change I Businesses, the Perimeter Change I Assets and the Perimeter Change I Contracts in the Carve Out, or (ii) to transfer them at Closing as set forth herein.
 - (b) Clause 2 of the SPA shall be supplemented by a new clause 2.3 as follows:

"2.3 Sellers' Perimeter Change I Business Covenant

Sellers shall procure at their own costs, in respect of the Perimeter Change I Businesses, that the relevant Target Companies have available, at Closing, all assets (including inventory), sourcing contracts, supply contracts, customer contracts and all other contracts, personnel, premises, Intellectual Property Rights, software, data, know-how, licences and permits, in each case to the extent required to carry on the Perimeter Change I Businesses as it was carried out in the 12-month period before the Closing,

- (a) through ownership (subject to Permitted Encumbrances), employment, licence or contractual entitlement (including the Carve Out Agreements, the Transitional Services Agreement, the IP Agreement and Product Supply Agreements as well as other Transaction Documents);
 - (b) not subject to termination, withdrawal, amendment or revocation, in each case, as a result of the transactions contemplated by this Agreement; and
 - (c) at no charge to the relevant Target Companies or the Purchaser Group, other than charges:
 - (i) of the kind incurred in the ordinary course of business by the relevant Target Companies in the 12-month period before the Closing (particularly under sourcing contracts and supply contracts) and reflected in the Financial Information;
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- (ii) relating to capital expenditures and expenditures foreseen in the budget or the business plan; or
- (iii) under the Transitional Services Agreements, Carve Out Agreements, Product Supply Agreements, IP Agreements, Shared Facility Agreements, or the collaboration agreement between Linde (*Engineering Division*) and/or Linde Engineering North America Inc. on the one hand and the relevant Linde DivestCos on the other hand entered into in accordance with this Agreement, in each case only in relation to the kind of services that have already been identified as of the date of the 1st Amendment.

If and to the extent a relevant transitional service to carry on the Perimeter Change I Business owed pursuant to Clause 2.3 above is not provided as at Closing and cannot reasonably be provided by a Target Company without incurring additional costs in excess of those referred to in clause 2.3(c), Sellers shall, and shall procure that the members of the relevant Seller's Group will, provide such transitional service to the relevant Target Company without undue delay and pursuant to the cost provisions under clause 2.3(c) until the earlier of (i) the relevant Target Company having, using reasonable endeavours, replaced the respective service and (ii) the end of a period of fifteen (15) months after the Closing (or such other period as agreed in writing between the respective Seller and the Purchaser. The Parties shall negotiate in good faith to agree and enter into additional transitional services schedules to be added to the Transitional Services Agreement to further specify and govern the provision of such transitional service."

4. **Interpretation of clauses 4.1, 8.2(a) and 8.2(c) of the SPA (*Perimeter change Mechanism*)**

The Parties agree that

- (a) the Perimeter Change I Transaction constitutes a "Perimeter Change" in terms of clause 8.2(a) of the SPA;
 - (b) the inclusion of the Perimeter Change I Assets, the Perimeter Change I Business and the Perimeter Change I Contracts shall be reflected by an increase in the Enterprise Purchase Price as set forth in Section 5 below which shall be subject to the adjustments for Financial Debt, Cash, Working Capital and Inter-Company Receivables and Payables set forth in clause 4.1 (a) through (d) of the SPA as modified by Section 5 below;
 - (c) given the agreement under Section 4(b) above, (i) the valuation principles for calculating the Perimeter Change Equity Value for the Perimeter Change I Assets, the Perimeter Change I Businesses and the Perimeter Change I Contracts set forth in clause 8.2(c)(i) through (iv) of the SPA shall not be applied and (ii) clause 4.1(g) of the SPA shall be disregarded for purposes of the calculation of the Final Purchase Price with respect to the acquisition of the Perimeter Change I Assets, the Perimeter Change I Businesses, and the Perimeter Change I Contracts under this 1st Amendment;
 - (d) the Perimeter Change I Transaction will be taken into account in case of any additional Perimeter Changes for the purposes of clauses 15.5 (b) and (c) of the SPA; and
 - (e) notwithstanding any other provision in this 1st Amendment or the SPA, no member of the CVC Network or Messer Group or Purchaser Group shall be obligated to contribute additional capital or assets in excess of the limitations under clauses 15.5(b) and (c) of the SPA.
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5. **Further Amendments to the Main Body of the SPA**

1. **Amendment of clause 4 of the SPA (*Final Purchase Price*)**

- (a) Considering the purchase of the Perimeter Change I Assets, the Perimeter Change I Businesses (by way of the purchase of the DivestCo Shares) and the Perimeter Change I Contracts the Parties agree to increase the Enterprise Purchase Price by an amount of 222,200,000 USD to 3,547,200,000 USD and the Target Working Capital by an amount of 7,500,000 USD to 255,500,000 USD.

Furthermore, the Parties agree that Sellers shall bear, and the Enterprise Purchase Price shall be reduced by, the following amounts:

- (i) 3,100,000 USD relating to the asset retirement obligation concerning the air separation unit located at 100 Industrial Park, Columbus, Mississippi 39701, USA, and
- (ii) 8,900,000 USD for the Brandon Liquifiers 1 & 2 Re-Life project minus the amount already spent as of the Financial Closing Date and minus the amount reflected in the Closing Statement as part of the Working Capital (as liability or provision).

In addition, the Parties acknowledge and agree that the Helium Iwatani Contract and the Linde LAR Enid Plant will not be considered in the Closing Statement and for the calculation of the Initial Purchase Price (but has been included in determining the Enterprise Purchase Price set out above), provided that volumes in transit on the. Financial Closing Date shall be for account of and paid to Sellers.

- (b) To implement Section 5.1(a) above, the numbers and words for the Enterprise Purchase Price "3,325,000,000 USD (three billion three hundred twenty-five million US dollars)" in the first sentence of clause 4.1 of the SPA shall be replaced by the following numbers and words:

"3,547,200,000 USD (in words: three billion five hundred forty-seven million two hundred thousand US dollars)".

and the numbers and words for the Target Working Capital "248,000,000 USD" in the second sentence of clause 4.1 of the SPA shall be replaced by the following numbers:

"255,500,000 USD".

Furthermore, clause 4.1 lit. (a) of the SPA shall be amended and shall read as follows:

- "(a) subtracting (i) the aggregate of the Financial Debt as at the Financial Closing Date and (ii) a fixed amount of 257,200,000 USD; and"

Furthermore, a new lit. (h) shall be added to clause 4.1 of the SPA as follows:

- "(h) subtracting an amount of 8,900,000 USD reduced by (i) any amount spent (incurred and paid) as of the Financial Closing Date and (ii) any amount reflected in the Closing Statement as part of the Working Capital (as liability or provision), in each case for the Brandon Liquifiers 1 & 2 Re-Life project and in accordance with the capital expenditure plan disclosed to the Purchaser."

- (c) As a consequence, the Initial Purchase Price and the Final Purchase Price shall be calculated considering such changes outlined in Section 5.1(a) through (b) above.

2. **Amendment of clause 6.1 of the SPA (*Closing Statement*)**

Clause 6.1 of the SPA shall be amended and read as follows:

"Sellers shall, or shall procure that its accountants shall, after Closing prepare a draft statement showing, as at the Financial Closing Date, the Financial Debt, Cash, Working Capital, Inter-Company

Payables and Inter-Company Receivables of the Target Companies as a whole by adding the respective figures for the Linde DivestCo Business and for the Praxair DivestCo Business (" **Closing Statement** "). For purposes of the Closing Statements, the Helium Iwatani Contract and the Linde LAR Enid Plant will not be considered, provided that volumes in transit on the Financial Closing Date shall be for account of and paid to Sellers. The Closing Statement shall set out the calculation of the Final Purchase Price and the Final Inter-Company Payment Amount and be in the form set out in Schedule 5.

Sellers shall deliver the draft Closing Statement to Purchaser within sixty (60) Business Days following Closing. The Closing Statement shall be prepared in accordance with the accounting principles and methodology set out in Schedule 4.

3. **Amendment of clause 8.1(c) of the SPA (*Closing Conditions*)**

Clause 8.1(c) of the SPA shall be amended and shall read as follows:

"The Transaction (including the Perimeter Change I Transaction) having received competition approvals for or the statutory waiting periods having expired in the European Union (European Commission), Albania, Brazil, Canada, China (PRC), Macedonia, Serbia, Bosnia & Hercegovina and the Ukraine (" **SPA Clearance Condition** ")."

4. **Insertion of a new clause 8.2(d) of the SPA (*Filings Perimeter Change I Transaction*)**

(a) Considering the requirement for Purchaser to submit (re-)filings or amend previous filings or make new filings, for the SPA Merger Clearance under clause 8.1(c) of the SPA to reflect the Perimeter Change I Transaction, the Parties agree to apply the commitments and processes regarding the SPA Clearance Condition foreseen under clause 8.2(b) of the SPA also to any (re-)filings or amendments of previous filings or new filings.

(b) To implement Section 5.4(a) above, a new clause 8.2(d) shall be added to the SPA which shall read as follows:

"(d) Filings Perimeter Change I Transaction

Purchaser shall ensure that any (re-)filings, amendments or supplements of the pending notifications to be made to the relevant Governmental Entities with respect to the SPA Clearance Condition under the Agreement and any other filings or notifications that are necessary due to the Perimeter Change I Transaction shall be submitted to the relevant Governmental Entities no later than five (5) Business Days after the date of the 1st Amendment. The provisions of clause 8.2(b) shall apply *mutatis mutandis* to any such (re-)filings, amendments or supplements of the pending notifications made to the relevant Governmental Entities with respect to the SPA Clearance Condition as well as any other filings or notifications made pursuant to the preceding sentence."

5. **Amendment of clause 8.3(b) of the SPA (*Waiver of Closing Conditions*)**

(a) Considering the requirement for Purchaser to submit (re-)filings, or amend previous filings, for the SPA merger clearance under clause 8.1(c) of the SPA to reflect the Perimeter Change I Transaction, the Parties agree to delay the point in time as of which the Sellers may unilaterally waive certain of the SPA Clearance Conditions set out in clause 8.3(b) of the SPA.

(b) To implement Section 5.5(a) above, clause 8.3(b) of the SPA shall be amended and read as follows:

"(b) The Closing Condition set out in clause 8.1(c) may be (i) waived jointly by the Parties or (ii) waived by Sellers unilaterally and in their sole discretion by giving written notice to Purchaser, to the extent such Closing Condition relates to the Transaction having received competition approvals for, or the statutory waiting periods having expired in, Albania, China (PRC), Macedonia, Serbia, Bosnia & Hercegovina and the Ukraine, provided, however, that Sellers may not waive such Closing Condition (in full or in part) prior to the date on which the Closing Conditions that cannot be unilaterally waived in full or in part are satisfied, with such waiver by Sellers becoming legally effective to allow for a Closing on or after the later of (i) 24 October 2018 and (ii) ten (10) calendar days after the date of the BCA Closing, provided that in the latter case (ii) Closing shall occur on the first Closing Business Day of the calendar month immediately following the month in which the BCA Closing occurred (with the last calendar day of such month being the Financial Closing Date) at the latest even if less than ten (10) calendar days have elapsed since the BCA Closing."

6. **Insertion of a new clause 8.7 of the SPA (*FTC Notifications*) and amendment of clause 8.6 (*No Right of Termination or Rescission*)**

(a) A new clause 8.7 shall be added to the SPA which shall read as follows:

"8.7 FTC Notification

The Parties acknowledge and agree that if, at the time the FTC determines to make its FTC Order final, the FTC notifies Sellers that: (i) Purchaser is not an acceptable acquirer of the Business, then the Parties shall immediately rescind this Agreement, or (ii) the manner in which the divestiture to Purchaser was accomplished is not acceptable, the FTC may direct the Parties, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Business (that shall be incorporated into an amendment to this Agreement) as the FTC may determine are necessary to satisfy the requirements of the final FTC Order. In case of (ii) above, the provisions set forth in clauses 8.2(a) and (c) and 15.5 shall apply *mutatis mutandis* ; this may include perimeter reductions which shall always be compensated with an equity purchase price to be calculated in accordance with clause 8.2(c)(i)."

(b) To reflect the addition of the termination rights under Section 5.6(a), item (ii) of the first subparagraph of clause 8.6 of the SPA shall read as follows

"[...] (ii) the contractual termination right provided in clause 8.5 or clause 8.7 [...]"

and the first half sentence of the second subparagraph of clause 8.6 of the SPA shall read as follows:

"If this Agreement is terminated in accordance with clause 8.5, clause 8.7 or by any Party in respect of fraud or fraudulent misrepresentation committed by the other Party, [...]"

7. **Amendment of clause 11.3 of the SPA**

Clause 11.3 of the SPA shall be supplemented by additional lit. (c), (d) and (e) which shall read as follows:

"(c) Sellers shall indemnify and hold the members of the Purchaser Shareholder Group harmless from and against fines and penalties, and related procedural costs and expenses incurred in

defending against such costs and penalties, imposed by the Chinese Governmental Entities, resulting from any delay of the fulfilment of the SPA Clearance Condition due to the signing of this 1st Amendment, unless and to the extent resulting from Purchaser having breached its filing obligations under clauses 8.2(b) and 8.2(d), it being understood that Sellers acknowledge, for the purposes of this clause, that Purchaser has made its filing in a timely manner and in a manner that duly includes all information received from Sellers. The maximum liability of Sellers for related procedural costs and expenses (but not for fines and penalties), incurred in defending against fines and penalties, under this clause 11.3(c) shall be an amount of 250,000 USD."

"(d) Sellers shall indemnify and hold the members of the Purchaser Shareholder Group harmless from and against any and all fines and penalties, and related procedural costs and expenses incurred in defending against such costs and penalties, imposed by the Chilean Governmental Entities resulting from the "Interim Hold Separate of Praxair Chile Limitada" as described in clause 13.2."

"(e) Sellers shall indemnify and hold Purchaser or the relevant Target Company harmless from and against

- (i) 100% of all costs actually incurred for dismantling the existing Linde LAR Enid Plant, if (A) the landlord requires the dismantling of the existing Linde LAR Enid Plant and (B) within four (4) years following the Closing Date Purchaser fully dismantles the existing Linde LAR Enid Plant in accordance with the contractual obligations under the Enid Land Lease Agreement in connection with the Enid Plant Operation Agreement or delivers to Sellers a confirmation by the landlord that the dismantling obligation under the Enid Land Lease Agreement in connection with the Enid Plant Operation Agreement (in each case as amended without increase of the dismantling obligations) have been fully discharged and (C) Purchaser does not build another plant on the premises; or
- (ii) 50% of all costs actually incurred for dismantling the existing Linde LAR Enid Plant within four (4) years following the Closing Date, if Purchaser builds another plant on the premises, provided that such costs shall be reduced, in case of (i) above by 100 % and in case of (ii) above by 50 % of any net proceeds collected by Purchaser Shareholder Group from a sale of the existing Linde LAR Enid Plant or parts thereof."

8. **Amendment of clause 15.6 of the SPA (*Agreements as of Closing*)**

The list after the first paragraph of clause 15.6 of the SPA shall be supplemented by the following lit. (k) to reflect the additional agreement entered into to implement the Perimeter Change I Transaction:

"(k) the First Amendment of the Americas Sale and Purchase Agreement dated 21 September 2018;".

9. **Deletion of clause 22.2 of the SPA (*Purchaser Non-Solicit Undertaking*)**

Clause 22.2 of the SPA shall be deleted and the wording shall be amended and read as follows:

"22.2 [*Intentionally left blank*]"

10. **Amendment of clause 22.4 of the SPA (Sellers' Customer Non-Solicit Undertaking)**

The beginning of the first sentence of clause 22.4(a) of the SPA shall be amended and shall read as follows:

"(a) As from Closing and from a period of twenty-four (24) months thereafter (" **Non-Solicitation Period** "), Sellers and PLC shall not, and PLC shall procure that neither of its Affiliates will, directly or indirectly [...]"

11. **Insertion of new clauses 25.9 through 25.11 of the SPA (*FTC Requested Amendments*)**

(a) A new clause 25.9 shall be added to the SPA which shall read as follows:

"25.9 Enforcement of FTC Order

The result of any dispute resolution mechanism set forth in this Agreement or any Transaction Document, or the decision of any arbitration or court proceeding involving a dispute between the Parties, will not be binding on the FTC with respect to enforcing the FTC Order or otherwise."

(b) A new clause 25.10 shall be added to the SPA which shall read as follows:

"25.10 Amendment with FTC Approval

No amendment or modification of any provision of this Agreement will be effective without the prior approval of the FTC, except as otherwise provided in Rule 2.41(f)(5) of the FTC's Rules of Practice and Procedure, 16. C.F.R. § 2.41(f)(5)."

(c) A new clause 25.11 shall be added to the SPA which shall read as follows:

"25.11 Hierarchy FTC Order

To the extent that any term or provision of this Agreement conflicts with any directly corresponding term or provision of the FTC Order, the Parties hereby agree that the terms or provisions of the FTC Order shall control the rights and obligations of the parties hereto."

6. **AMENDMENTS to Schedule 7 of The SPA**

1. **Amendment of paragraph 1.3 of Schedule 7 of the SPA (*Financial Matters*)**

(a) Purchaser acknowledges that the Perimeter Change Transaction is not reflected in the Combined Carve Out Financial Statements as set forth in Section 2.2(n) above. The Parties agree that, in lieu thereof, the Financial Information and the Financial Contract Information which are not audited or reviewed by an auditor shall be the basis for a specific warranties relating to the financials of the Perimeter Change I Transaction instead of the warranty provided for the Combined Carve Out Financial Statements.

(b) To implement Section 6.1(a) above, paragraph 1.3(a) of Schedule 7 to the SPA shall be amended and shall read as follows:

- "(a) The Combined Carve Out Financial Statements were prepared in accordance with the requirements of all relevant laws and the relevant accounting principles then in force save as disclosed therein and subject to the basis of preparation and the assumptions made therein to reflect the separation of the respective business and, on the basis of the knowledge of the respective management when they were prepared, present fairly, in all material respects, the combined carve-out financial position of the respective Target Companies as of the date to which they relate, and the respective Target Companies' combined carve-out financial performance and such companies' combined carve-out cash flows for the periods to which they relate, provided that they do not take into account the changes in the helium perimeter set out in Schedule 16 or the addition of the Perimeter Change I Businesses, the Perimeter Change I Assets and the Perimeter Change I Contracts."
- (c) To implement Section 6.1(a) above, paragraph 1.3 of Schedule 7 to the SPA shall be supplemented by a new lit. (d) which shall read as follows:
- "(d) The Financial Information was prepared using, on a consistent basis, the methodology used for the preparation of the Combined Carve Out Financial Statements set forth in paragraph 1.3(a), save as disclosed in such Financial Information and subject to the basis of preparation and the assumptions made in it to reflect the separation of the respective Perimeter Change I Businesses and presents fairly, in all material respects, the financial position of the respective Perimeter Change I Businesses as of the date to which it relates, and, on a combined basis, of the financial performance and cash flows of the Perimeter Change I Businesses for the periods to which it relates.

The Financial Contract Information, on the basis of the assumptions made, presents fairly, in all material respects, the financial performance of the Helium Contract Iwatani in respect of revenues for the periods to which it relates; provided however, that Purchaser is aware that the embedding of the contracts in the respective businesses changes with Closing."

2. **Amendment of paragraph 1.4 of Schedule 7 to the SPA (*Financial Debt, Liabilities*)**

- (a) Considering that the Perimeter Change I Transaction is not reflected in the Combined Carve Out Financial Statements, the Parties agree to provide for a specific warranty regarding the Financial Debt relating to the Perimeter Change I Businesses instead of the warranty provided for the Financial Debt in paragraph 1.4 of Schedule 7 to the SPA.
- (b) To implement Section 6.2(a) above, a new paragraph 1.4(b) shall be added to Schedule 7 to the SPA which shall read as follows:
- "(b) In relation to the Perimeter Change I Businesses only, the Target Companies will not owe at Closing any Financial Debt to any person outside Sellers' Groups or have any loan agreements and other loan commitments including bonds (with the exception of customary extensions of the due date of trade receivables or payables agreed in the ordinary course of business and of inter-company agreements to be terminated prior to or at Closing), in each case, other than (i) Financial Debt which will be repaid on or before the Financial Closing Date or (ii) Financial Debt to be taken into account in the Closing Statement and reducing the Final Purchase Price.

The Perimeter Change I Businesses are not, and will not be at the Financial Closing Date, subject to any other liability whether actual or contingent, unless such liabilities or underlying facts are referred to in the Financial Information or the Closing Statement."

(c) As a consequence of the amendment set forth in Section 6.2(b) above, the former paragraph 1.4 of Schedule 7 to the SPA shall be the new paragraph 1.4(a) of Schedule 7 to the SPA.

7. **AMENDMENTS TO SCHEDULE 8 TO THE SPA**

1. **Amendment of paragraph 4 of Schedule 8 to the SPA (*Knowledge*)**

To reflect the additional disclosure with respect to the Perimeter Change I Businesses, paragraph 4(a) of Schedule 8 to the SPA shall be amended and shall read as follows:

"(a) has been disclosed to Purchaser or any of Purchaser's Representatives, in or by this Agreement, any other Transaction Document, the Disclosure Letter or any document or other information in the Data Room on or before the date of this Agreement in sufficient detail to enable a reasonable purchaser to identify and make a reasonably informed assessment of the nature of the fact, matter or circumstance so disclosed, provided, however, that any disclosure in relation to any Warranty Claim to the extent it relates to the Perimeter Change I Businesses, the Perimeter Change I Assets and the Perimeter Change I Contracts, the Perimeter Change I Transaction including the lack of liabilities regarding the Perimeter Change I Businesses shall be limited to the facts, matters, events or circumstances that have been disclosed in this Agreement, any other Transaction Document, the Perimeter Change I Disclosure Letter, or any document or other information in the Perimeter Change I Data Room, including references in the Perimeter Change I Disclosure Letter or the Perimeter Change I Data Room to specified documents or folders of the Data Room in sufficient detail to enable a reasonable purchaser to identify and make a reasonably informed assessment of the nature of the fact, matter or circumstance so disclosed ("**Disclosed**"); or".

2. **Amendments of paragraph 14 of Schedule 8 to the SPA (*Maximum Liability*)**

The aggregate amount of the liability of Sellers in paragraph 14(a) of Schedule 8 to the SPA shall be amended and the numbers "460,000,000 USD" shall be replaced by the following numbers:

"490,000,000 USD".

8. **BRANDON CO2 LLC**

- (a) Certain assets pertaining to the Brandon CO2 plant will be held, as of Closing, by Linde LLC and will be part of the Perimeter Change I Assets. As the Perimeter Change I Assets no longer foresee the formation of a joint venture, such step shall be abandoned and no sale and transfer of shares or interests in a Brandon CO2 LLC shall occur and the Brandon CO2 plant is included in the Perimeter Change I Assets in full.
- (b) References to Brandon CO2 LLC in the main body of the SPA shall be read as if they were deleted without substitution. The row with information on Brandon CO2 LLC (JVCo 5) under A.II.3. of Schedule 1 to the SPA, the corresponding definition and the entry of Brandon CO2 LLC in the North America target structure chart under A.II.1. of Schedule 1 to the SPA shall each be read as if they were deleted without substitution.

9. **INTERPRETATION OF THE SPA WITH RESPECT TO TIME PERIODS "AS OF THE DATE OF THIS AGREEMENT" OR SIGNING**

The Parties agree that with respect to the Perimeter Change I Assets, the Perimeter Change I Businesses and the Perimeter Change I Contracts any undertaking, warranty, right or obligation shall not be given as of the date of the SPA but as of the date of this 1st Amendment and as of Closing, as the case may be provided for in the SPA. Therefore, any reference in the SPA to "the date of this Agreement" or the signing of the SPA shall, with respect to the Perimeter Change I Assets, the Perimeter Change I Businesses, the Perimeter Change I Contracts and the Perimeter Change I Transaction, be interpreted and construed, except for clause 8.5 of the SPA, to mean exclusively a reference to the date of this 1st Amendment.

10. **INTERPRETATION OF THE SPA WITH RESPECT TO CERTAIN Tax PROVISIONS**

- (a) The Parties acknowledge and agree that the term Brazilian Entities used in clauses 6.5(b)(i) and 12.10(f) of the SPA refers to Linde Gases Ltda. (DivestCo 1) and Linde-BOC Gases Limitada (DivestCo 2).
- (b) From the date on which the Chilean Spin-Off becomes effective references to 'Praxair Chile Limitada' in clause 6.5(b)(ii) of the SPA shall be read as references to the Chilean new entity to which the business of Praxair Chile Limitada is spun-off or otherwise transferred.
- (c) Clause 12.1 of the SPA shall be amended by (i) deleting the word "and" at the end of lit. (e), (ii) by replacing "Group." at the end of lit. (f) by the words "Group; and" and (iii) by adding the following new lit. (g):
 - "(g) any Tax Liability for which any of the Target Companies or member of the Purchaser German TopCo Group is liable in consequence of recognition of income as a result of any deferred intercompany transaction (described in US Treasury regulations under section 1502 of the Code or similar provisions of state, local or foreign law) entered into by Linde Merchant Production LLC (" **LMP LLC** ") and existing on or before the Closing. For purposes of the indemnity provided for in this clause 12.1(g), the exclusions set forth in clauses 12.2(a)(ii), 12.2(a)(iv), 12.2(a)(x), 12.2(a)(xi), 12.2(a)(xii) and 12.2(a)(xiv) shall not apply, provided that Sellers shall not be liable under this clause 12.1(g) if after the Closing a check-the-box election is made with respect to LMP LLC to the effect that, contrary to Step 5 lit. f) of Schedule 13, LMP LLC is retroactively treated as a disregarded entity at any point in time prior to the Closing."

11. **HELIUM CONTRACT IWATANI**

Paragraph 1.9(c) of Schedule 7 to the SPA shall be amended and shall read as follows:

- "(c) To Sellers' Knowledge, there are no material unremedied breaches by the Sellers' Groups or the Target Companies or, the counterparties of the Helium Contracts (other than the Helium Contract Iwatani) to the extent it would affect the back to back agreements. To Sellers' Knowledge, all Helium Contracts (other than the Helium Contract Iwatani) subject to the terms specified in Schedule 16, are in full force and effect. For the purposes of this warranty under Schedule 7 paragraph 1.9(c) reference to Sellers' Knowledge in relation only to the Helium Contracts (other than the Helium Contract Iwatani) means the actual knowledge as of the date hereof of Linde's Head of Global Helium and Rare Gases without any further inquiry.

With respect to the Helium Contract Iwatani only, there are no material unremedied breaches by the Sellers' Groups or the Target Companies or, to Sellers' Knowledge, the counterparties of the Helium Contract Iwatani. The Helium Contract Iwatani, subject to the terms specified in Schedule 16, is in full force and effect. For the purposes of this warranty under Schedule 7 paragraph 1.9(c) reference to Sellers' Knowledge in relation only to the Helium Contract Iwatani means the actual knowledge as of the date hereof of Richard L. Steinseifer, Vice President, Mergers and Acquisitions, Praxair, Inc. after having made due inquiry with the key account managers responsible for the Helium Contract Iwatani."

12. **Linde LAR Enid Plant**

The Parties acknowledge and agree that the Linde LAR Enid Plant is a shut-down operation, and there is currently no business operation, it being understood that in the three (3) months' period prior to the Closing no services (other than power supply, as the case may be) have been rendered to, or were required under applicable law to be rendered to, the Linde LAR Enid Plant. Further, the Parties acknowledge that no transitional services by Sellers' Groups with respect to the Linde LAR Enid Plant are agreed.

13. **Miscellaneous**

1. **Rectification Declaration Messer Industries GmbH**

The undersigned Messer Industries GmbH herewith approves the signatures and all declarations given by Messrs. Dr. Hans-Gerd Wienands-Adelsbach and Dr. Daniel Pindur on 16 July 2018 in the name of Messer Industries GmbH (at that time MG Industries GmbH) in and with respect to the SPA as well as the entire content of the SPA in all parts. Said SPA is fully known to Messer Industries GmbH.

2. **Interim Hold Separate of Praxair Chile Limitada**

The Parties acknowledge that, in connection with the closing of the BCA, Sellers may enter into hold-separate arrangements for the period until the Closing Date with respect to Praxair Chile Limitada respectively the Chilean new entity to which the business of Praxair Chile Limitada is spun-off or otherwise transferred. Such hold-separate arrangements shall not release the Sellers from any of their undertakings, warranties, representations, or other obligations under the SPA relating to Praxair Chile Limitada respectively the Chilean new entity to which the business of Praxair Chile Limitada is spun-off or otherwise transferred or the Business in connection with Praxair Chile Limitada respectively the Chilean new entity to which the business of Praxair Chile Limitada is spun-off or otherwise transferred, which shall remain unaffected and in full force and effect.

3. **Entirety of 1st Amendment**

This 1st Amendment contains the entirety of the amendments to the SPA agreed by the Parties at this time which shall otherwise remain unamended.

4. **Provisions applied mutatis mutandis**

The content of clauses 25, 26, and 27 of the SPA shall apply to this 1st Amendment *mutatis mutandis* as if contained in this 1st Amendment and being a part hereof.

5. **Condition Precedent**

This 1st Amendment shall be subject to the condition precedent of the consent of the supervisory board (*Aufsichtsrat*) of Linde, except for the provisions set forth in Section 5.3 (*Waiver of Closing Conditions*) Section 13.4 (*Provisions applied mutatis mutandis*) above and this Section 13.5 which shall not be subject to such condition precedent and shall be effective as of the date hereof. The supervisory board of Linde shall resolve upon this 1st Amendment not later than in the context of its final and binding decision of whether or not to consent to an increase of the thresholds for divestitures under the BCA.

[Signatures to follow]

Date: 21 September 2018

For and on behalf of LINDE AG

/s/ Aldo Belloni

/s/ Christian Graf zu Ortenburg

Name: Prof. Dr.-Ing. Aldo Belloni

Name: Christian Graf zu Ortenburg

Title: Chief Executive Officer (*Vorstand*)

Title: Head of M&A

Date: 21 September 2018

For and on behalf of PRAXAIR, INC.

/s/ Richard L. Steinseifer

Name: Richard L. Steinseifer

Title: Vice President, M&A

Date: 21 September 2018

For and on behalf of Linde Public Limited Company

/s/ C.J. Cossins

Name:C.J. Cossins

Title:Director

Date: 21 September 2018

For and on behalf of Messer Industries GmbH

/s/ Hans-Gerd Wienands-Adelsbach

Name:Dr. Hans-Gerd Wienands-Adelsbach

Title:Managing Director (*Geschäftsführer*)

/s/ Daniel Pindur

Name:Dr. Daniel Pindur

Title:Managing Director (*Geschäftsführer*)

Date: 21 September 2018

For and on behalf of Messer Canada Inc.

/s/ Uwe Bechtolf

Name: Dr. Uwe Bechtolf

Title: Executive Vice President Controlling / Accounting & Strategy of Messer Group GmbH

Date: 21 September 2018

For and on behalf of Messer Industries USA, Inc.

/s/ Carsten Knecht

Name: Mr Carsten Knecht

Title: Attorney-in-fact acting under power of attorney dated 12 July 2018 and sub-power of attorney dated 13 July 2018

Second Amendment of the Americas Sale and Purchase Agreement

dated 19 October 2018

This Second Amendment of the Americas Sale and Purchase Agreement (the "**2nd Amendment**") is entered into by and between:

1. **Linde Aktiengesellschaft**, a stock corporation (*Aktiengesellschaft*) organised under the laws of the Federal Republic of Germany, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Munich, Germany under registration number HRB 169850, having its registered address (*Geschäftsanschrift*) at Klosterhofstraße 1, 80331 Munich, Germany,

- herein "**Linde**" -
2. **Praxair, Inc.**, a corporation organised under the laws of Delaware, USA, having its registered address at 10 Riverview Drive, Danbury, Connecticut, CT06810, United States of America,

- herein "**Praxair**" and together with Linde "**Sellers**" -
3. **Messer Industries GmbH** (formerly MG Industries GmbH), a private limited liability company (*Gesellschaft mit beschränkter Haftung*) organised under the laws of the Federal Republic of Germany, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Frankfurt am Main, Germany under registration number HRB 111628, having its registered address at Messer-Platz 1, 65812 Bad Soden am Taunus, Germany,

- herein "**Purchaser**" -
4. **Messer Canada Inc.**, a corporation organised under the laws of Canada, registered with the register of Corporations Canada under registration number 1083715-6 having its registered address at 199 Bay Street, Suite 5300, Commerce Court West, Toronto, Ontario M5L 1B9, Canada,

- herein "**Canadian Local Purchaser**" -
5. **Messer Industries USA, Inc.** (formerly MG Industries USA, Inc.), a company organised under the laws of Delaware, with registration number 6964345 and registered address at 251 Little Falls Drive, Wilmington, New Castle, Delaware 19808, United States of America,

- herein "**American Local Purchaser**" -

(the Canadian Local Purchaser and the American Local Purchaser herein collectively herein the "**Local Purchasers**")

and

6. **Linde Public Limited Company**, a public limited company organised under the laws of Ireland, having its business address at The Priestley Centre, 10 Priestley Road, The Surrey Research Park, Guildford, Surrey GU2 7XY, United Kingdom,
-

(each of Linde, Praxair, Purchaser, the Local Purchasers and PLC herein also referred to individually as a " Party " and collectively as " Parties ").

RECITALS

- (A) **Whereas** , *inter alia* , Linde, Praxair, and PLC have entered into a business combination agreement as of 1 June 2017, as amended, to effect a strategic combination of the businesses of Linde and Praxair (herein " **BCA** " and the transactions contemplated by the BCA the " **Business Combination** ").
- (B) **Whereas** , the Parties have entered into a sale and purchase agreement as of 16 July 2018 as amended by the First Amendment of the Americas Sale and Purchase Agreement dated 22 September 2018 (the " **1st Amendment** ") to effect the sale and transfer of certain businesses (" **SPA** ") in order to meet certain regulatory concerns with a view to close the BCA.
- (C) **WHEREAS** , after the signing date of the 1st Amendment, upon further discussions with regulatory authorities, in connection with the Business Combination the Purchaser has agreed that the Perimeter Change II Assets and the Perimeter Change II Employees shall be included in the Transaction under the SPA. The Parties wish to procure the inclusion of the Perimeter Change II Assets and of the Perimeter Change II Employees in the Transaction under the SPA and to amend the SPA as set out herein.

NOW, THEREFORE, the Parties agree as follows:

1. **Interpretations**

Unless otherwise provided herein or the context otherwise requires, words and expressions defined for the purposes of the SPA will have the same meaning in this 2nd Amendment.

2. **Amendment of THE Index of SCHEDULES AND OF CLAUSE 1.1 of the SPA**

1. **Amendment of the Index of Schedules**

- (a) The Index of Schedules to the SPA shall be amended to read as follows to reflect the insertion of a new Schedule 22 and a new Schedule 23 to the SPA:
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Schedule 1	Target Companies and Ownership Structure
Schedule 2	Financial Line Items
Schedule 3	Apportioning between DivestCo Shares
Schedule 4	Principles of Closing Statement
Schedule 5	Form of Closing Statement
Schedule 6	<i>Intentionally left blank</i>
Schedule 7	Sellers' Warranties
Schedule 8	Remedies and Limitations
Schedule 9	Third Party Assurances Sellers' Groups
Schedule 10	Target Company Third Party Assurances
Schedule 11	Debt Commitment Letter and Form of Interim Facility
Schedule 12	Equity Commitment Letter
Schedule 13	Carve Out Steps
Schedule 14	Welding Fumes Indemnification
Schedule 15	<i>Retained Business</i>
Schedule 16	Helium Perimeter Change
Schedule 17	Perimeter Change I
Schedule 18	Linde Canada Investments LLC Dissolution
Schedule 19	Financial Information
Schedule 20	Sample Helium Contract Iwatani Transfer Agreement
Schedule 21	Financial Contract Information
Schedule 22	Perimeter Change II Assets
Schedule 23	Transfer Agreement Perimeter Change II Assets
Schedule 24	Perimeter Change II Employees

(b) To reflect the inclusion the Perimeter Change II Assets and the Perimeter Change II Employees (as defined below) in the Transaction under the SPA, the Parties agree to replace the following Schedules to the SPA by amended Schedules attached hereto as **Annex 2.1(b)** :

- Schedule 3 (*Apportioning between DivestCo Shares*),
- Schedule 13 (*Carve Out Steps*) (the amendments are - for the avoidance of misunderstandings - reflecting changes not relating to the inclusion the Perimeter Change II Assets and the Perimeter Change II Employees in the Transaction) , and
- Schedule 15 (*Retained Business*),

and all references in the SPA to such Schedules (or parts thereof) shall be read to refer to the revised Schedules to the SPA annexed hereto.

For Schedule 2 (*Financial Line Items*) and Schedule 5 (*Form of Closing Statement*) to the SPA the Parties acknowledge - for the avoidance of misunderstandings - that these Schedules have been prepared on the basis of the status prior to the 1st Amendment and this 2nd Amendment and the indicated numbers (at 31 December 2017 which were added for illustration purposes) do, therefore, neither reflect the 1st Amendment nor the 2nd Amendment.

(c) The Parties further agree to add the following Schedules to the SPA as new Schedules attached hereto as **Annex 2.1(c)** :

- "Schedule 22 (*Perimeter Change II Assets*)",
- "Schedule 23 (*Transfer Agreement Perimeter Change II Assets*)" and
- "Schedule 24 (*Perimeter Change II Employees*)" .

2. **Amendment of clause 1.1 of the SPA (*Definitions*)**

In clause 1.1 of the SPA the following definitions shall be amended or, as the case may be, newly introduced, in each case to read as set out below:

- (a) " **Agreed Form** means, in relation to a document, the form of that document as initialled on or prior to the date of this Agreement or on, prior to or in the context of the 1st Amendment or on, prior to or in the context of the 2nd Amendment for the purpose of identification by or on behalf of Sellers and Purchaser (in each case with such amendments as may be agreed in writing by or on behalf of Sellers and Purchaser);"
- (b) " **EP&C Assistance** means field consulting, engineering, procurement, and construction services in connection with the design, delivery, and construction of industrial gases plants;"
- (c) " **Escrow Account** has the meaning given in clause 16.5(a);"
- (d) " **Escrow Administrator** has the meaning given in clause 16.5(a);"
- (e) " **Laser Gases** means excimer laser gas mixtures containing neon and one or more of the following gases: argon, krypton, xenon, and fluorine;"
- (f) " **Linde DivestCo Business** means the business currently operated by the Linde DivestCos, as reflected in the carve out combined financial statements as of 31 December 2017 which have been audited by KPMG,

which means, with respect to the United States (excluding, for the avoidance of doubt, Puerto Rico and the US Virgin Islands) it shall comprise (i) the business conducted by Linde LLC and Linde Energy Services, Inc. for the production, sale, purification, treatment and/or distribution of (A) atmospheric gases, (B) CO₂, (C) hydrogen, and (D) helium, including the remote operations centre, related plants, rail depots, truck terminals, fuelling stations, transfill stations, tractor trucks, cryo-trailers, gas depots and tanks, cylinders and customer contracts, in each case, operating from the Linde LLC locations identified in Schedule 13 hereto, as well as (ii) the shares held by entities of the Linde Group in East Coast Oxygen Company as well as in East Coast Nitrogen Company,

as *supplemented by* the facilities, membership interests and other assets and liabilities to be transferred to Linde LLC, including by Linde Gas North America LLC, pursuant to the Master Carve Out and Asset Exchange Agreement, in each case, as identified in the schedules and annexes to such agreements, subject to clause 3.5 in respect of Cliffside Helium, LLC and Cliffside Refiners, L.P.

and as reduced by the Retained Atmospheric Gases Business and the Retained CO₂ Business to be transferred by Linde LLC to Linde Gas North America LLC pursuant to the Master Carve Out and Asset Exchange Agreement, including, without limitation, the air separation units (ASUs), liquefied natural gas (LNG) facilities, ECOVAR production systems, oil & gas supply modules (OGSMs) and packaged gas products (PGPs) business identified in the schedules and annexes thereto,

and as such business has developed and will develop up to Closing or, with respect to the Colombian Entities, a Deferred Closing, as the case may be, in the ordinary course of business.

For the avoidance of doubt, the definition of Linde DivestCo Business shall not affect the rules set forth in this Agreement relating to Cash, Financial Debt and Working Capital.

The Parties agree that (i) the addition of the Perimeter Change I Businesses, the Perimeter Change I Assets and the Perimeter Change I Contracts, (ii) the changes in the helium perimeter set out in Schedule 16, and (iii) the addition of the Perimeter Change II Assets and the Perimeter Change II Employees shall each adjust the Linde DivestCo Business and the Praxair DivestCo Business, respectively, sold under this Agreement but are each not reflected in the Combined Carve Out Financial Statements as of 31 December 2017;"

- (g) " **Perimeter Change II Assets** means the assets relating to the Laser Gases business of Linde Group in the United States of America (ship-to-principle, i.e. shipped to locations in the United
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States of America of customers to be served from any Laser Gases plants owned or operated prior to the closing of the BCA by Linde Group), being (i) the Perimeter Change II Contracts, (ii) all existing intangible assets (process descriptions) and records of such Laser Gases business in the United States of America (ship-to-principle), including the product specifications (also for packaging) and historical customer data, also for the Perimeter Change II Customer Relationships, and Sellers' Groups using retained copies of such data only to the extent (w) they also relate to other businesses or Laser Gases business for deliveries outside of the United States of America, or as required (x) by law or regulation, or (y) to handle any issues relating to the time until the Financial Closing Date or (z) to provide deliveries and services foreseen under this 2nd Amendment, the Carve Out Agreements and the Transaction Documents, and (iii) the lease agreement relating to the site at 1261 Activity Dr, Vista, CA, United States of America (the "Vista Site") as well as the operational tangible assets (as opposed to office equipment) located at the Vista Site as listed or specified in part C of Schedule 22 whereas (iv) the real property and any other tangible property shall not be part of the Perimeter Change II Assets, all as specified in the Decision and Order of the Federal Trade Commission, File No. 171-0068, in the matter of Linde AG, Praxair Inc. and Linde PLC;"

- (h) "**Perimeter Change II Contracts** means (i) the agreements listed in part A of Schedule 22 and other contracts, if any, in each case to the extent (i.e. in respect of Split Contracts only the portion or part of the respective contract) providing for the delivery of Laser Gases in the United States of America (ship-to-principle) existing as of the Financial Closing Date between Linde Group in the United States of America and customers to be served from Laser Gases plants owned or operated prior to the closing of the BCA by Linde Group, and further in each case, as such contracts have developed and will develop up to Closing in the ordinary course of business and (ii) all contractual rights and obligations in respect of Laser Gases deliveries in the United States of America undelivered at the Financial Closing Date vis-a-vis customers to be served from Laser Gases plants owned or operated prior to the closing of the BCA by Linde Group (whether under the agreements described in (i) above or otherwise);"
 - (i) "**Perimeter Change II Customer Relationships** means the customer relationships with Laser Gases spot customers in the United States of America (ship-to-principle) of the Laser Gases business of Linde Group which have been served from Laser Gases plants owned or operated prior to the closing of the BCA by Linde Group during the last twelve months prior to Closing as will be listed in part B of Schedule 22 to be updated by Sellers as of Closing within twenty (20) Business Days following Closing;"
 - (j) "**Perimeter Change II Data Room** means the following folders in the electronic file room named "Project Planet - Post Signing": "A. Red Data Room", subfolder "7 Laser Gas Agreements - Clean Team Only" and "B. Green Data Room", subfolder "7 Laser Gas", such electronic file room hosted by Linklaters LLP as at 18 October 2018, 24:00h CEST, comprising the documents and other information made available by Sellers to Purchaser, the content of which is recorded on two identical data storage devices prepared by Linklaters LLP and is listed in the data room index attached to the Perimeter Change II Disclosure Letter;"
 - (k) "**Perimeter Change II Disclosure Letter** means the letter from Sellers to Purchaser in relation to the Perimeter Change II Transaction executed and delivered before the date of this 2nd Amendment, and which, in case of information referred to in such letter, makes reference to (i) the Perimeter Change II Data Room or (ii) specified documents or folders of the Data Room;"
 - (l) "**Perimeter Change II Employees** means the persons identified in Schedule 24;"
 - (m) "**Perimeter Change II Transaction** means the acquisition of the Perimeter Change II Assets and the Perimeter Change II Employees;"
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(n) " **Split Contracts** means the agreements listed in part A of Schedule 22 and other contracts, if any, which provide for the delivery of Laser Gases in the United States of America (ship-to-principle) existing as of the Financial Closing Date between Linde Group in the United States of America and customers to be served from Laser Gases plants owned or operated prior to the closing of the BCA by Linde Group, but which also provide for other deliveries, e.g. deliveries to other geographic regions or deliveries of products other than Laser Gases, and hence need to be split with economic effect as of the Financial Closing Date;"

3. **Transfer of the PERIMETER CHANGE II ASSETS, AND THE PERIMETER CHANGE II EMPLOYEES; AMENDMENT OF TRANSACTION DOCUMENTS AND CARVE OUT AGREEMENTS; AMENDMENT OF CLAUSE 2 of the SPA**

1. **Transfer of the Perimeter Change II Assets and of the Perimeter Change II Employees**

The Parties agree that after the date of this 2nd Amendment, the Sellers shall, to the extent such assets are not already held by a Target Company, (i) transfer or procure the transfer of such Perimeter Change II Assets which do not require third party consents and (ii) use reasonable endeavours to transfer or procure the transfer of the Perimeter Change II Assets which require third party consents from their current owners as well as Perimeter Change II Employees to Linde LLC (or to another Target Company as agreed between Sellers and Purchaser), or, if the current owner or employer is already a Target Company, that they are kept by such entity, as of Closing, and that the steps under (i) and (ii) above shall be considered to be part of the Carve Out but shall be subject to the special provisions in this 2nd Amendment; the Master Carve Out and Asset Exchange Agreement, the Carve Out Agreement and the Reverse Carve Out Agreement shall not apply to the steps under (i) and (ii) above. The transfer agreement regarding the Perimeter Change II Assets, which shall follow substantially the form of the transfer agreement attached as Schedule 23, shall be a Transaction Document except for purposes of clauses 2.1 last para. (payments to be made but still outstanding), 12 (Taxes) and the allocation of Taxes under other clauses of the SPA (such as clause 6.5 and clause 25.1 of the SPA), and Schedule 7 paragraph 1.2 of the SPA, for which it shall be considered to be a Carve Out Agreement. The necessary transfers and assignments of the Perimeter Change II Assets, Perimeter Change II Contracts and Perimeter Change II Employees shall be implemented with economic effect on the Financial Closing Date. The steps to be taken pursuant to this Section 3.1 shall be at Sellers' cost.

2. **Amendment of Transaction Documents and Carve Out Agreements**

(a) The Parties will separately agree in good faith and document any amendments required with respect to the Transaction Documents and Carve Out Agreements (if any) to reflect the inclusion of the Perimeter Change II Assets and the Perimeter Change II Employees in the Transaction under the SPA. All inventories relating to the Perimeter Change II Assets shall be sold under the Product Supply Agreements.

(b) With respect to the transfer of the Perimeter Change II Assets the following shall apply:

(i) Sellers shall assign and transfer, or shall procure the assignment or transfer of, the Perimeter Change II Assets with all rights and obligations relating to the period as from the Financial Closing Date (and regarding Perimeter Change II Contracts relating to deliveries made as from the Financial Closing Date and other rights and obligations relating to the period as from the Financial Closing Date), but without any claims, obligations or liabilities relating to the period before the Financial Closing Date (and regarding Perimeter Change II Contracts relating to deliveries made before the Financial Closing Date and other rights and obligations relating to the period before the Financial Closing Date) (in particular, no customer claims, trade payables or trade receivables shall be transferred), to Linde LLC (or to another Target Company as agreed between the Parties) with legal effect as of the Financial Closing Date, in each case, subject to (*under the condition precedent of*) the respective necessary third party consents having been

obtained for the respective Perimeter Change II Asset and in accordance with the provisions below. With respect to the transfer of the Perimeter Change II Assets the transfer documentation shall follow substantially the form of the transfer agreement attached as Schedule 23;

- (ii) Sellers shall indemnify and hold the relevant Target Company harmless from and against any (A) liabilities relating to the Perimeter Change II Assets relating to the period prior to the Financial Closing Date (and regarding Perimeter Change II Contracts relating to deliveries made before the Financial Closing Date and other rights and obligations relating to the period before the Financial Closing Date), (B) liabilities relating to such portions or parts of the Split Contracts which are not to be transferred pursuant to this 2nd Amendment, (C) claims of customers for the return of consideration paid under the Perimeter Change II Contracts or other liabilities resulting from forwarding of claims or proceeds according to Section 3.2(b)(iii) below and (D) losses or costs and expenses which the Purchaser or the relevant Target Company may suffer or incur by reason of taking any reasonable action to avoid, resist or defend against any liabilities as per item (i) or (ii);
 - (iii) Purchaser shall (A) forward without deduction to Sellers (x) any claims relating to such portions or parts of the Split Contracts which are not to be transferred pursuant to this 2nd Amendment and (y) any claims and proceeds relating to the Perimeter Change II Contracts relating to deliveries made before the Financial Closing Date, and (B) (except if and to the extent this is caused by Sellers' Groups having breached their obligations under the Product Supply Agreements in respect of Laser Gases) indemnify and hold harmless Sellers and any members of Sellers' Groups against any (x) liabilities relating to the Perimeter Change II Assets relating to the period as from the Financial Closing Date (and regarding the Perimeter Change II Contracts (i.e. the portions or parts of the Split Contracts which are to be transferred pursuant to this 2nd Amendment) relating to deliveries made as from the Financial Closing Date and other rights and obligations relating to the period as from the Financial Closing Date) and (y) losses or costs and expenses which the Sellers or members of Sellers' Groups may suffer or incur by reason of them taking any reasonable action to avoid, resist or defend against any liabilities as per item (x);
- (c) With respect to the transfer of the Perimeter Change II Contracts and the transfer of the lease agreement for the Vista Site the following shall apply:
- (i) Sellers and the respective Target Companies shall use their reasonable endeavours, both before and after the Financial Closing Date, to obtain all necessary third party consents on terms reasonably acceptable to both Sellers and Purchaser (acting reasonably) as soon as possible after signing of this 2nd Amendment and having obtained all merger clearances and buyer approvals required from merger clearance authorities in Canada and the United States of America and prior to the Financial Closing Date and, if such third party consents have not been obtained prior to the Financial Closing Date, as soon as possible after the Financial Closing Date and keep each other reasonably informed of progress in obtaining such third party consents and implementing such arrangements as soon as a consent is obtained, in particular inform Purchaser if a third party consent can only be obtained at terms and conditions less favourable than the terms and conditions at signing of this 2nd Amendment in which case Sellers and Purchaser shall discuss with each other how to deal with the respective third party consent; Sellers shall not agree on terms and conditions less favourable than the terms and conditions at signing of this 2nd Amendment without the prior consent of the Purchaser.
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- (ii) neither Sellers, nor Purchaser nor any relevant Target Company shall have, however, any obligation to enter into any undertakings or grant any guarantees, bonds or other security in favour of any relevant third party; and
 - (iii) from the Financial Closing Date until necessary third party consents have been obtained and always to the extent these consents have not yet been obtained:
 - (A) Sellers shall ensure that the relevant Target Company receives the benefits of the Perimeter Change II Contracts and the lease agreement for the Vista Site as if they had been transferred to the relevant Target Company as of the Financial Closing Date and Sellers shall use reasonable endeavours that the Purchaser and the relevant members of the Purchaser Group have continuous access to the relevant third party;
 - (B) Purchaser shall ensure that the relevant Target Company shall assume the burdens and shall assume, carry out, perform and discharge the obligations of the relevant member of the Sellers' Groups under the Perimeter Change II Contracts the lease agreement for the Vista Site (as applicable) to the extent they are lawfully able to do so, as if they had been transferred to the relevant Target Company as of the Financial Closing Date; and
 - (C) Purchaser shall, except if and to the extent this is caused by Sellers' Groups having breached their obligations under the Product Supply Agreements in respect of Laser Gases, indemnify and keep indemnified the relevant member of the Sellers' Groups against any losses incurred by the relevant member of the Sellers' Groups arising from any failure by the relevant Target Company to assume, carry out, perform or discharge such obligations under Section 3.2(c)(iii)(B) as of the Financial Closing Date, and against any losses which a member of the Sellers' Groups may suffer by reason of a member of the Sellers' Groups taking any reasonable action to avoid, resist or defend any liability referred to in Section 3.2(c)(iii)(B).
 - (d) Linde together with Purchaser shall, as soon as possible after signing of this 2nd Amendment and having obtained all merger clearances and buyer approvals required from merger clearance authorities in Canada and the United States of America and prior to the Financial Closing Date (or with regard to Perimeter Change II Customer Relationships identified by way of an update pursuant to Sec. 2.2(i), as soon as possible after they have been updated by Sellers), jointly send a letter to the respective customers under the Perimeter Change II Customer Relationships to inform them that in each case subject to the occurrence of Closing (i) Linde Gas North America LLC, now a subsidiary of Linde/Praxair, has sold to Purchaser its Laser Gases business, (ii) Purchaser will take over as from Closing such business and will service the customer, (iii) Purchaser's main contact person for the customer as of Closing, (iv) Linde Gas North America LLC will, for a transitional period lasting up to five (5) years as from Closing, be exclusively delivering Laser Gases in the United States of America to Purchaser and (v) Purchaser is intending to build its own Laser gases production facility.
 - (e) The transfer of the Perimeter Change II Employees shall be implemented pursuant to the EMA.
 - (f) The Parties acknowledge and agree that clause 22.4 (*Sellers' Customer Non-Solicit Undertaking*) of the SPA shall apply also in respect of the Perimeter Change II Contracts and the Perimeter Change II Customer Relationships.
 - (g) Sellers shall not sell or provide Laser Gases produced at any facility owned or operated by Linde Group prior to the closing of the BCA to any person in the United States other than the Purchaser Group during the period of the supply relationship regarding Laser Gases under the Product Supply Agreements up to a maximum period of five (5) years.
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- (h) Sellers shall provide to the Purchaser Group, EP&C Assistance in connection with the Laser Gases business, but on commercial terms (Framework Agreement relating to a business cooperation framework relating to DEPC).
- (i) The Parties acknowledge and agree that for as long as Sellers and members of Sellers' Groups are providing product supplies and services under the Product Supply Agreements to the Purchaser and the Target Companies in respect of the fulfilment of the Perimeter Change II Contracts, whether directly or indirectly by way of deliveries directly to customers of the Purchaser or to the Target Group Companies, any damages and liabilities, if and to the extent caused by Sellers or a member of Sellers' Groups not fulfilling its contractual duties, shall not lead to Purchaser or a Target Company having a liability vis-à-vis the customer in respect of such non-fulfillment by Sellers that is greater or smaller than the indemnification claims the Purchaser or the respective Target Company has against Sellers or the respective member of Sellers' Groups. Therefore, Sellers or the respective member of Sellers' Groups shall assume in relation to Purchaser or the respective Target Company, and indemnify Purchaser or the respective Target Company, for such liabilities and damages payable to the customer under the respective Perimeter Change II Contract as would have been payable as damages or liabilities for the Sellers' or the respective member of Sellers' Groups act or omission not fulfilling their contractual duties (but excluding any acts or omissions of Purchaser or Target Companies), as if Sellers or the respective member of Sellers' Groups were still party to the respective Perimeter Change II Contract. Sellers and the respective member of Sellers' Groups shall not be entitled to invoke a limitation of liability that would lead to Purchaser or the respective Target Company being able to claim only a smaller amount, and Purchaser together with the Target Companies shall not be entitled to claim any higher amount than set forth in the previous sentence with respect to the Perimeter Change II Contracts.

4. **Interpretation of clauses 4.1, 8.2(a) and 8.2(c) of the SPA (*Perimeter change Mechanism*)**

The Parties agree that

- (a) the Perimeter Change II Transaction constitutes a "Perimeter Change" in terms of clause 8.2(a) of the SPA;
- (b) the inclusion of the Perimeter Change II Assets and the Perimeter Change II Employees shall be reflected by an increase in the Enterprise Purchase Price as set forth in Section 5 below which shall be subject to the adjustments for Financial Debt, Cash, Working Capital and Inter-Company Receivables and Payables set forth in clause 4.1 (a) through (d) of the SPA;
- (c) given the agreement under Section 4(b) above, (i) the valuation principles for calculating the Perimeter Change Equity Value for the Perimeter Change II Assets and the Perimeter Change II Employees set forth in clause 8.2(c)(i) through (iv) of the SPA shall not be applied and (ii) clause 4.1(g) of the SPA shall be disregarded for purposes of the calculation of the Final Purchase Price with respect to the acquisition of the Perimeter Change II Assets and the Perimeter Change II Employees under this 2nd Amendment;
- (d) the Perimeter Change II Transaction will be taken into account in case of any additional Perimeter Changes for the purposes of clauses 15.5 (b) and (c) of the SPA; and
- (e) notwithstanding any other provision in this 2nd Amendment or the SPA, no member of the CVC Network or Messer Group or Purchaser Group shall be obligated to contribute additional capital or assets in excess of the limitations under clauses 15.5(b) and (c) of the SPA.

5. **Further Amendments to the Main Body of the SPA**

1. **Amendment of clause 4 of the SPA (*Final Purchase Price*)**

- (a) Considering the purchase of the Perimeter Change II Assets and the Perimeter Change II Employees, the Parties agree to increase the Enterprise Purchase Price by an amount of 32,250,000 USD to 3,579,450,000 USD.
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In addition, the Parties acknowledge and agree that the Perimeter Change II Assets will not be considered in the Closing Statement and for the calculation of the Initial Purchase Price (but have been included in determining the Enterprise Purchase Price set out above), provided that volumes in transit on the Financial Closing Date shall be for account of and paid to Sellers.

- (b) To implement Section 5.1(a) above, the numbers and words for the Enterprise Purchase Price 3,547,200,000 USD (in words: three billion five hundred forty-seven million two hundred thousand US dollars) in the first sentence of clause 4.1 of the SPA shall be replaced by the following numbers and words:

"3,579,450,000 USD (in words: three billion five hundred seventy-nine million four hundred fifty thousand US dollars)".

- (c) As a consequence, the Initial Purchase Price and the Final Purchase Price shall be calculated considering such changes outlined in Section 5.1(a) through (b) above.

2. **Amendment of clause 6.1 of the SPA (Closing Statement)**

Clause 6.1 of the SPA shall be amended and read as follows:

"Sellers shall, or shall procure that its accountants shall, after Closing prepare a draft statement showing, as at the Financial Closing Date, the Financial Debt, Cash, Working Capital, Inter-Company Payables and Inter-Company Receivables of the Target Companies as a whole by adding the respective figures for the Linde DivestCo Business and for the Praxair DivestCo Business (" **Closing Statement** "). For purposes of the Closing Statements, (i) the Helium Iwatani Contract, (ii) any purchase price payments to be made by Linde LLC but still outstanding under the Helium Container Transfer Agreement and the helium containers transferred or to be transferred under the Helium Container Transfer Agreement (iii) the Linde LAR Enid Plant and (iv) the Perimeter Change II Assets will not be considered, provided that volumes in transit on the Financial Closing Date under the Helium Iwatani Contract or the Perimeter Change II Contracts shall be for account of and paid to Sellers. The Closing Statement shall set out the calculation of the Final Purchase Price and the Final Inter-Company Payment Amount and be in the form set out in Schedule 5.

Sellers shall deliver the draft Closing Statement to Purchaser within sixty (60) Business Days following Closing. The Closing Statement shall be prepared in accordance with the accounting principles and methodology set out in Schedule 4."

3. **Amendment of clause 8.1(c) of the SPA (Closing Conditions)**

Clause 8.1(c) of the SPA shall be amended and shall read as follows:

"The Transaction (including the Perimeter Change I Transaction and the Perimeter Change II Transaction) having received competition approvals for or the statutory waiting periods having expired in the European Union (European Commission), Albania, Brazil, Canada, China (PRC), Macedonia, Serbia, Bosnia & Hercegovina and the Ukraine (" **SPA Clearance Condition** ")."

4. **Insertion of a new clause 8.2(e) of the SPA (Filings Perimeter Change II Transaction)**

- (a) Considering the requirement for Purchaser to submit (re-)filings or amend previous filings or make new filings, for the SPA Merger Clearance under clause 8.1(c) of the SPA to reflect the
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Perimeter Change II Transaction, the Parties agree to apply the commitments and processes regarding the SPA Clearance Condition foreseen under clause 8.2(b) of the SPA also to any (re-)filings or amendments of previous filings or new filings.

- (b) To implement Section 5.4(a) above, a new clause 8.2(e) shall be added to the SPA which shall read as follows:

"(e) Filings Perimeter Change II Transaction

Purchaser shall ensure that any (re-)filings, amendments or supplements of the pending notifications to be made to the relevant Governmental Entities with respect to the SPA Clearance Condition under the Agreement and any other filings or notifications that are necessary due to the Perimeter Change II Transaction shall be submitted to the relevant Governmental Entities no later than five (5) Business Days after the date of the 2nd Amendment. The provisions of clause 8.2(b) shall apply *mutatis mutandis* to any such (re-)filings, amendments or supplements of the pending notifications made to the relevant Governmental Entities with respect to the SPA Clearance Condition as well as any other filings or notifications made pursuant to the preceding sentence."

5. **Amendment of clause 8.3(b) of the SPA (*Waiver of Closing Conditions*)**

Clause 8.3(b) of the SPA shall be amended and read as follows:

- "(b) The Closing Condition set out in clause 8.1(c) may be (i) waived jointly by the Parties or (ii) waived by Sellers unilaterally and in their sole discretion by giving written notice to Purchaser, to the extent such Closing Condition relates to the Transaction having received competition approvals for, or the statutory waiting periods having expired in, Albania, China (PRC), Macedonia, Serbia, Bosnia & Hercegovina and the Ukraine, (provided, however, that Sellers may not waive such Closing Condition in full or in part prior to the date on which those Closing Conditions that cannot be unilaterally waived in full or in part are satisfied) with such waiver by Sellers becoming legally effective to allow for a Closing on or after 31 December 2018 24:00h / 1 January 2019 00:00h as Financial Closing Date and the first Closing Business Day after the Financial Closing Date as Closing Date, provided that in case of a Financial Closing Date of 31 December 2018 24:00h / 1 January 2019 00:00h Closing shall occur on 3 January 2019 as set forth in clause 9.1."

6. **Amendment of clause 9.1 of the SPA (*Closing Date*)**

- (a) The Parties agree to delay the Closing Date as defined in clause 9.1 of the SPA and agree on special rules for a financial closing, if it happens as per 31 December 2018 24:00h / 1 January 2019 00:00h.
- (b) To implement Section 5.6(a) above, clause 9.1 of the SPA shall be supplemented by the following lit. (c):
- "(c) but in each case (a) or (b) not before 31 December 2018 at the earliest;"

and clause 9.1 of the SPA shall be supplemented at the end by the following additional paragraph:

"If the Unconditional Date allows for, or the Parties agree on (without affecting clause 11.3 (c)), a financial closing as per 31 December 2018 24:00h / 1 January 2019 00:00h (i) this date shall be the Financial Closing Date, (ii) actual Closing shall occur on 3 January 2019, and (iii) risks and rewards of the Business shall also in this case transfer as of the Financial Closing Date subject to clause 15.1."

7. **Amendment of clause 15.6 of the SPA (*Agreements as of Closing*)**

The list after the first paragraph of clause 15.6 of the SPA shall be supplemented by the following lit. (l) to reflect the additional agreement entered into to implement the Perimeter Change II Transaction:

"(l) the Second Amendment of the Americas Sale and Purchase Agreement dated 19 October 2018."

8. **Insertion of a new clause 16.5 of the SPA (*Building Incentive*)**

- (a) The Parties acknowledge that the FTC requests that a certain incentive shall be agreed between the Parties in order to encourage Purchaser to establish an own production facility for Laser Gases mixtures in North America within sixty (60) months following Closing and to start construction or renovation within twelve (12) months following Closing.
- (b) To implement Section 5.8(a) above, clause 16 of the SPA shall be supplemented by the following clause 16.5 of the SPA:

"16.5 Building Incentive

- (a) Within thirty (30) calendar days following the Closing Date, Sellers shall deposit an amount of 60,000,000 USD as construction fund in an interest bearing bank account at standard terms and conditions (the " **Escrow Account** ") approved and administered by the monitor appointed by the FTC in order to observe and report on Sellers' compliance in relation to the FTC Order and the divestment process (the " **Escrow Administrator** ") which amount shall be held and disbursed on instruction by the Escrow Administrator to the Parties in accordance with the provisions set out in this clause 16.5 and further details (if any) which shall be agreed between the Parties and the Escrow Administrator in good faith within 60 calendar days following the signing of this 2nd Amendment or at a later point in time, upon either the FTC's or the Escrow Administrator's request. Any interest accrued with respect to the amount deposited in the Escrow Account shall increase and form part of the deposit in the Escrow Account.
 - (b) The Escrow Administrator shall release the funds on the Escrow Account (or any portion thereof) only in accordance with the following provisions:
 - (i) During a period of sixty (60) months following the Closing Date, the Escrow Administrator shall, upon request by the Purchaser, release on a quarterly basis from the Escrow Account to the Purchaser a total amount of up to 12,000,000 USD to cover actual external costs incurred by the Purchaser or any member of Purchaser's Group for the construction or renovation of a Laser Gases plant, which payments shall be subject to the Purchaser providing reasonable documentation as evidence of such external costs to the Escrow Administrator and to the Sellers which is satisfactory to the Escrow Administrator.
 - (ii) Subject to the delivery by Purchaser to the Escrow Administrator and the Sellers of a certificate satisfactory to the Escrow Administrator from Cymer LLC, a company that manufactures chip-making equipment located at 17075
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Thornmint Court, San Diego, California 92127, and a wholly owned subsidiary of ASML, certifying the production process (including quality control) in the newly built or renovated Laser Gases plant for use in excimer lasers for the semiconductor industry and thereby being accepted as qualified supplier, the Escrow Administrator shall, upon request by the Purchaser, release to the Purchaser an amount of 12,000,000 USD within thirty (30) calendar days after receipt of such certificate.

- (iii) Subject to the delivery by Purchaser to the Escrow Administrator and the Sellers of a certificate from one or more customers in the semiconductor industry, other than and in addition to Cymer, satisfactory to the Escrow Administrator certifying the production process (including quality control) in the newly built or renovated Laser Gases plant for use in excimer lasers for the semiconductor industry and thereby being accepted as qualified supplier, the Escrow Administrator shall, upon request by the Purchaser, release to the Purchaser the remaining Escrow Amount on the Escrow Account (including any interest accrued), less (i) the aggregate of all claims of Purchaser for release that are not yet approved by the Escrow Administrator at such date under each case of clause 16.5(b)(i) and 16.5 (b)(ii) and (ii) such amount to cover the costs of administration of the Escrow Account as determined by the Escrow Administrator.
 - (iv) To the extent, upon lapse of sixty (60) months plus thirty (30) calendar days from Closing, funds remain in the Escrow Account, such funds shall be released to the Sellers subject to the consent of the Escrow Administrator, less (i) the aggregate amount of all claims of Purchaser for release that are not yet approved by the Escrow Administrator at such date under each case of clause 16.5(b)(i) to 16.5(b)(iii) and (ii) such amount to cover costs of administration of the Escrow Account as determined by the Escrow Administrator.
 - (v) Other than set forth in clause 16.6(b)(i) to (iv), any monies shall be released from the Escrow Account upon the joint written instructions by the Sellers and the Purchaser in accordance with such instructions and subject to the Escrow Administrator's consent.
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- (c) If Purchaser or the relevant Target Company do not begin actual physical construction or renovation of a Laser Gases plant within twelve (12) months after the Closing, Sellers shall rescind the Perimeter Change II Transaction with immediate effect by providing notice to the Purchaser, unless the FTC agrees on an extension of such twelve (12) months period.
- (d) Following the effective date of such termination under clause 16.5(c), Purchaser shall, or, as the case may be, shall ensure that the relevant Target Company, (re-)assigns and re-transfers the Perimeter Change II Assets and shall procure that the Perimeter Change II Employees (re-)transfer to an entity designated by Sellers in the notice within twenty (20) Business Days after the effective date of the termination.
- (e) Upon such (re-)transfer in accordance with clause 16.5(d), Sellers shall pay to Purchaser an amount equal to 32,250,000 USD *minus* (i) any net benefits received by the Purchaser Group or any Target Group Company with respect to the Perimeter Change II Assets prior to such retransfer and (ii) any payments received by the Purchaser out of the Escrow Account (however, only to the extent Purchaser does not have to re-transfer such payments to the Escrow Account on request of the Escrow Administrator). In the event that such amount is negative, Purchaser shall pay to the Sellers an amount equal to such negative amount. Any such payment (if any) shall be made within twenty (20) Business Days after the effective date of the termination.

6. **Amendment of paragraph 1.3 of Schedule 7 of the SPA (*Financial Matters*)**

- (a) Purchaser acknowledges that the Perimeter Change II Transaction is not reflected in the Combined Carve Out Financial Statements as set forth in Section 2.2(f) above.
- (b) To implement Section 6(a) above, paragraph 1.3(a) of Schedule 7 to the SPA shall be amended and shall read as follows:
 - "(a) The Combined Carve Out Financial Statements were prepared in accordance with the requirements of all relevant laws and the relevant accounting principles then in force save as disclosed therein and subject to the basis of preparation and the assumptions made therein to reflect the separation of the respective business and, on the basis of the knowledge of the respective management when they were prepared, present fairly, in all material respects, the combined carve-out financial position of the respective Target Companies as of the date to which they relate, and the respective Target Companies' combined carve-out financial performance and such companies' combined carve-out cash flows for the periods to which they relate, provided that they neither take into account (i) the changes in the helium perimeter set out in Schedule 16 nor (ii) the addition of the Perimeter Change I Businesses, the Perimeter Change I Assets, and the Perimeter Change I Contracts, nor (iii) the addition of the Perimeter Change II Assets."

7. **AMENDMENT OF PARAGRAPH 1.9 OF SCHEDULE 7 OF THE SPA (*Contractual Matters*)**

A new paragraph 1.9(d) shall be added to Schedule 7 to the SPA which shall read as follows:

- "(d) With respect to the Perimeter Change II Contracts, there are no material unremedied breaches by the Sellers' Groups or the Target Companies or, to Sellers' Knowledge, by the counterparties of the Perimeter Change II Contracts. All Perimeter Change II Contracts subject to the terms specified in Schedule 22, are in full force and effect. For the purposes of this warranty under
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Schedule 7 paragraph 1.9(d) reference to Sellers' Knowledge means the actual knowledge as of the date hereof of Dr Harald Voigts after having made due inquiry with Mr Robert Capellman without any further inquiry."

8. **REFERENCE TO DATA ROOM INSCHEDULE 7 OF THE SPA**

Where Schedule 7 of the SPA refers to the "Data Room", except for Paragraph 1.4 of Schedule 7, such reference shall be to the "Data Room, the Perimeter Change I Data Room and/or the Perimeter Change II Data Room".

9. **Amendment to paragraph 4 of Schedule 8 to the SPA (Knowledge)**

To reflect the additional disclosure with respect to the Perimeter Change II Transaction, paragraph 4(a) of Schedule 8 to the SPA shall be amended and shall read as follows:

"(a) has been disclosed to Purchaser or any of Purchaser's Representatives,

- (i) in or by this Agreement, any other Transaction Document, the Disclosure Letter or any document or other information in the Data Room on or before the date of this Agreement in sufficient detail to enable a reasonable purchaser to identify and make a reasonably informed assessment of the nature of the fact, matter or circumstance so disclosed,
- (ii) provided, however, that any disclosure in relation to any Warranty Claim to the extent it relates to the Perimeter Change I Businesses, the Perimeter Change I Assets and the Perimeter Change I Contracts, the Perimeter Change I Transaction including the lack of liabilities regarding the Perimeter Change I Businesses shall be limited to the facts, matters, events or circumstances that have been disclosed in this Agreement, any other Transaction Document, the Perimeter Change I Disclosure Letter, or any document or other information in the Perimeter Change I Data Room, including references in the Perimeter Change I Disclosure Letter or the Perimeter Change I Data Room to specified documents or folders of the Data Room in sufficient detail to enable a reasonable purchaser to identify and make a reasonably informed assessment of the nature of the fact, matter or circumstance so disclosed,
- (iii) and further provided, that any disclosure in relation to any Warranty Claim to the extent it relates to the Perimeter Change II Assets, the Perimeter Change II Employees and the Perimeter Change II Transaction shall be limited to the facts, matters, events or circumstances that have been disclosed in this Agreement, any other Transaction Document, the Perimeter Change II Disclosure Letter, or any document or other information in the Perimeter Change II Data Room, including references in the Perimeter Change II Disclosure Letter or the Perimeter Change II Data Room to specified documents or folders of the Data Room in sufficient detail to enable a reasonable purchaser to identify and make a reasonably informed assessment of the nature of the fact, matter or circumstance so disclosed

(" Disclosed "); or".

10. **INTERPRETATION OF THE SPA WITH RESPECT TO TIME PERIODS "AS OF THE DATE OF THIS AGREEMENT" OR SIGNING**

The Parties agree that with respect to the Perimeter Change II Transaction any undertaking, warranty, right or obligation shall not be given as of the date of the SPA but as of the date of this 2nd Amendment and as of Closing, as the case may be provided for in the SPA. Therefore, any reference in the SPA to "the date of this Agreement" or the signing of the SPA shall, with respect to the Perimeter Change II Assets, the Perimeter Change II Employees, and the Perimeter Change II Transaction, be interpreted

and construed, except for clause 8.5 of the SPA, to mean exclusively a reference to the date of this 2nd Amendment.

11. **Miscellaneous**

1. **Entirety of 2nd Amendment**

This 2nd Amendment contains the entirety of the amendments to the SPA agreed by the Parties at this time which shall otherwise remain unamended.

2. **Provisions applied mutatis mutandis**

The content of clauses 25, 26, and 27 of the SPA shall apply to this 2nd Amendment *mutatis mutandis* as if contained in this 2nd Amendment and being a part hereof.

[Signatures to follow]

Date: 19 October 2018

For and on behalf of LINDE AG

/s/ Sven Schneider

/s/ Christian Graf zu Ortenburg

Name: Dr. Sven Schneider

Title: CFO

Name: Christian Graf zu Ortenburg

Title: Head of M&A

Date: 19 October 2018

For and on behalf of PRAXAIR, INC.

/s/ Richard L. Steinseifer

Name: Richard L. Steinseifer

Title: Vice President, M&A

Date: 19 October 2018

For and on behalf of Linde Public Limited Company

/s/ C.J. Cossins

Name: C.J. Cossins

Title: Director

Date: 19 October 2018

For and on behalf of Messer Industries GmbH

/s/ Michael Beck

/s/ Carsten Knecht

Name:Mr. Michael Beck

Title:Managing Director (*Geschäftsführer*)

Name:Mr. Carsten Knecht

Title:Managing Director (*Geschäftsführer*)

Date: 19 October 2018

For and on behalf of Messer Canada Inc.

/s/ Stephan Waldhausen

Name: Dr. Stephan Waldhausen

Title: Attorney-in-fact acting under power of attorney dated 11 July 2018

Date: 19 October 2018

For and on behalf of Messer Industries USA, Inc.

/s/ Justus Anacker

Name: Dr. Justus Anacker

Title: Attorney-in-fact acting under power of attorney dated 12 July 2018

RULE 13a-14(a) CERTIFICATIONS

Linde plc and Subsidiaries

EXHIBIT 31.01

I, Stephen F. Angel, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Linde plc;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
 - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing equivalent function):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

November 9, 2018

By: /s/ Stephen F. Angel

Stephen F. Angel

Chief Executive Officer

(principal executive officer)

RULE 13a-14(a) CERTIFICATIONS

Linde plc and Subsidiaries

EXHIBIT 31.02

I, Matthew J. White, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Linde plc;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
 - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing equivalent function):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

November 9, 2018

By: /s/ Matthew J. White

Matthew J. White

Chief Financial Officer

(principal financial officer)

SECTION 1350 CERTIFICATION

Linde plc and Subsidiaries

EXHIBIT 32.01

Pursuant to 18 U.S.C. § 1350, the undersigned officer of Linde plc (the “Company”), hereby certifies that the Company’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2018 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

November 9, 2018

By: /s/ Stephen F. Angel

Stephen F. Angel

Chief Executive Officer

(principal executive officer)

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

A signed original of this written statement required by 18 U.S.C. § 1350 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

SECTION 1350 CERTIFICATION

Linde plc and Subsidiaries

EXHIBIT 32.02

Pursuant to 18 U.S.C. § 1350, the undersigned officer of Linde plc (the “Company”), hereby certifies that the Company’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2018 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

November 9, 2018

By: /s/ Matthew J. White

Matthew J. White

Chief Financial Officer

(principal financial officer)

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

A signed original of this written statement required by 18 U.S.C. § 1350 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.