

# Terms and Conditions of Purchase Bilfinger Industrietechnik Salzburg GmbH – Austria



## BILFINGER

Version March 2021

### 1. Scope of Application

(1) The Client in the following Terms and Conditions of Purchase is Bilfinger Industrietechnik Salzburg GmbH.

(2) The Terms and Conditions of Purchase apply to all purchase agreements and contracts for work and labour concluded between the parties. They also apply where the Contractor is required to manufacture or produce the contractual object.

(3) Insofar as the parties have not expressly agreed in writing to conditions of purchase or supply of the Contractor, the present Terms and Conditions of Purchase apply exclusively to any purchase agreements or contracts for work and labour between the Client and the Contractor.

(4) The order date is the date that the order is sent.

(5) The order is to be confirmed or rejected in writing by the Contractor within seven calendar days, calculated from the order date. Electronic confirmation is sufficient. If confirmation by the Contractor of the order does not reach the Client within this period, an agreement with the content of the order is concluded. If the order has not been accepted with an order confirmation that accepts the order in full, the Client is entitled to withdraw from the order without indicating any reason for doing so and without the Contractor being entitled to any claims for any reason. The withdrawal is timely if it is sent before receipt of the notice of acceptance. Deviations from the order must be clearly indicated by the Contractor and require express written or electronic approval by the Client to be effective. The acceptance of goods without reservation does not constitute such approval.

### 2. Conclusion of the Agreement

(1) The statements by which the parties declare conclusion of the purchase agreement are to be made in writing. The written form requirement is also deemed met if the declarations are transmitted in electronic form or by fax.

(2) Should the Contractor deviate from the order or specifications of the Client, then this is to be communicated separately in writing in a timely manner.

(3) Any quotations prepared by the Contractor will be free of charge for the Client. In a quotation, the Contractor is to adhere to the specifications and wording of the Client's enquiry. In the event of any deviations, the Contractor must communicate this expressly and separately.

### 3. Prices

(1) The agreed prices are net fixed prices including transport packaging for requested deliveries according to Incoterms 2010® EXW or FCA "Place of dispatch". For requested transactions in accordance with Incoterms 2010® CPT, CIF, DAT or DAP "Reception point", the transport costs must be included in addition to the net fixed prices including transport packaging. Unless otherwise agreed in writing, no further costs will be reimbursed.

(2) If the Contractor should reduce its prices by general declaration following the conclusion of the agreement, the prices valid on the day of delivery also apply to such agreement.

(3) The price includes the costs of documentation, technical inspection, painting, corrosion protection, labelling, lettering, etc. For overseas deliveries the services of the Contractor include export customs (customs handling with own papers as well as payment of any associated costs and duties).

### 4. Withdrawal

(1) In the case of a breach of agreement by the Contractor, the Client may withdraw from the agreement in whole or in part after a reasonable grace period. Such breaches of agreement include, in particular, delays in intermediate or final deadlines, unauthorised

subcontracting, or other defects in performance that jeopardise the ability of the Client to fulfil an agreement with their contractual partners.

(2) In such a case the Client is entitled to perform the omitted or unsatisfactory delivery or service themselves or have it performed by a third party at the expense of the Contractor (substitute performance). Any resulting costs can either be invoiced immediately by the Client, with an agreed payment term of 30 calendar days after invoicing, or deducted from the next payments due to the Contractor by the Client.

(3) If exercise of the right to substitute performance requires access to industrial property rights, documentation (such as workshop drawings or calculations) or other information, the Contractor hereby guarantees the Client access to the necessary rights, documentation and information.

(4) The Client has the right to withdraw from the contract in whole or in part at any time, even if the Contractor is not at fault. In such a case, the Contractor is obliged to pay the Contractor the contract price in proportion to the deliveries and services already provided and, furthermore, to reimburse the proven direct and unavoidable costs of deliveries and services in progress or the cancellation of subcontracts. Following a declaration of withdrawal, the Contractor is obliged to make every effort to keep the costs to be reimbursed by the Client as low as possible.

(5) If the Client withdraws from the agreement due to a breach of agreement that is the fault of the Contractor, then the Client and/or the end user have the right to use the deliveries and services performed by the Contractor up until this point. Any costs associated with this usage are at the expense of the Contractor.

### 5. Delivery Time

(1) The agreed delivery dates are binding and are deemed as being "incoming". Handover of the contractual object at the agreed place of performance is decisive for the punctuality of the performance. The Contractor is only entitled to early delivery with written consent of the Client. The Contractor must inform the Client promptly in writing of any delivery delays, including details of the expected delivery date. The rights of the Client concerning delay remain unaffected.

(2) If the Client is in default of acceptance, the Contractor is not entitled to consign the contractual object.

(3) Should the Client be in default of acceptance, the Client is not liable to compensate any additional expenditure incurred as a result of the unsuccessful delivery of the requested object, nor for its storage or maintenance, unless the Client has caused such default intentionally or as a result of gross negligence.

(4) In the event that the Contractor is delayed in performance of its obligations, the Contractor is liable to pay a contractual penalty amounting to 0.2% of the net contract price for each calendar day that elapses, capped at 5% of the net contract price. This penalty will be taken into account by the Client when calculating any larger claims for damages. All other rights of the Client concerning delay remain unaffected.

### 6. Delivery, Shipping, Packaging and Passing of Risk

(1) The Contractor shall inform the Client by e-mail about dispatch of the contractual object as early as possible, at the latest upon successful dispatch. The ready to ship notification and all other correspondence (e.g. dispatch note, shipping documents) must include the delivery date, the ordering authority at the Client, the receiving office, the project designation and number, the order number, and the date of order.

(2) The Contractor shall perform quality control of the purchased item and verify this to the Client in an appropriate manner, at the latest upon delivery. The Client is entitled to supervise the quality control by

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the Contractor after prior notification. The Contractor must grant the Client or its representative access to the production and assembly facilities or storage locations during normal business hours for this purpose.

(3) The Contractor shall package the object of purchase appropriately for transport to the place of receipt. The Contractor shall take back all packaging material. If the Contractor is aware that the object of purchase is subject to special public conditions of carriage and storage in the countries of origin, transit or destination, the Contractor shall ensure that the object of purchase (except for Incoterms 2010® EXW and FCA Place of Dispatch) is duly labelled and transported in accordance with such conditions. The Contractor shall make any necessary declarations in this respect. If the delivery is made to a construction site, the Contractor shall collect the packaging material within a reasonable period of time specified by the Client. Expenses incurred in this respect are included in the contract prices.

(4) The place of performance depends on the agreed Incoterm.

(5) All deliveries require confirmation of receipt from an employee of the Client who is authorised to issue such confirmation. The confirmation of receipt does not constitute any acknowledgement that the purchased item is complete or possesses the contractually specified properties. The inspection carried out by the Client in accordance with Section 377 of the Austrian Corporate Code (UGB) is limited to obvious defects in the purchased item. The Client may give notice of defects within 14 calendar days from discovery.

(6) In the case of third country deliveries, the Contractor shall submit to the Client the following documents, before delivery, for import customs clearance in the recipient country: Package lists, evidence of direct transport (e.g. AWB, B/L or CMR consignment note), customs invoice or commercial invoice, as well as any other documents that may be required for clearing the goods through customs.

(7) The Contractor shall package, label and ship hazardous goods in accordance with the relevant national and international regulations. With regard to delivery of the goods, the Contractor will comply with all of the duties incumbent on suppliers (as defined in Article 3 point 32 of Regulation (EC) No. 1907/2006 (hereinafter referred to as the "REACH Regulation")) under the REACH Regulation. In particular, in all cases described in Article 31 points 1 to 3 of the REACH Regulation, the Contractor will make available to the Client a safety data sheet in accordance with Article 31 of the REACH Regulation in the language of the recipient country.

(8) If a delivery has been agreed that includes installation/servicing, ownership is transferred following proper installation/servicing and handover.

(9) If acceptance has been provided for by law or contractually agreed, risk passes once the Client has accepted the goods. If formal acceptance has been agreed, risk will not pass before successful acceptance by the Client has been confirmed in the record of acceptance. The payment of invoice amounts does not replace formal acceptance.

(10) For deliveries of machines or systems, the Contractor will install and commission them if requested to do so by the Client. If the Contractor provides necessary equipment then any costs incurred in this respect are to be separately itemised and billed; otherwise they are considered to have been included in the quotation. Should the Contractor be required to perform any additional development work in order to fulfil the contract, the Client will bear the corresponding costs only if this has been previously agreed in writing.

(11) Insofar as the Contractor makes available any processing, measurement or testing equipment, or gauges, the costs incurred in this respect are to be separately itemised and billed; otherwise they are considered to have been included in the quotation. Only calibrated measurement and testing equipment, and gauges may be used.

## 7. Export Control, Customs, Origin of Goods and Preferences

(1) The Contractor is obliged to comply with all Austrian and EU regulations as well as, if applicable in the specific case of delivery, US regulations that relate to the import, export or re-export of the goods, products, information, software or technology covered by this agreement. Without the prior consent of the Client, the Contractor is not entitled to deliver or incorporate US goods subject to the EAR (Export Administration Regulation) into deliveries, or to involve US persons.

(2) The Contractor will provide the Client with all information required for export of the goods and will promptly, no later than two weeks after the binding order has been placed, provide the Client with the relevant information free of charge by means of the "Declaration for Export Restrictions" form for all goods supplied under this agreement. The Contractor is also obligated to inform the Client in writing of any changes that occur.

(3) Before shipment, the Contractor will give the Client original supplier declarations with preferential origin status or preference declarations either in invoices or EUR.1 certificates. At a minimum the Contractor will provide a certificate of origin.

(4) The Contractor will indemnify the Client against all damage, financial losses and claims of third parties that arise for the Client due to the Contractor breaching one of the obligations in Clauses (1) to (3), unless the Contractor is not responsible for the breach of obligation.

(5) The Contractor will issue the necessary organisational instructions and take the necessary organisational measures, in particular in the areas of property protection, business partner, personnel and information security, packaging and transport, to ensure security in the supply chain in accordance with the requirements of corresponding, internationally recognised initiatives based on the WCO Safe Framework of Standards (e.g. AEO, C-TPAT). The Contractor will protect deliveries and services to the Client or to third parties designated by the Client against unauthorised access and unauthorised manipulation. The Contractor will only employ reliable staff for such deliveries and services, and will also oblige any subcontractors to similarly take appropriate measures.

(6) If the Contractor culpably breaches the provisions of this Section 7, the Client is entitled, without prejudice to further claims, to terminate or withdraw from the agreement. If it is possible to remedy the breach of obligation then this right may only be exercised after expiry of a reasonable deadline for remedying the breach of obligation.

## 8. Warranty/Guarantee

(1) The Contractor provides a guarantee of the contractually agreed and normally required properties in accordance with the latest state of the art, as well the completeness and suitability of the deliveries and services for a period of 30 months for moving parts and 36 months for non-moving parts. The Contractor also guarantees that deliveries are free from material or legal defects for the duration of this warranty period. The warranty period begins upon acceptance of the overall system by the end user (customer of the Client). In any case, the warranty period ends at the latest 36 months for moving parts and 48 months for non-moving parts after complete fulfilment of the deliveries and services ordered by the Client. Regardless of other rights of the Client or any fault by the Contractor, the Client is entitled to remedy or resolve any identified defects or damage either themselves or through third parties at the expense of the Contractor if the Contractor does not comply within a reasonable period with a request to eliminate the defect.

(2) The obligation of the Client to inspect and give notice of defects with regard to the deliveries and services of the Contractor before commissioning or use is excluded. The warranty or guarantee period restarts in the case of replacement delivery or repair.

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(3) The place of performance for supplementary performance is the location of the contractual object in accordance with its intended purpose. If the contractual object is installed at the location of a third party, the supplementary performance will be carried out in coordination with them and in compliance with their needs.

(4) The Contractor will assign any claims for defects, guarantee or damages against suppliers on account of performance to the Client, which accepts the assignment upon conclusion of the purchase agreement or contract for work and labour. Until further notice, the Contractor is entitled to assert the claims against its suppliers.

### 9. Liability

(1) The Contractor is liable in accordance with the statutory provisions for any damage that the Contractor or its vicarious agents cause during provision of the contractual services. The liability of the Contractor for minor negligence is limited to €2,500,000.00 per claim and year, or the order value, with the higher value being used. The limitation of liability does not apply to personal injuries or cases in which legally mandated, non-negotiable liability provisions apply.

(2) If a third party suffers damage as a result of a defect or fault in the purchased item, the Contractor bears sole liability for the damage insofar as it was not caused by wilful intent or gross negligence by the Client. If the Client is held liable by a third party, the Client may demand that the Contractor release the Client from this liability to the third party.

(3) The Contractor will provide the Client with proof of liability insurance with minimum coverage of €2,500,000.00 per claim and year as blanket coverage for personal injuries and property damage.

(4) The Contractor shall take out transport insurance if it bears the risk of goods transport or must take out transport insurance due to the delivery conditions. The liability amount must be at least 110% of the commercial value of the goods being transported.

(5) In the event that the delivered goods have defects as defined in the Austrian Product Liability Law (PHG) and the Client is therefore held liable, the Contractor must reimburse the Client for all expenses and completely indemnify the Client.

(6) The Contractor is obliged to include a comprehensive but easy to understand instruction manual, to store all required documentation and to examine the product closely. Furthermore, the Contractor is also obliged to upgrade the product without being requested to do so if it becomes aware of potential problems that could give rise to a liability.

### 10. Retention of Title

Ownership of the delivered item passes to the Client upon transfer to the Client or to a third party designated by the Client, unless the parties agree on a different transfer of ownership. Any retention of title, regardless of the form, is excluded.

### 11. Payments

(1) Payments are to be made by bank transfer on the weekly payment date defined by the Client, subject to proper invoicing and after expiry of an assessment period of seven calendar days in addition to the following payment terms selected by the Client:  
(a) 30 calendar days after delivery or partial delivery and receipt of the invoice or partial invoice with a discount of 3%,  
(b) 45 calendar days after delivery or partial delivery and receipt of the invoice or partial invoice with a discount of 2%, or  
(c) within 60 calendar days after delivery or partial delivery and receipt of the invoice or partial invoice without discount.

The timely payment is fulfilled if the payment is made (outgoing) no later than on the following Tuesday (1 payment run per week).

Invoices received between 7 December and 7 January every year are treated as if received on 7 January.

(2) Payments will only be made by transfer to a bank account held in the name of the Contractor, either in the country in which the contractual services were rendered or where the Contractor has its principal place of business.

(3) Each invoice must be separately sent to the e-mail address specified by the Client and must include the order number, the goods or services delivered, and the beneficiary. A signed delivery note or performance record must be included. Invoices with incomplete information or that cannot be reviewed for other reasons will be returned unprocessed at the expense of the Contractor. Return of an invoice suspends the payment terms, which restart once resubmission of the associated invoice is received. Promptness of payment is determined by issue of the transfer order to the bank.

(4) Payment does not imply acknowledgement of the proper delivery or services, and therefore does not cause the Client to waive any rights to fulfilment, warranty, compensation for damages, etc. Payments are not deemed as a relinquishment of claims by the Client.

(5) Claims of the Contractor must be proven by the Contractor and expire after 12 months.

### 12. Assignment/Offsetting/Right of Retention

(1) The Contractor may only assign claims to payment of the purchase price with prior consent of the Client.

(2) The Contractor is only entitled to apply offsetting or rights of retention if the counter-claims are uncontested or have been legally established. Rights of retention may only be exercised within the contractual relationship that the claims of the Client are based on.

### 13. Offsetting for Affiliated Companies

(1) The term "affiliated companies" in this clause refers to affiliated companies as defined in Section 15 et seq. of the Austrian Stock Corporation Act (AktG), as well as, with regard to the Client, companies that use the name component "Bilfinger" in the company name. Upon request, the Client can send the Contractor a list of the companies affiliated with the Client.

(2) The Client is entitled to offset claims of the Contractor arising from or in connection with this agreement (a) against claims of the Client against affiliated companies of the Contractor, (b) against claims of affiliated companies of the Client against the Contractor, and (c) against claims of affiliated companies of the Client against affiliated companies of the Contractor, or to exercise rights of retention in this respect.

(3) The Client is entitled to offset claims of the Contractor against affiliated companies of the Client (a) against claims of the Client or affiliated companies of the Client against the Contractor (b) against claims of the Client or affiliated companies of the Client against affiliated companies of the Contractor.

(4) In the claim configurations outlined in Clauses (2) and (3), affiliated companies of the Client are entitled to the same offsetting or rights of retention as the Client.

### 14. Declarations of the Parties

(1) Any declarations of the Contractor associated with this agreement are to be addressed to the commissioning authority at the Client.

(2) All documents from the Contractor to the Client must include the order number, the commissioning authority at the Client, the place of receipt, the project designation, and the number and date of the order letter.

(3) Changes to the agreement as well as all unilateral legal declarations must be in written form for reasons of proof.

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## 15. Confidentiality and Data Protection

(1) The parties commit to maintain confidentiality about the content of this agreement, in particular with regard to its terms. They also commit

to comply with the applicable regulations regarding data protection. In particular, the parties will not make public comments of a negative nature about one another.

(2) The parties will treat all confidential information that the other party makes available in connection with this agreement as strictly confidential. Confidential information is defined, for the purposes of this provision, as information, documents or data that are considered to be confidential by nature or which are designated as such. This particularly refers to personal data within the meaning of the GDPR. This definition does not extend to information that is publicly accessible or that was already in the other party's possession before its disclosure.

(3) The confidentiality obligation does not apply to the sharing of information with affiliated group companies as defined in Section 15 et seq. of the Austrian Stock Corporation Act (AktG). In particular, information may be shared with affiliated group companies anywhere in the world within the context of supplier or procurement management activities.

(4) In addition, the parties undertake to only grant access to confidential information from the other party to employees, subcontractors and suppliers who have been assigned to perform a service within the scope of this agreement and with whom suitable agreements regarding confidentiality and data protection have been concluded. The aforementioned obligations to maintain confidentiality also apply for a further period of five years after this agreement ends. The confidentiality obligation does not expire with regard to personal data.

(5) If the Contractor acts as a data processor for the Client, an agreement safeguarding contract data processing requirements will be concluded.

(6) The Contractor may not use the business relationship with the Client or the content thereof for advertising purposes without prior agreement by the Client.

## 16. Drawings, Models and Documents

The Contractor may only use drawings, models and documents received from the Client for the purposes of contract negotiation and implementation, and may not make them available to third parties. The Contractor shall return them to the Client immediately upon request, or at the latest once the agreement has ended. They remain the property of the Client, who also retains all other rights thereto.

## 17. Vendor Declaration and Business Conduct

(1) The Contractor is obligated to comply with the Bilfinger Vendor Declaration. The current version of the Vendor Declaration can be viewed on the Bilfinger website (<https://www.bilfinger.com/en/company/responsibility/compliance/>). The Vendor Declaration outlines the minimum standards required. If, however, the Vendor Declaration contravenes local laws, the local laws take precedence. The Client may change the Vendor Declaration if relevant legal, regulatory or institutional requirements, case law or ethical business principles change. The Client will inform the Contractor about any changes or supplements to the Vendor Declaration.

(2) The Contractor acknowledges and agrees that any breach of the provisions of the Vendor Declaration will be deemed to be a material breach of this agreement, giving the Client the right to terminate the agreement at any time and with immediate effect. The Client reserves the right to claim further damages in this respect. The Client is not obligated to compensate any damage that the Contractor suffers due to such a termination.

## 18. Applicable Law/Place of Jurisdiction

(1) This agreement is governed by Austrian law, to the exclusion of national and international referral rules as well as the UN Convention on Contracts for the International Sale of Goods 1980 (CISG).

(2) The exclusive place of jurisdiction for any disputes in connection with a legal business relationship between the Contractor and the Client that is based on these provisions (including any disputes that relate to the validity of the agreement itself) is the court responsible for the headquarters of the Client. However, the Client may instead choose to use the responsible court of law a) at the headquarters of the Contractor, b) at one of their subsidiaries or c) at the place of performance.