

# **SCHEME OF ARRANGEMENT FOR DEMERGER**

**UNDER SECTION 228 READ WITH SECTION 229  
OF THE COMPANIES ACT, 1994**

**BETWEEN**

**Linde Bangladesh Limited**

**("Transferor Company")**

**AND**

**Linde Industries Pvt. Ltd.**

**("Resulting Company")**

**UNDER SECTION 228 READ WITH SECTION 229 OF THE COMPANIES ACT, 1994 AND THEIR  
RESPECTIVE**

**SHAREHOLDERS AND CREDITORS IN RESPECT OF DEMERGED UNDERTAKING OF  
LINDE BANGLADESH LIMITED**

## **PART I - GENERAL**

- A. Linde Bangladesh Limited ("LBL") is a public company limited by shares whose shares are being traded in the Dhaka Stock Exchange Limited and Chittagong Stock Exchange Limited and presently engaged in the businesses of, inter alia, manufacturing, sale, distribution and marketing of, among others, gaseous products like Carbon-di-oxide, Oxygen etc. as well hardgoods items e.g. various brands of welding electrodes, arc welding machines, and associated scraps.
- B. The present Scheme of Arrangement for demerger (hereinafter referred to as "this Scheme") would involve transfer of, on a going concern basis, the Demerged Undertaking into Linde Industries Pvt. Ltd. ("LIPL", a subsidiary of LBL), with LBL focusing on the Remaining Business (as defined later in this Scheme) and in consideration thereof, issue of equity shares by LIPL to LBL on a proportionate basis, pursuant to Section 228, 229 and other relevant provisions of the Companies Act, 1994. This restructuring is intended to provide greater business focus both in LBL and LIPL.
- C. The Board of Directors of both the Transferor Company and the Resulting Company are of the opinion that the demerger would result in benefit to the shareholders, creditors, employees of both the companies.

### **1. DEFINITIONS**

In this Scheme, unless repugnant to the meaning or context thereof, the following expressions shall have the following meaning:

- (a) "Act" means the Companies Act, 1994 or any statutory modification or re-enactment thereof.
- (b) "Appointed Date" means the 1<sup>st</sup> of January, 2023 or such other date as may be fixed by the High Court Division of the Supreme Court of Bangladesh.
- (c) "Demerged Undertaking" means the division of LBL largely comprising, inter alia, of the business activity including, but not limited to of manufacturing, importing,

selling, marketing and distribution of various brands of welding electrodes (example, VORTIC MARINE, FERROSPEED, BOLARC 1400, LBL ARC BA, BOLWELD, BOLCRAFT, BOLMARINE, FERROCRAFT, STAINCRAFT etc.), associated scraps and trading of imported arc welding machines ("Hardgoods Business") being carried on by LBL on a going concern basis, as on the Appointed Date and shall include (without limitation):

- (i) all assets wherever situated, whether movable or immovable, leasehold or freehold, tangible or intangible, including all plant and machinery, buildings, offices, roads and culverts, tubewell installations, capital work-in-progress, vehicles, furniture, fixtures, office equipment, computer installations, electricals, appliances, accessories, investments, stocks pertaining to or relatable to the Demerged Undertaking including assets (both current and non-current);
- (ii) all liabilities present and future (including the liabilities allocable as per Clause 4.8 of this Scheme) and the specific contingent liabilities pertaining to or relatable to the Demerged Undertaking including liabilities (both current and non-current);
- (iii) all rights and licences including Fire License, as detailed in Schedule B to the Scheme, for the Hardgoods Business, all assignments and grants thereof, all regulatory permits, Registrations including VAT Registration Certificate, quota rights, import quotas, rights (including rights under any agreement, contracts, applications, letters of intent, or any other contracts), subsidies, grants, tax credits, incentives or schemes of governments, quality certifications and approvals, product registrations (both Bangladeshi and foreign), regulatory approvals, entitlements, industrial and other licenses, municipal permissions, goodwill, approvals, consents, tenancies, if any in relation to the office and/or residential properties for the employees, investments and/or interest (whether vested, contingent or otherwise) in projects undertaken by the Demerged Undertaking, either solely or jointly with other parties, cash balances, bank balances, bank accounts, deposits, advances, recoverables, receivables, easements, advantages, financial assets, hire purchase and lease arrangements, the benefits of bank guarantees issued by Transferor Company in relation to the Demerged Undertaking, funds belonging to or proposed to be utilised for the Hardgoods Business, privileges, all other claims, rights and benefits (including under any powers of attorney issued by the Transferor Company in relation to the Demerged Undertaking or from or by virtue of any proceeding before a legal, quasi judicial authority or any other statutory authority to which the Transferor Company was a party, in relation to Demerged Undertaking), powers and facilities of every kind, nature and description whatsoever, rights to use and avail of telephones, telexes, facsimile connections and installations, utilities, electricity, water and other services, provisions, funds, benefits of all agreements, contracts and arrangements and all other interests, in connection with or relating to, the Demerged Undertaking;
- (iv) all permanent employees that are determined by the Board of Directors of the Transferor Company, to be substantially engaged in or in relation to the Demerged Undertaking;
- (v) all deposits and balances with Government, Semi-Government, local and other authorities and bodies, customers and other persons, earnest moneys and/ or security deposits paid or received by the Transferor Company, directly or indirectly in connection with or in relation to the Demerged Undertaking;
- (vi) all books, records, files, papers, product specifications and process information, records of standard operating procedures, computer programmes along with their licenses, manuals and back up copies, drawings, other manuals, data catalogues, quotations, sales and advertising materials, lists of present and former customers and suppliers, customer credit information, customer pricing information, and other records whether in physical or electronic form, directly or indirectly in connection with or relating to the Demerged Undertaking;

- (vii) all trademarks, tradenames, patents and domain names, copyrights, industrial designs, trade secrets, product registrations and other intellectual property and all other interests exclusively relating to the goods or services being dealt with by the Demerged Undertaking; but shall not include any assets or liabilities relating to the Remaining Business of the Transferor Company.

It is intended that the definition of Demerged Undertaking under this clause would enable the transfer of all property, assets and liabilities of the Demerged Undertaking to LIPL pursuant to this Scheme.

It is hereby clarified that the Demerged Undertaking shall include without limitation the immovable properties illustratively listed in Schedule A of this Scheme of Arrangement.

- (d) "Effective Date" means the last of the dates on which all the conditions and matters referred to in Clause 16 hereof have been fulfilled. References in this Scheme to the date of "coming into effect of this Scheme" or "effectiveness of the Scheme" shall mean the Effective Date.
- (e) "Remaining Business" means all other businesses, divisions, assets and liabilities of the Transferor Company other than the Demerged Undertaking as defined in sub clause (c).
- (f) "Resulting Company" or "LIPL" means Linde Industries Pvt. Ltd., a company incorporated under the Act and having its registered office at 285 Tejgaon Industrial Area, Dhaka – 1208, Bangladesh.
- (g) "Scheme of Demerger" or "this Scheme" or "the Scheme" means this Scheme of Arrangement in its present form or with any modifications made under Clause 12 of the Scheme.
- (h) "Transferor Company" or "Demerged Company" or "LBL" means Linde Bangladesh Limited, a Company incorporated under the Act and having its Registered Office at 285 Tejgaon Industrial Area, Dhaka – 1208, Bangladesh.

## **2. DATE OF COMING INTO EFFECT**

The Scheme set out herein in its present form or with any modification(s) approved or imposed or directed by the Hon'ble High Court in terms of Clause 14, shall be operative from the Appointed Date. The Appointed Date shall also be considered as the acquisition date as specified in Bangladesh Accounting Standard (BAS). The Scheme shall come into effect from the Effective Date.

## **3. SHARE CAPITAL**

- (a) The authorised, issued, subscribed and paid-up capital of the Transferor Company as on 05.03.2023 was as follows:

Share Capital		As on 05.03.2023 (Amount in Taka)
Authorized Capital 20,000,000 EQUITY SHARES OF Taka. 10/- EACH		200,000,000
ISSUED SUBSCRIBED AND PAID UP CAPITAL		
36,16,902 of Taka 10 each issued against cash consideration		3,61,69,020
9,99,498 ordinary shares of Taka 10 each issued for consideration other than cash		99,94,980
1,06,01,880 bonus shares of Taka 10 each		10,60,18,800
15218280 EQUITY SHARES OF Taka.10/- EACH, FULLY PAID UP		15,21,82,800

(b) The authorized, issued, subscribed and paid-up capital of LIPL as on 09.03.2023 was as follows:

Share Capital		As on 09.03.2023 (Amount in Taka)
Authorized Capital 10,00,00,000 EQUITY SHARES OF Taka. 10/- EACH		100,00,00,000
ISSUED SUBSCRIBED AND PAID UP CAPITAL		10,00,010
1,00,001 EQUITY SHARES OF Taka.10/- EACH, FULLY PAID UP		10,00,010

## PART II – DEMERGED UNDERTAKING

### 4. TRANSFER OF UNDERTAKING

4.1 With effect from the Appointed Date, the Demerged Undertaking shall, pursuant to the provisions contained in Section 228 and 229 of the Act and other provisions of law for the time being in force and without any further act or deed, be demerged from the Transferor Company, and be transferred to and vested in or be deemed to have been transferred to and vested in LIPL on the Appointed Date, on a going concern basis, so as to become as and from the Appointed Date, the undertaking of LIPL.

Provided always that the Scheme shall not operate to enlarge the security for any loan, deposit or facility availed of by the Transferor Companies or the Transferee Company.

4.2 All assets acquired by the Transferor Company after the Appointed Date and prior to the Effective Date for operation of the Demerged Undertaking or pertaining to the Demerged Undertaking, shall also stand transferred to and vested in the Resulting Company upon the coming into effect of the Scheme, at their book values.

- 4.3 In respect of such of the assets of the Demerged Undertaking (mentioned in Clause 4.1 and Clause 4.2 above) as are movable in nature or are otherwise capable of transfer by manual delivery, by paying over or by endorsement and delivery, the same may be so delivered, paid over, or endorsed and delivered, by the Transferor Company and shall become the property of the Resulting Company as an integral part of the Demerged Undertaking transferred to it. Such delivery shall be made on a date mutually agreed upon between the Board of Directors of the Transferor Company and the Board of Directors of the Resulting Company within thirty days from the Effective Date.
- 4.4 In respect of such of the assets of the Demerged Undertaking other than those referred to in Clause 4.3 above, the same shall, as more particularly provided in Clause 4.1 above, without any further act, instrument or deed, be transferred to and vested in and/or be deemed to be transferred to and vested in the Resulting Company on the Appointed Date pursuant to the provisions of Section 228 and 229 of the Act or other provisions of law as applicable.
- 4.5 It is hereby clarified that the rest of the assets and liabilities (other than those forming part of the Demerged Undertaking or otherwise specified in this Scheme), if any, of the Transferor Company shall continue to vest in the Transferor Company.
- 4.6 Upon the coming into effect of the Scheme, as regards the future usage of the trademarks of the Demerged Undertaking, if any, by the Resulting Company, it is clarified that the Transferor Company and the Resulting Company may enter into a licensing arrangement on the basis of such terms and conditions as are mutually agreed.
- 4.7 For the avoidance of doubt and without prejudice to the generality of the foregoing, it is clarified that upon the coming into effect of this Scheme, in accordance with the provisions of relevant laws, consents, permissions, licenses, certificates, authorities (including for the operation of bank accounts), powers of attorneys given by, issued to or executed in favour of the Transferor Company, and the rights and benefits under the same shall, insofar as they relate to the Demerged Undertaking and all quality certifications and approvals, trademarks, patents and domain names, copyrights, industrial designs, trade secrets, product registrations and other intellectual property and all other interests relating to the goods or services being dealt with by the Demerged Undertaking, be transferred to and vested in the Resulting Company. Insofar as the various incentives, sales tax deferral benefits, subsidies (including applications for subsidies), rehabilitation schemes, grants, special status and other benefits or privileges enjoyed, granted by any Government body, local authority or by any other person, or availed of by the Transferor Company are concerned, the same shall, without any further act or deed, in so far as they relate to the Demerged Undertaking, vest with and be available to the Resulting Company on the same terms and conditions.
- 4.8 It is clarified that, upon the coming into effect of the Scheme, the following liabilities and obligations of the Transferor Company as on the Appointed Date and being a part of the Demerged Undertaking shall, without any further act or deed be and shall stand transferred to the Resulting Company, and all rights, powers, duties and obligations in relation thereto shall be and stand transferred to and vested in and shall be exercised by or against the Resulting Company as if it had entered into such loans or incurred such borrowings and the Resulting Company undertakes to meet, discharge and satisfy the same :
- (a) the liabilities which directly and specifically arose out of the activities or operations of the Demerged Undertaking;
  - (b) specific loans or borrowings raised, if any, and incurred and utilized solely for the activities or operations of the Demerged Undertaking;
  - (c) In cases other than those referred to in sub-clauses (a) and (b) above, proportionate part of the general or multipurpose borrowings and liabilities of

the Transferor Company allocable to the Demerged Undertaking in the same proportion in which the value of the assets transferred under this Scheme bears to the total value of the assets of the Transferor Company immediately before the demerger. It is hereby clarified that upon the coming into effect of this Scheme, where any regulatory approvals are required for the purposes of apportioning the general or multipurpose borrowings as provided herein, the same shall be obtained by the Transferor Company and/or the Resulting Company by way of specific applications in this behalf.

- 4.9 Where any of the liabilities and obligations of the Transferor Company as on the Appointed Date deemed to be transferred to the Resulting Company have been discharged by the Transferor Company after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to have been for and on account of the Resulting Company, and all loans raised and used and all liabilities and obligations incurred by the Transferor Company for the operations of the Demerged Undertaking after the Appointed Date and prior to the Effective Date shall be deemed to have been raised, used or incurred for and on behalf of the Resulting Company and to the extent they are outstanding on the Effective Date, shall also without any further act or deed be and stand transferred to the Resulting Company and shall become its liabilities and obligations.
- 4.10 Upon the coming into effect of this Scheme, the balances as on the Appointed Date of general or multipurpose borrowings shall be transferred to and assumed by LIPL in the proportion provided in Clause 4.8 (c) above. Thus, the primary obligation to redeem or repay such transferred liabilities shall be that of the Resulting Company. However, without prejudice to such transfer of proportionate liability amount, where considered necessary for the sake of convenience and towards facilitating single point creditor discharge, the Resulting Company may discharge such liability (including accretions thereto) by making payments on the respective due dates to the Transferor Company, which in turn shall make payments to the respective creditors.
- 4.11 Upon the coming into effect of this Scheme, insofar as the security in respect of the liabilities of the Transferor Company as on the Appointed Date is concerned, it is hereby clarified that the Transferor Company and the Resulting Company shall, subject to confirmation by the concerned creditor(s), mutually agree upon and arrange for such security as may be considered necessary to secure such liabilities, and obtain such consents under law as may be prescribed.
- 4.12 The provisions of this Clause insofar as they relate to the transfer of liabilities to the Resulting Company shall operate notwithstanding anything to the contrary contained in any deed or writing or the terms of sanction or issue or any security document, all of which instruments shall stand modified and/or superseded by the foregoing provisions.
- 4.13 Upon the coming into effect of this Scheme, the Resulting Company alone shall be liable to perform all obligations in respect of the transferred liabilities, which have been transferred to it in terms of this Scheme, and the Demerged Company shall not have any obligations in respect of such Transferred Liabilities.
- 4.14 Any refund or tax credit under the Income Tax Ordinance, 1984 due to the Demerged Company, which is pertaining to the business of the Demerged Undertaking consequent to the assessment made on the Demerged Company, and for which no credit is taken in the accounts as on the date immediately preceding the Appointed Date, shall also belong to and be received or credit availed, as the case may be, by the Resulting Company.
- 4.15 It is hereby clarified that all assets and liabilities of the Demerged Undertaking shall be transferred at values appearing in the books of account of the Transferor Company as on the Appointed Date which are set forth in the closing balance sheet of the Transferor Company as of the close of business hours on the date immediately preceding the Appointed Date.

## **5. CONTRACTS AND DEEDS**

- 5.1 Upon the coming into effect of this Scheme and subject to other provisions of this Scheme, all contracts, deeds, bonds, agreements, schemes, arrangements and other instruments of whatsoever nature in relation to the Demerged Undertaking to which the Transferor Company is a party or to the benefit of which the Transferor Company may be eligible, and which are subsisting or having effect immediately before the Effective Date, shall be in full force and effect on or against or in favour, as the case may be, of the Resulting Company and may be enforced as fully and effectually as if, instead of the Transferor Company, the Resulting Company had been a party or beneficiary or obligee thereto.
- 5.2 Without prejudice to other provisions of the Scheme and notwithstanding that vesting of the Demerged Undertaking with the Resulting Company occurs by virtue of this Scheme itself, the Resulting Company may, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required under any law or if it is otherwise considered necessary or expedient, execute deeds, confirmations or other writings or tripartite arrangements with any party to any contract or arrangement to which the Transferor Company is a party or any writings as may be necessary to be executed merely in order to give formal effect to the above provisions. The Transferor Company will, if necessary, also be a party to the above.

## **6. LEGAL PROCEEDINGS**

- 6.1 Upon the coming into effect of the Scheme, all legal or other proceedings (including before any statutory or quasi-judicial authority or tribunal) by or against the Transferor Company under any statute, whether pending on the Appointed Date, or which may be instituted any time in the future and in each case relating to the Demerged Undertaking shall be continued and enforced by or against the Resulting Company after the Effective Date. In the event that the legal proceedings referred to herein require the Transferor Company and the Resulting Company to be jointly treated as parties thereto, the Resulting Company shall be added as party to such proceedings and shall prosecute or defend such proceedings in co-operation with the Transferor Company. In the event of any difference or difficulty in determining whether any specific legal or other proceeding relates to the Demerged Undertaking or not, the decision of the Board of Directors of the Transferor Company as to whether such proceeding relates to the Demerged Undertaking or not, shall be conclusive evidence of the relationship with Demerged Undertaking.
- 6.2 The Resulting Company undertakes to have all legal proceedings initiated by or against the Transferor Company referred to in Clause 6.1 above transferred into its name and to have the same continued, prosecuted and enforced by or against the Resulting Company to the exclusion of the Transferor Company. Both companies shall make relevant applications in that behalf.
- 6.3 Notwithstanding the above, in case the proceedings referred to in Clause 6.1 above cannot be transferred for any reason, the Transferor Company shall defend the same in accordance with the advice of the Resulting Company and at the cost of the Resulting Company, and the Resulting Company shall reimburse, indemnify and hold harmless the Transferor Company against all liabilities and obligations incurred by the Transferor Company in respect thereof.

## **7. BUSINESS AND PROPERTY IN TRUST FOR RESULTING COMPANY/CONDUCT OF BUSINESS**

- 7.1 With effect from the Appointed Date and up to and including the Effective Date,:

- (a) the Transferor Company shall be deemed to have been carrying on all business and activities relating to the Demerged Undertaking and stand possessed of all assets, rights, title, interest and authorities of the Demerged Undertaking for and on account of, and in trust for, the Resulting Company;
- (b) all profits accruing to the Transferor Company, or losses arising or incurred by it (including the effect of taxes if any thereon), relating to the Demerged Undertaking shall for all purposes, be treated as the profits, taxes or losses, as the case may be, of the Resulting Company;
- (c) the Transferee Company shall be entitled, pending the confirmation of the Scheme, to apply to the Government and all other agencies, departments and authorities concerned as are necessary under any law for such consents, approvals and confirmations which the Transferee Company may require to carry on the business and to give effect to the Scheme; and
- (c) the tax payments (including, without limitation income tax, service tax, goods and service taxes, central sales tax, applicable state value added tax, etc.) whether by way of tax deducted at source, advance tax, all earnest monies, security deposits provisional payments, payment under protest, or otherwise howsoever, by the Transferor Company in relation to the Demerged Undertaking after the Appointed Date, shall be deemed to be paid by the Transferee Company and shall, in all proceedings, be dealt with accordingly;

7.2 The Transferor Company undertakes that it will from the date of approval of the Scheme by the Board of Directors of the Transferor Company and the Resulting Company, or the Appointed Date, whichever is earlier, and up to and including the Effective Date preserve and carry on the Demerged Undertaking with diligence and prudence and agrees that it will not, in any material respect, without the prior written consent of the Resulting Company, alienate, charge or otherwise deal with or dispose of the Demerged Undertaking or any part thereof except in the ordinary course of business or undertake substantial expansion of the Demerged Undertaking, other than expansions which have already been commenced.

7.3 The Resulting Company undertakes to engage such of the permanent employees of the Transferor Company as are determined under Clause 1(c) of this Scheme of Arrangement, as being substantially engaged in the Demerged Undertaking and who are in the employment of the Transferor Company as on the Effective Date, on terms and conditions not less favourable than those on which they are engaged by the Transferor Company, without any interruption of service as a result of the transfer of Demerged Undertaking to the Resulting Company. The Resulting Company undertakes to continue to abide by any agreement/settlement entered into by the Transferor Company in respect of the Demerged Undertaking. The Resulting Company agrees that for the purpose of payment of any compensation, gratuity and other terminal benefits, the past services of such employees with the Transferor Company shall also be taken into account, and agrees and undertakes to pay the same as and when payable.

7.4 Upon the Scheme coming into effect, the accounts of the employees, who are employed by the Transferor Company and who fall under Clause 7.3, above, relating to the Provident Fund, Gratuity Fund and Pension and/or Superannuation Fund and any other Fund, created under the law or otherwise, shall be identified, determined and transferred to the respective funds of the Resulting Company and the employees shall be deemed to have become members of such trusts/funds of the Resulting Company.

7.5 Upon the Scheme coming into effect, until such time that the Resulting Company creates its own funds, the Resulting Company may, subject to necessary approvals and permissions, if any, continue to make contributions pertaining to the employees of the Demerged Undertaking to the relevant funds of the Transferor Company and such contributions pertaining to the employees of the Demerged



Undertaking shall be transferred by the Transferor Company to the funds of the Resulting Company as and when created. The Transferor Company shall take all steps necessary for the transfer of the Provident Fund, Gratuity Fund and Pension and/or Superannuation Fund and any other Fund of employees, pursuant to the Scheme, to the Resulting Company.

7.6 Upon the coming into effect of this Scheme, all consultants, retainers and other persons engaged in the Demerged Undertaking (other than the employees who fall under Clause 7.3 above) on a non-permanent basis, shall become consultants, retainers and persons engaged by the Resulting Company with effect from the Effective Date and, subject to the provisions hereof, on terms and conditions not less favourable than those on which they are engaged by the Demerged Company in relation to the Demerged Undertaking and without any interruption of or break in service as a result of the transfer of the Demerged Undertaking.

7.7 The Transferee Company is expressly permitted to claim refunds/credits, pursuant to the provisions of the Scheme. The Transferee Company shall be entitled to such tax, benefits including but not limited to turnover tax paid under section 16CCC of the Income Tax Ordinance, 1984 (as amended, July 2019) and the right to claim credit therefore including the benefit of brought forward losses or depreciation as admissible under the provision of the Income Tax Ordinance, 1984 to the extent applicable of the Demerged Undertaking of the Transferor Company from taxable profit of the Transferee Company with effect from the Appointed Date. The Transferee Company shall continue to enjoy the tax benefits/concessions/exemptions provided to the Transferor Company in relation to the Demerged Undertaking through notifications/circular issued by the concerned authorities.

#### 8. SAVING OF CONCLUDED TRANSACTIONS

Transfer and vesting of the assets, liabilities and obligations of the Demerged Undertaking and continuance of the proceedings by or against the Resulting Company shall not in any manner affect any transaction or proceedings already completed by the Transferor Company (in respect of the Demerged Undertaking) on or before the Appointed Date to the end and intent that the Resulting Company accepts all such acts, deeds and things done and executed by and/or on behalf of the Transferor Company as acts, deeds and things done and executed by and on behalf of the Resulting Company.

### PART III – REORGANIZATION OF SHARE CAPITAL

#### 9. ISSUE OF SHARES

9.1 Upon the coming into effect of the Scheme and in consideration of the demerger of the Demerged Undertaking in the Resulting Company pursuant to Part II of the Scheme, the Resulting Company shall, without any further act or deed and without any further payment, issue and allot 1,339,33800 equity shares of Tk. 10 each (hereinafter also referred to as the "New Equity Shares") to the Demerged Company as a consideration of the Demerged Undertaking. The distribution of New Equity Shares shall be as follows:

Sl.	Shareholders	No. of shares
1.	Linde Bangladesh Limited	1,339,33800
Total:		1,339,33800 shares

9.2 The New Equity Shares to be issued and allotted pursuant to Clause 9.1 shall in all respects, rank pari passu with the existing equity shares of the Resulting Company,

save and except in relation to dividends, if any, to which they may be entitled to, as and from the Appointed Date.

- 9.3 The Equity Shares issued and allotted by the Resulting Company in terms of this Scheme shall be subject to the provisions of the Memorandum of Association and Articles of Association of the Resulting Company. The issue and allotment of Equity Shares of Resulting Company in terms of this Scheme shall be deemed to have been carried out as if the procedure laid down under Section 155 of the Companies Act, 1994 and any other applicable provisions of the Act have been complied with.
- 9.4 The Resulting Company shall, if and to the extent required, apply for and obtain any approvals from the concerned regulatory authorities for the issue and allotment by the Resulting Company of New Equity Shares to the members of the Transferor Company.

#### **PART IV – GENERAL TERMS AND CONDITIONS**

#### **10. ACCOUNTING TREATMENT**

##### **10.1 Treatment in the books of the Transferor Company:**

Upon coming into effect of the Scheme, the Demerged Company shall give effect to the following accounting treatment as at the Demerger Appointed Date:

- (i) The book value of all assets and liabilities pertaining to the Demerged Undertaking which cease to be the assets and liabilities of Transferor Company and become part of the Resulting Company. Insofar as the accounts representing common or multipurpose borrowings referred to in Clause 4.8 are concerned, they shall stand reduced by the amounts transferred to Resulting Company in accordance with the provisions of this Scheme.

##### **10.2 Treatment in the books of the Resulting Company:**

Upon coming into effect of the Scheme, the Resulting Company shall give effect to the following accounting treatment as at the Demerger Appointed Date:

- (i) The Resulting Company shall record the assets and liabilities pertaining to the Undertaking, at the respective books values as appearing in the books of Demerged Company as on Appointed Date. It is clarified that insofar as the amounts of common or multipurpose borrowings referred to in Clause 4.8 and sub-Clause 10.1(i) are concerned, the Resulting Company shall record the same under the same account caption as that used by Demerged Company.
- (ii) The Resulting Company shall credit to its Share Capital Account in its books of account the aggregate face value of the new equity shares issued by it to the Demerged Company pursuant to Clause 9.1 of the Scheme.

- 10.3 It is hereby clarified that pursuant to the provisions of Clause 4, all transactions during the period between the Appointed Date and Effective Date relating to the Demerged Undertaking would be duly reflected in the financial statements of the Resulting Company, upon the Scheme coming into effect.

#### **11. APPLICATIONS TO HIGH COURT/OTHER AUTHORITY**

- 11.1 The Transferor Company and the Resulting Company shall, with all reasonable dispatch, make applications to the High Court under Section 228 and 229 of the

Act, seeking orders for dispensing with or convening, holding and conducting of the meetings of the respective classes of the members and/or creditors of the Transferor Company and the Resulting Company as may be directed by the High Court.

- 11.2 On the Scheme being agreed to by the Board of Directors of the Transferor Company and the Resulting Company and requisite number of members and creditors as directed by the High Court, the Transferor Company and the Resulting Company shall, with all reasonable dispatch, apply to the High Court, for sanctioning the Scheme under Sections 228 and 229 of the Act, and for such other order or orders, as the said High Court may deem fit for carrying this Scheme into effect.

## **12. MODIFICATION OR CLARIFICATION**

- 12.1 The Transferor Company (by its Directors or their committee thereof) and the Resulting Company (by their Directors or their committee thereof) may assent to any modification(s) or amendment(s) in this Scheme which the Court and/or any other authorities may deem fit to direct or impose or which may otherwise be considered necessary or desirable for implementing and/or carrying out the Scheme or which may be considered necessary due to any change in law and the Transferor Company (by its Directors or their committee thereof) and the Resulting Company (by their Directors) be and is hereby authorised to take such steps and do all acts, deeds and things as may be necessary, desirable or proper to give effect to this Scheme and to resolve any doubts, difficulties or questions whether by reason of any orders of the Court or of any directive or orders of any other authorities or otherwise howsoever arising out of, under or by virtue of this Scheme and/or any matters concerning or connected therewith.
- 12.2 Any issue as to whether any asset or liability or incentives/subsidies etc. (more specifically mentioned in Clause 4.7 and Clause 4.8 hereof) pertains to or is relatable to the Demerged Undertaking or not shall be solely decided by the Board of Directors of the Transferor Company, on the basis of evidence that they may deem relevant for the purpose (including the books or records of the Transferor Company).
- 12.3 If any part of this Scheme is found to be unworkable for any reason whatsoever, the same shall not, subject to the decision of the respective Boards of Directors of the Transferor Company and the Resulting Company, affect the adoption or validity or interpretation of the other parts and/or provisions of this Scheme. It is hereby clarified that the Board of Directors of the Transferor Company and the Resultant Company may in their absolute discretion, adopt any part of this Scheme or declare the entire Scheme to be null and void and in that event no rights and liabilities whatsoever shall accrue to or be incurred inter se by the parties or their shareholders or creditors or employees or any other person. In such case each Company shall bear its own cost or bear costs as may be mutually agreed.

## **13. GENERAL TERMS**

- 13.1 It is clarified that all taxes payable by the Transferor Company, relating to the Demerged Undertaking, from the Appointed Date onwards including all or any refunds and claims shall, for all purposes, be treated as the tax liabilities or refunds and claims of the Resulting Company. Accordingly, upon the Scheme becoming effective, the Resulting Company is expressly permitted to revise its VAT returns and other tax returns, and to claim refunds/credits, pursuant to the provisions of this Scheme. Upon the Scheme becoming effective, the Resulting Company is also expressly permitted to revise its income tax returns and to claim refunds, advance tax and withholding tax credits, etc., pursuant to the provisions of this Scheme.
- 13.2 In accordance with the Value Added Tax and Supplementary Duty Act, 2012 and rules framed thereunder, the unutilized credits relating to excise duties paid on

inputs/capital goods lying to the account of the Demerged Undertaking shall be permitted to be transferred to the credit of the Resulting Company, as if all such unutilized credits were lying to the account of the Resulting Company. The Resulting Company shall accordingly be entitled to set off all such unutilized credits against the excise duty payable by it.

13.3 Without prejudice to the other provisions of this Scheme and notwithstanding the fact that the vesting of the Demerged Undertaking occurs by virtue of this Scheme itself, the Demerged Company and Resulting Company may at any time after the coming into effect of the Scheme, in accordance with the provisions hereof, if so required under any law or otherwise, take such actions and execute such deeds (including deeds of adherence), confirmations or other writings or tripartite arrangements with any party to any contract or arrangement to which the Demerged Company is a party or any writings as may be necessary in order to give formal effect to the provisions of this Scheme, including to ensure that such assets and properties which comprise a part of the Demerged Undertaking but which are not specifically enumerated in the Schedules hereto are transferred to and shall vest in the Resulting Company. The Demerged Company will, if necessary, also be a party to the above. The Resulting Company shall, under the provisions of this Scheme, be deemed to be authorized to execute any such writings on behalf of the Demerged Company and to carry out or perform all such formalities or compliances referred to above on the part of the Demerged Company to be carried out or performed.

13.4 If any assets (or estate, claims, rights, title, interest in or authorities relating to such assets) or any contracts, deeds, bonds, arrangements, schemes, arrangements or other instruments of whatsoever nature in relation to the Demerged Undertaking which the Demerged Company owns or to which the Demerged Company is a party to, cannot be transferred to the Resulting Company for any reason whatsoever, the Demerged Company shall hold such assets, contracts, deeds, bonds, agreements, schemes, arrangements or other instruments of whatsoever nature in trust for the benefit of the Resulting Company, insofar as it is permissible so to do, till such time as the transfer is effected.

#### **14. CONDITIONALITY OF SCHEME**

The Scheme is conditional upon and subject to :

- (a) the Scheme being agreed to by the respective requisite majorities of the shareholders and creditors (where applicable) of the Transferor Company and the Resulting Company as required under the Act and the requisite sanction and orders of the High Court being obtained;
- (b) such other sanctions and approvals including sanctions and approvals including sanctions of any governmental or regulatory authority, creditor, lessor or contracting party as may be required by law or contract in respect of the scheme being obtained;
- (c) each of the Transferor Company and Resulting Company having satisfied their completion date obligations to the extent required, which includes the issue of the New Equity Shares, and other such administrative and mechanical tasks necessary to effect the transfer of the Demerged Undertaking as may be agreed separately by the parties; and
- (d) the certified copies of the above orders of the High Court or of such other authority having jurisdiction under law being filed with the Registrar of the Joint Stock Companies and Firms, Dhaka;
- (e) In the event, after obtaining the approval of the Scheme from the High Court Division, the board of either Linde Bangladesh Limited or Linde Industries Pvt. Limited is of the opinion that implementing the Scheme is no longer viable then the concern board reserves the right not to proceed with the Scheme.

**15. COSTS, CHARGES AND EXPENSES**

All past, present and future costs, charges, levies, duties, and expenses (save and except stamp duty payable pursuant to transfer of Demerged Undertaking, if any, which shall be borne by the Resulting Company) in relation to or in connection with or incidental to the Scheme or the implementation thereof shall be borne by the Transferor Company and all of the above costs (including stamp duty) shall be treated as costs relating to the demerger.

**16. EFFECT OF NON-APPROVALS**

In the event of this Scheme failing to take effect finally by 31.12.2023 or by such later date as may be agreed upon by the respective Boards of Directors of the Transferor Company and the Resulting Company, this Scheme shall become null and void and in that event no rights and liabilities whatsoever shall accrue to or be incurred inter se by the parties or their shareholders or creditors or employees or any other person. In such case each Company shall bear its own cost or as may be mutually agreed.

### **SCHEDULE A**

**Illustrative descriptive list of the Demerged Undertaking(s) (Immovable Assets) of the Transferor Company including any other title, interest or right in such assets, of the Transferor Company**

**436 Decimals of land under the following deed in Mouza - Lobonchora under sub-registrar office: Khulna Sadar, Thana: Khulna Sadar, District - Khulna:**

Sl	Deed No.& Date	Mouza	CS/SA Dag No.	DP Khatian and Dag No.	Purchased Land (Decimal)
1	1183 dated 03.06.2005 registered on 07.06.2005	Lobonchora	197, 198, 199, 200, 201, 202, 203, 204, 303, 304, 306, 307, 308 and 316	JL No.6 DP Khatian No. 15. Dag No. 2220	436
			...		

**SCHEDULE B**  
**LIST OF LICENSE TO BE TRANSFERRED TO THE RESULTING COMPANY**

**Details of Licence :-**

Location	Authorized Body	License Name	License No
Rupganj	Fire Service & Civil Defense	Fire License_Electrode	8735/97