

CRYOSTAR INDIA Service Terms and Conditions



NOTICE: These General Service terms and conditions (the "STC") shall unless otherwise agreed in writing, apply to all Works or Services (collectively the "Services") performed by any authorized member, agent or service representatives of Cryostar India, a branch of Linde Engineering Pvt Ltd (hereinafter "Cryostar") during consulting, supervision of erection, installation, start-up, inspection, repair or maintenance, remote services with regard to equipment (such as pumps, turbines, compressors) previously manufactured and sold by Cryostar or any (the "Goods").

These STC plus the additional Cryostar's General Sales conditions shall be an integral part of any Purchase Order (the "Order") assigned by the beneficiary of the Services (the "Client") to Cryostar.

Except for any other terms and conditions of Cryostar and/or the Client (that are expressly agreed upon in writing by Cryostar), none of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered except as revised in writing by Cryostar and all orders for the Services received by Cryostar shall be governed only by the terms and conditions contained herein, plus the additional Cryostar's General Sales conditions, notwithstanding any terms and conditions which may be found in any purchase order, release order, or any other form issued by the Client.

These terms and conditions are effective as of the date published on this bulletin and are subject to change without prior notification.

This document shall take precedence over any conflicting terms and conditions submitted by the Client, unless otherwise agreed to in writing by Cryostar.

1. RATE DEFINITION

Calculation of rates:

Billable days are calculated from the day the technician departs Cryostar until the day the technician returns to Cryostar including weekends and Holidays (portal to portal) or from the time the Cryostar representative spend for Remote Services (as defined in Annex A) including time to get the connection with the Client and any interruption.

A. Standard Rate – This rate applies to time worked during a normal 8-hour day, Monday through Friday except holidays.

B. Overtime Rate – This rate applies to the first 4 hours worked in excess of the normal 8 hour period during which the Standard Rate applies and the first 12 hours on Saturday.

C. Holiday Rate – This rate applies to time worked in excess of 12 hours in any given work day during which the Standard Rate applies, hours in excess of 12 hours on Saturday, and all hours worked on Sunday or Client observed holidays.

D. Client observed holidays include those bank holidays applicable in the country where the Cryostar entity is located.

E. Between two (2) days, a minimum of eleven (11) hours of rest is required. After fifteen (15) consecutive work days, a rest day will be given.

F. Receipts will be provided only when charged at cost +10%; otherwise the flat rate will be charged, with no receipts.

2. CLIENT OBLIGATIONS

A. The Client shall provide all required labour, supervision, equipment, materials, tools, utilities, supplies and parts necessary for the efficient performance of the Services

B. The Client shall issue a written purchase order (the "Order") making reference to this document in order to dispatch

Cryostar personnel to site. The order must be amendable as actual work time and expenses may vary.

C. Cryostar must be notified two weeks in advance of any planned service intervention. The site intervention request form must be filled prior to any intervention.

3. BILLABLE CHARGES

A. Time worked by the Cryostar representative shall be billed in accordance with the Rates and Rate Definition set forth above.

B. Standby Time – Any time the Cryostar representative is available to work, Monday through Sunday up to a maximum 8 hours per day, will be regarded as time actually worked, even though his services are not actually utilized. Standby Time will be billed at the Standard Rate. It should be noted that Standby time is defined as time during which Cryostar is available for work but is not working because of circumstances beyond the control of Cryostar, such as but not limited to loss of communication, work permit preparation or by directions of the Client (pressurization, mechanical works,...).

C. Travel Time – Time spent by the Cryostar representative in transit to and from the site or in relation to travel preparations shall be billed per the Standard Rate.

D. Cancellation or postponement of services previously arranged, without a two (2) business day prior notification, will be subject to a cancellation fee plus any expenses incurred at cost + 10%. Postponement will be invoiced at 75% of 8 hours per day unless Cryostar is aware 15 days in advance.

4. WORKING CONDITIONS (site intervention)

The Client shall maintain safe working conditions at the work site.

The Client shall timely advise Cryostar in writing of all health, safety, security and environmental requirements procedures and instructions applicable at the work site. Without limiting the Client's responsibilities under this Clause 4, Cryostar has the right, but not the obligation to, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the work site.

For any Services performed when the temperature is above 35°C, a break every 2 hours must be respected with access to drinks as well as an air conditioned room. For any Services performed when the temperature is below -10°C a break every 2 hours must be respected with access to warm drinks as well as a heated room.

Cryostar reserves the right, at its sole and absolute discretion, and without any liability whatsoever, to remove from the job site any of its service representatives or workers which have been assigned to the performance of the Services, when:

- i) The Client fails to comply with its obligations set forth in this Article 4;
- ii) The Client fails to comply with the applicable laws related to health, safety and environment, including but not limited to the laws and regulations on occupational health and safety being applicable and enforceable in the location where the Works are performed; and/or
- iii) The health and security conditions are likely to put Cryostar's personnel at risk,
- iv) The physical integrity and/or safety of the workers assigned by Cryostar to perform the Services is endangered by circumstances, which are not attributable to Cryostar's acts, omissions, fault or negligence, and/or,

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The agreed schedule for the performance of the Services shall therefore be extended accordingly.

Considering the social and political situation in the country of work site and the potential threats on the health and security of persons, Cryostar may, in addition to other rights or remedies available to it, decide not to delegate or to immediately evacuate some or all of its personnel, temporary workers or other sub-contractors, from the work site, repatriate any of its employees, temporary workers or other sub-contractors for services to be performed at the work site, or otherwise in the country of Site, and/or remotely perform the Services. Any such occurrence shall be considered an excusable event without any liability to Cryostar. The Client shall reasonably assist Cryostar in any such evacuation and/or repatriation.

The Client represents and warrants to Cryostar and agrees to ensure that the work site, surrounding environment, all equipment provided or otherwise made available to Cryostar's representative in connection with the Services rendered in connection with the Order and all products and equipment serviced or otherwise worked on by Cryostar's representatives in connection with the Order, shall at all times be free of Hazardous Materials and/or contaminated substances, elements or waste of any kind that are restricted by applicable laws or regulations and hazardous to the health or safety of Cryostar's representatives. In the event that the Client is in breach of any such representation, warranty or covenant, Cryostar may immediately cease performance under the Order and the Client shall be liable for the full amount of the fees due under the Order for all services provided through the date of such termination, and any additional costs incurred by Cryostar and arising directly or indirectly from such suspension of performance. The foregoing remains without prejudice to any claims for death, disease or injury of any Cryostar's personnel due to exposure to Hazardous Materials and/or contaminated substances, elements or waste of any kind.

5. TRAVEL EXPENSES

A. Airfare shall be Coach or Economy class for all domestic and international daytime travel less than five (5) hours. Required overnight travel and flights in excess of five (5) hours shall be booked in Business class or equivalent.

B. An equitable division of travel time and expenses will be made when the Cryostar representative goes from one assignment to another before returning to his headquarters.

C. Assignments will not exceed sixty (60) days of service. Rotation of personnel will be at Client's expense. Expenses include air, railroad, taxi, automobile, and related cost which may include gas, tolls, or other expenses incurred.

6. WARRANTY (Intervention site)

A. Warranty terms for the Goods will be strictly adhered to (refer to GSC or agreed sale contract terms). The Services performed by Cryostar on the Goods shall not amend or nullify the warranty already granted by Cryostar to the Client on the said Goods in accordance with the Goods' sales contract.

B. Determination of warranty claim validity will be done by Cryostar management and not by the representative. Any decision made by the representative will not be binding upon Cryostar.

C. Labour associated with Services shall be subject to a 90 days' warranty, starting from the date of achievement of the Services by Cryostar. In no event shall Cryostar be liable for indirect, special, incidental or consequential damages.

Cryostar's service rate will apply for waiting time & travel time to attain the location of the Goods. Travel expenses to and from the location of the Goods shall be invoiced.

D. Labour associated with Services performed in house (Cryostar's premises, or any other places deemed relevant to Cryostar) shall be subject to a 180 days' warranty, starting from the date of achievement of the Services by Cryostar.

E. All other warranty terms and conditions shall be as per the GSC (as defined herein below).

F. CRYOSTAR DOES NOT MAKE ANY OTHER EXPRESS OR IMPLIED WARRANTY REGARDING THE SERVICES. THE REMEDIES OF THE CLIENT ARE EXCLUSIVE AND IN LIEU OF ANY ADDITIONAL WARRANTIES, GUARANTEES OR REPRESENTATIONS AVAILABLE AT LAW OR IN EQUITY. CRYOSTAR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES FOR THE GOODS, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.

7. TAXES

Prices are NET OF ALL TAXES. All prices quoted in the offer and submitted by Cryostar are net and exclude taxes, duties and similar assessments which are payable in addition as applicable. Cryostar shall bear and promptly pay all taxes including income/corporate taxes, duties, customs duties including surcharges, fees whatsoever arising now or in the future out of or in connection with the Contract outside the country of Site and/or of Client.

Client shall bear and promptly pay all taxes including income/corporate taxes, duties, customs duties including surcharges, fees (including stamp duty levied on the signature of the Contract), bank charges whatsoever, arising now or in the future out of or in connection with the Contract inside the country of Site and/or of Client.

If, notwithstanding the foregoing, any such taxes including sales, value added, income/corporate, withholding taxes, duties, customs duties including surcharges, fees (including stamp duty levied on the signature of the Contract), bank charges whatsoever will be imposed on Cryostar and/or Cryostar's personnel, Client shall hold Cryostar and/or Cryostar's personnel indemnified and harmless against any such claims and shall pay any such taxes including income/corporate taxes, duties, customs duties including surcharges, fees (including stamp duty levied on the signature of the Contract), bank charges whatsoever in the name and on behalf of Cryostar and/or Cryostar's personnel to the respective organizations and authorities, or, if paid by Cryostar, Client shall reimburse Cryostar such sums.

8. PAYMENT - INVOICE

Cryostar offers no discount periods and unless otherwise agreed, payment shall be made by bank remittance in the currency and to the bank account set forth in the invoice within thirty (30) days net after the invoice date, except where advance payment has been agreed upon between Client and Cryostar.

Notwithstanding anything to the contrary, Invoices will be issued for each monthly segment of services (or each mobilization).

Payment shall be made in full without any set off, counterclaim or deduction

Failure of the Client's representative to sign time sheets of Cryostar's representative shall not preclude payment for services rendered.

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9. FORCE MAJEURE

As per the GSC (as defined below).

In case of force majeure Cryostar reserves the right to postpone the performance of the order, to refuse its terms or to repatriate the technician. The same terms apply for sensitive area and for countries under embargo. If the Services cannot be started as agreed due to reasons attributable to the Client or is interrupted by Force Majeure or for other reasons not attributable to Cryostar, the costs for maintaining personnel at or near the work site (including, without limitation, wages and lodging) shall be borne by the Client. All expenses in relation to such withdrawal and/or subsequent return shall be borne by the Client.

10. SOFTWARE PROVISION

If software material is provided under the Order, Client is granted a non-exclusive, royalty free licence only for Client's use of Cryostar's software provided with Cryostar's system. Under this licence Client may : (a) Use Cryostar's software with Cryostar's system provided; (b) Copy Cryostar's software into any machine readable or printed form for back up in support of Client's use of Cryostar's software on Cryostar's system provided; (c) Create one additional copy of the software for archival purposes only.

11. INSURANCE

Client shall at its own expense take out and maintain in effect an adequate Erection All Risk (EAR) insurance, meeting at least best international terms and conditions with a financially strong and reputable insurance company, covering physical loss or damage to the Goods at the Site, occurring prior to acceptance of the Goods, followed by an Extended Maintenance Coverage insuring also activities of Cryostar, or its subcontractors or sub-suppliers, while they are at the Site for the purpose of complying with its obligations under the Order. Such insurance policy shall be primary and shall name Cryostar, its subcontractors, sub suppliers and their personnel, as well as all parties involved as additional insureds and all insurer's rights of subrogation against such additional insureds and their insurer for losses or claims arising out of the performance of the Order shall be waived under such policy. Any claim which might be put forward against Cryostar and/or its sub-contractors and/or its sub-suppliers and/or their personnel shall be covered by this insurance, and their liability shall not exceed the coverage of this insurance. The deductible of such EAR insurance shall be set not higher than 50.000,00 Euros or equivalent per occurrence and if a loss or damage has been caused by Cryostar, the liability of Cryostar shall be limited hereto.

IMPORTANT NOTICE:

THESE TERMS AND CONDITIONS CONTAINS PROVISIONS REGARDING INDEMNITIES AND WARRANTIES THAT EXPRESS THE AGREEMENT OF THE PARTIES CONCERNING CLAIMS ARISING OUT OF THESE TERMS AND CONDITIONS

It is hereby expressly agreed and understood by both Parties that the General Sales Conditions of Cryostar (the "GSC") (which can be found at the following Internet link: <http://www.cryostar.com/gsc> or upon written request to Cryostar) shall apply to the work performed by Cryostar under the Order on a *mutatis mutandis, servandis servatis* basis, being ascertained that the stipulations vested in these GSC shall be construed as complementary provisions to these Service Terms

& Conditions (the "STC"), without causing any prejudice, contradictions or conflicts to the present conditions.

Should a discrepancy, conflict, or contradiction be created between the GSC and the STC, the STC shall take precedence over the GTC.

The Client hereby declares having fully accepted all conditions, and having been in a position to review the STC and the GTC (including the articles related to embargo and denied parties), with the assistance of a legal counsel if needed.

I have read and agree with the terms and conditions listed above

Client Signature

_____ Date _____

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Annex A - TERMS AND CONDITIONS FOR REMOTE SERVICES - Specific provisions applicable in case of REMOTE SERVICES

1. SCOPE

These Specific Terms and Conditions for Remote Services apply to the extent Cryostar provides to the Client Remote Services.

Such Remote Services shall be conditioned upon, and subject to these Specific Terms and Conditions, which shall form an integral part of any order, agreement, understanding or arrangement therefor.

2. PERFORMANCE OF REMOTE SERVICES

A. Cryostar provides the Remote Services, with respect to the Goods in accordance with the terms and conditions as stipulated hereunder

B. Client shall use its own personnel, to perform the Works and Services in respect of Goods.

C. Client shall cooperate fully and to the extent necessary with Cryostar and provide any assistance to Cryostar to ensure that Cryostar is enabled to provide the Remote Services, and Client will, likewise, require its personnel to cooperate fully and to the extent necessary with Cryostar and designate a representative with whom Cryostar may have direct contact.

D. Client acknowledges that, during the course of providing Remote Services, Cryostar may, at its sole discretion, modify, add or remove any feature of the Services from time to time without prior notice or recommend that the Services/ works shall be changed or supplemented.

E. Cryostar shall be entitled to refuse, cancel or suspend any Remote Services if, in Cryostar's opinion, an on-site intervention is necessary.

3. CLIENT'S ADDITIONAL OBLIGATIONS

A. Client shall comply with all rules, regulations, recommendations, arising out of the performance of Remote Services and provided for by Cryostar.

B. Client shall ensure cooperation and compliance of its employees to all rules, regulations and recommendations provided for by Cryostar.

D. Client's personnel to be provided and teamed with Cryostar's Representatives during Remote Services shall have all required habilitations and certifications to perform the works and shall be professional suitable, qualified experienced and proficient in the English language

E. Cryostar has the right to suspend the performance of the Remote services and its obligations under the Order if it is reasonably clear from the circumstances that Client will not be able to perform its obligations as stated in the Order and these STC. Cryostar shall have the right to require Client to remove forthwith any of Client Personnel who, in the opinion of Cryostar: (1) misconduct themselves; or (2) are incompetent or negligent in the proper performance of their duties; or (3) fail to comply with any of Cryostar's recommendations or persist in any conduct which is contrary to or inconsistent with Cryostar's recommendations.

F. Provision of the Remote Services by Cryostar shall not require any access to the Client's information technology environment and computer systems, and, therefore, Cryostar shall not be liable for, and the Client hereby releases Cryostar from, any claim of unauthorized access to the Client's information technology environment, or for unauthorized access to, or alteration, theft or destruction of the Client's or any third

party's data files, programs, procedures or information through accident, intentional misconduct, or any other method, or for violation of the Client's network security policies and security violation response procedures, network security or security incidents, design or comprehensiveness of any security program or any security services including those provided by other providers or professionals chosen by the Client.

4. WARRANTY (Remote services)

A. Cryostar warrants that the Remote Services shall be carried out in a good, workmanlike manner.

B. Client acknowledges and agrees that the Remote Services are not intended and shall not replace any physical services, intervention, inspections or maintenance of Goods required by applicable law, manual operations, or technical specifications, or recommended by Cryostar regarding use and maintenance recommendations for Goods or as a result of physical inspection.

Therefore, Cryostar is not providing any warranty herein, express or implied, with respect to the Remote Services and hereby expressly disclaims any warranty, express or implied, with respect to these Remote Services.

Cryostar hereby disclaims any liability related to works performed by the Client or its subcontractors, and associated consequences. Cryostar's instructions and advice shall not relieve the Client of responsibility for the technical, proper and efficient management of its installation(s), the Goods and the Works for which Cryostar provides assistance and Cryostar shall not be liable.

C. Notwithstanding the foregoing and notwithstanding any provisions in GSC with regard to Cryostar's limitation of liability, Cryostar shall only be responsible for deficiencies related to Remote Services, if it can be proved that such deficiencies are solely and directly attributable to the fact that Cryostar's personnel has acted with Gross Negligence in the course of the Remote Services. Gross Negligence shall in respect of these Conditions be construed as a conscious and voluntary act or omission of a party in reckless disregard of a legal duty which fundamentally, seriously and substantially deviates from a diligent course of action and which is in reckless disregard of or indifference to the direct and harmful consequences to the other party ("Gross Negligence").

E. Any data relating to the Goods and/or its usage remotely collected and/or processed by Cryostar, and/or any other data provided by Cryostar to the Client shall be created by Cryostar and provided to the Client on "as is" and "as available" basis and without warranties of any kind, express or implied, made in relation to the correctness, accuracy or reliability of such Goods.

F. This warranty clause represents the sole and exclusive warranty given by Cryostar to the Client with respect to the Remote Services, and is in lieu of and excludes all other warranties, express or implied, arising by operation of law or otherwise, including, but not limited to, any implied warranties of merchantability or fitness for particular purpose.

5. INTELLECTUAL PROPERTY

Nothing contained in these Terms and Conditions or any other agreement or understanding between the Parties shall be construed as transferring from one Party to the other any Intellectual Property Rights.

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The Intellectual Property Rights of the Supplier with respect to the Remote Services shall remain the exclusive property of Cryostar.

Client Signature

_____ Date _____