



## Purchase Order Terms & Conditions (2 Pages)

**Parties:** Bilfinger Westcon, Inc (the purchaser of the goods or services) will be referred to as "BWI" and the supplier of goods or services under this Purchase Order/Contract will be referred to as "VENDOR". Owner as referenced herein will be the entity for which BWI is performing the services.

### General Terms and Conditions:

**Acceptance:** The Purchase Order/Contract and these General Terms and Conditions (collectively referred to as the "Agreement") are expressly limited to the terms and conditions stated by BWI herein. No purchase orders, confirming orders, or other documentation, written or oral, by VENDOR modifies, alters or changes the express written terms of this Agreement. If any additional or different terms are proposed by VENDOR while accepting this Agreement, including strikeouts of language in this form, such additional or different terms will be considered as a proposal by VENDOR for a modification of this Agreement and will be effective only if expressly accepted in writing by BWI. The return of a signed Agreement by the VENDOR, the shipping of any of the goods or the performance of any of the services, constitutes acceptance by VENDOR under this Agreement.

**Code of Conduct:** Vendor shall comply with the Bilfinger Code of Conduct Policy. If a copy of the policy is desired, please call or e-mail your request to (701) 222-0076 or [procurement@westconindustries.com](mailto:procurement@westconindustries.com).

**Assignments or Subcontracts:** VENDOR shall not assign or subcontract this Agreement in whole or in part without BWI's prior written consent. The term "subcontractor" includes all materialmen, suppliers and sub-subcontractors who have entered into a contract, expressed or implied, with VENDOR to perform a portion of the services or supply the goods under this Agreement.

**Set-Off:** BWI may credit any amount which VENDOR owes to BWI under this Agreement or any other Agreement, or based upon any other claim or right, against any amounts which BWI owes to VENDOR under this Agreement.

**Time of Delivery for Performance:** Time Is Of The Essence. BWI reserve the right to cancel this Agreement or any part of it and reject delivery of goods or performance of services if (1) VENDOR has not delivered the goods or started or completed performance of the services by the time specified in this Agreement (or within a reasonable time if not otherwise specified), or (2) if VENDOR's delivery of goods or performance of services is not in accordance with the Agreement specifications. VENDOR shall be liable to BWI for all loss and damage sustained by BWI as a result of VENDOR's delay or failure, with the exception of delays beyond VENDOR's reasonable control. BWI will not be required to notify VENDOR of VENDOR's default or otherwise put VENDOR in default.

**Entire Agreement; Change Notice:** No change to any of the terms and conditions of this Agreement will be effective unless both VENDOR and BWI has agreed to the change by signing a Change Notice. **Regardless of any previous oral or written communication, the written terms of this Agreement constitute the entire agreement between VENDOR and BWI**

**Compliance:** VENDOR represents and warrants that all goods which VENDOR shall deliver and/or services which VENDOR shall perform under this Agreement shall be accomplished in compliance with all applicable standards, codes, and specifications; federal, state, and local laws; and rules and regulations.

**VENDOR's Indemnity to WESTCON, INC.** VENDOR agrees to defend and indemnify and hold BWI and Owner harmless for any costs, damages (including damage to property or the environment), injuries (including injury to, illness or death of persons), liabilities, claims, settlements, demands, lawsuits, penalties, interest, taxes or liens which BWI may incur, be found liable for or are required to pay (collectively called "Claims") which arise out of or are related to VENDOR or VENDOR's subcontractor's furnishing goods or providing services to BWI under this Agreement. **THIS PROVISION WILL REQUIRE VENDOR TO INDEMNIFY AND DEFEND BWI AND OWNER FOR CLAIMS CAUSED BY BWI OR BWI EMPLOYEES' NEGLIGENCE WHEN SUCH CLAIMS ARISE OUT OF THE JOINT OR CONCURRENT NEGLIGENCE OF (1) VENDOR AND VENDOR'S EMPLOYEES (INCLUDING VENDOR'S SUBCONTRACTORS AND THEIR EMPLOYEES) AND (2) BWI AND BWI EMPLOYEES. HOWEVER VENDOR WILL NOT BE REQUIRED TO INDEMNIFY BWI (1) IF THE CLAIM IS THE RESULT OF BWI OR BWI EMPLOYEES' SOLE NEGLIGENCE, (2) FOR THE PORTION OF ANY CLAIM WHICH IS CAUSED BY BWI OR BWI EMPLOYEES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (3) FOR THE PORTION OF ANY CLAIM WHICH IS CAUSED BY A THIRD PARTY OTHER THAN VENDOR'S EMPLOYEES OR VENDOR'S SUBCONTRACTORS OR THEIR EMPLOYEES.** This indemnity is separate from VENDOR's insurance, and VENDOR shall be responsible even if VENDOR's insurance carrier denies coverage

**Patents, Trade Secrets, Copyrights and Confidential Information** VENDOR agrees to indemnify, hold harmless and defend BWI and any of BWI parents, subsidiaries, or affiliates in any suit, claim or demand alleging infringement of any patent, copyright, and for misappropriation of any confidential information or trade secrets in the United States, in the country of source, and in the country of destination, based upon the performance of the services, or the sale or use of goods supplied under this Agreement. VENDOR agrees to keep confidential and not to disclose to others or to use in any way to BWI's detriment confidential business or technical information that BWI may have discussed in conjunction with the negotiation or performance of this Agreement, or that VENDOR may be exposed to as a result of entering BWI's or Owners property to deliver goods or perform services under this Agreement. Notwithstanding restrictive legends to the contrary, no confidentiality obligations will be imposed on BWI by acceptance of materials supplied by VENDOR.

Title to all plans and specifications and technical data, including but not limited to, drawings, flow diagrams, layout details and specifications, computer programs and their contents furnished to VENDOR and/or VENDOR's subcontractors by BWI or developed by VENDOR and/or VENDOR's subcontractors at BWI's request or direction or as a result of this Agreement will belong to and become BWI property. All Agreements with subcontractors shall contain this requirement. VENDOR shall assign and hereby does assign to BWI all copyrights, trademarks and patents created by VENDOR during performance of the services. VENDOR shall execute any assignments, applications or other instruments that are necessary to carry out such assignment.

Notwithstanding the foregoing paragraph, VENDOR agrees that all copyrightable works that VENDOR creates and have created at BWI's request and direction or as a result of this Agreement (including, but not limited to, documents, computer programs, software, literary works, pictorial works, graphic works, sculptural works, audiovisual works, sound recordings and architectural works) shall be and are "works made for hire" under federal copyright law. VENDOR shall assign to BWI any rights VENDOR may have or obtain in all copyrightable works that VENDOR creates or have created at BWI's request or direction or as a result of this Agreement. VENDOR shall not use any person to create such works for BWI who does not agree in advance, in writing (i) that the works are to be works made for hire under federal copyright law or (ii) to assign to BWI all rights the person may have or obtain in the works. VENDOR shall provide BWI with copies of all such "work for hire" and assignment agreements before any person participates in the creation of any copyrightable work for BWI.

**Audit:** VENDOR agrees to maintain all records relating to the quality, price and cost of and payment for the goods sold or the services performed under this Agreement and allow BWI to inspect, copy and audit those records during normal business hours for a period of up to five (5) years or statutory requirements, whichever is greater, following VENDOR's delivery of the goods or performance of the services.

**Taxes:** VENDOR or VENDOR's subcontractors shall be responsible for sales and use taxes, including federal, state and local sales and use tax, on the purchase of all supplies, tools, parts, rentals, machinery, equipment or services which VENDOR uses or consumes in the manufacture of goods sold or services performed. [If required, this Agreement is a separated contract for purpose of North Dakota sales and use tax and VENDOR agrees that all invoices which VENDOR sends to BWI shall reflect separate charges for labor, equipment, and materials. BWI will be responsible for accruing North Dakota sales and use tax on separately stated charges for materials or equipment which are incorporated into BWI facility and labor, unless such items are exempt from such taxes.] VENDOR agrees to be solely responsible for the payment of all contributions and taxes resulting from the employment of persons performing services under this Agreement.

<b>Governing Law:</b>	THIS AGREEMENT WILL BE INTERPRETED IN ACCORDANCE WITH THE LAWS OF NORTH DAKOTA AND WITH THE DECISIONS OF THE COURTS OF THAT COUNTRY/STATE/PROVINCE. HOWEVER, PRIOR TO AND AFTER FILING ANY LAWSUIT VENDOR AND BWI AGREE TO MAKE A GOOD FAITH EFFORT TO RESOLVE DISPUTES THROUGH SETTLEMENT OR THROUGH USE OF A NEUTRAL THIRD PARTY MEDIATOR. VENDOR AND BWI AGREE THAT ANY LITIGATION INVOLVING THIS AGREEMENT WILL BE BROUGHT IN FEDERAL OR STATE COURTSTS LOCATED IN NORTH DAKOTA AND VENDOR AND BWI WAIVE THE RIGHT TO FILE OR DEFEND AN ACTION ELSEWHERE.
<b>Conflict of Interest:</b>	VENDOR agrees that neither VENDOR nor any of VENDOR's employees, subcontractors and their employees, directors or agents will give to or receive from BWI or BWI's employees or agents, any gifts or entertainment of significant value or any commission, fee or rebate in connection with this Agreement. In addition, neither VENDOR nor any of VENDOR's directors or employees will enter into any business arrangement with any of BWI employees or agents who are not acting as BWI's representative, without giving BWI prior written notification.
<b>Insurance:</b>	VENDOR shall maintain in effect the following types and amounts of insurance with insurance companies satisfactory to BWI: (1) Workers Compensation with Employer's Liability with limits of not less than \$500,000 for each accident; (2) Commercial General Liability insurance, including contractual liability insuring the indemnity agreement set forth in this Agreement and products-completed operations coverage with limits of not less than \$1,000,000 for property damage, bodily injury, sickness or death, in any one occurrence, and (3) Automobile Liability insurance with limits of not less than \$500,000 applicable to property damage, bodily injury, sickness or death in any one occurrence. Each insurance policy maintained by VENDOR for services performed under this Agreement must be endorsed to (1) name BWI, BWI subsidiaries and owners as additional insured except with respect to Workers Compensation and, (2) provide that VENDOR's underwriters and insurance companies will not have any right of subrogation against BWI, BWI subsidiaries, owners, underwriters, and insurance companies. VENDOR shall provide Certificate of Insurance evidencing the above coverage prior to the commencement of services. VENDOR shall notify BWI in writing at least thirty (30) days prior to the cancellation of or any material change in the above insurance coverage. The insurance shall not affect or limit VENDOR's liability to BWI in this Agreement or under law.
<b>Waiver of Mechanic's Liens:</b>	VENDOR shall not file and agrees to waive any right VENDOR may have to file a mechanic's or materialman's lien against BWI or any of BWI facilities (or BWI Owner's facilities) for any labor or material which VENDOR has furnished as part of the performance of VENDOR's obligations services under this Agreement. In the event any such lien is filed by VENDOR or one of VENDOR's subcontractors who has furnished labor or material, VENDOR shall at VENDOR's own expense take steps to promptly remove the lien by bond or otherwise. VENDOR further agrees to indemnify and hold BWI harmless for any loss or damage which BWI may suffer or incur as a result of VENDOR's failure to comply with this provision.
<b>Terms Applicable to Purchase of Goods:</b>	
<b>Delivery:</b>	Title and risk of loss will pass from VENDOR to BWI in accordance with Uniform Commercial Code shipping terms set forth in this Agreement (ex. FOB, CIF etc.). VENDOR warrants that VENDOR has good and clear title to the goods delivered. If the risk of loss passes to BWI at the shipping point and if VENDOR fails to ship in the manner or route directed by BWI, VENDOR agrees to reimburse BWI for any loss, delay or damage which BWI suffer.
<b>Quality</b>	VENDOR warrants that the goods which VENDOR deliver shall be new and of good and merchantable quality and conform to the description stated in this Agreement; and that such goods will be fit for the intended use which BWI has described to VENDOR. VENDOR agrees to promptly repair or replace any defective goods that BWI has notified VENDOR about within one (1) year following delivery. If VENDOR fails to promptly repair or replace the defective goods, VENDOR agrees that BWI will be entitled to repair or replace them. In such case VENDOR agree to reimburse BWI for BWI's cost to repair or replace the defective goods. BWI will be entitled to inspect all goods before, upon or within a reasonable time after delivery. No substitution of any goods shall be made without BWI written approval. BWI reserve the right to reject goods which have been reworked.
<b>Price Warranty:</b>	VENDOR warrants that the prices for the goods sold to BWI under this Agreement are not less favorable than those currently extended to any other customer for the same or like goods in equal or less quantities. In the event VENDOR reduces VENDOR's price for such goods during the term of this Agreement, VENDOR agrees to reduce the prices of the goods accordingly. Unless agreed to in writing by BWI and VENDOR, prices shown on this purchase order are firm and shall not be subject to escalation of any kind.
<b>Terms Applicable to Performance of services:</b>	
<b>Safety:</b>	VENDOR shall perform the services in a safe and prudent manner in accordance with BWI plant manual. VENDOR agrees to comply with such plant rules while performing services at or making deliveries at BWI facility. VENDOR will be solely responsible for notifying and training VENDOR's employees, subcontractors, and agents with respect to BWI plant rules and all applicable laws and regulations. VENDOR's employees, agents and subcontractors (and their employees) shall wear all personal protective equipment required by applicable law, BWI area work permits, or plant rules. If BWI notifies VENDOR of non-compliance with the terms of this provision, VENDOR shall immediately make all reasonable efforts to correct the non-complying condition. If VENDOR fails to do so, BWI have the right to require VENDOR to stop performance of all or any part of the services. VENDOR shall not be entitled to an extension of time to complete performance of the services or to any compensation for additional costs incurred, damages suffered or for the work time lost during the suspension.
<b>Statutory Permits:</b>	VENDOR agrees to obtain and maintain all required federal, state and local permits and licenses required for performance of the services at VENDOR's sole cost and expense.
<b>Performance:</b>	VENDOR acknowledges that they have inspected or have been given the opportunity to inspect the premises upon which VENDOR shall perform the services in order to become familiar with all site conditions. VENDOR agrees to (1) perform all services in a good, workmanlike, efficient and safe manner; (2) supply all necessary labor, materials, tools and equipment, (3) conform to all required governmental and accepted industry standards of engineering, construction and safety, (4) comply with BWI plant rules and (5) perform the services in accordance with the specifications and drawings which BWI has provided to VENDOR or which VENDOR has furnished and BWI have approved. VENDOR agrees that it will be fully responsible to BWI for the errors, acts, and omissions of VENDOR's employees or its subcontractors (and their employees) assisting VENDOR in performing the services, as if such errors, acts, and omissions were committed by VENDOR. VENDOR agree that all supervisory and craft personnel shall have the skills, licenses, and training necessary for performance of the services as required by governmental regulation, industry standards and BWI plant rules.
<b>Independent Contractor:</b>	VENDOR shall be an independent contractor in all respects with regard to the performance of the services. VENDOR, VENDOR's employees or subcontractors performing the services will not be considered for any purpose to be BWI employees, agents or representatives. BWI is interested in the results of the services and will not direct or control the manner or method in which VENDOR performs the services.
<b>Hazardous Material:</b>	VENDOR acknowledges VENDOR's understanding that the performance of the services may involve, or may expose persons performing such services to materials, substances, pollutants or contaminants which could be hazardous to human health and/or the environment ("Hazardous Materials"). VENDOR acknowledges that VENDOR has considerable experience working in and around refineries, chemical, and other industrial facilities and that VENDOR is generally aware of the types of materials and substances used or contained in such facilities, including Hazardous Materials, and the risk which they pose to human health or the environment. BWI have made or will make available to VENDOR for review Material Safety Data Sheets ("MSDS") for those substances and materials which VENDOR's personnel may be exposed to while performing services in BWI's or owner's facility. VENDOR agrees that VENDOR shall ensure that VENDOR's employees and VENDOR's subcontractors familiarize themselves with the information contained in such MSDS.