



**General Terms and Conditions of Purchase (AEB) (2012)**

**1. General, area of application**

- 1.1. The following general terms and conditions of purchase apply for all orders of supplies and services ("services" in the following) by associated companies of Bilfinger Power Systems GmbH (Client) and for contracts in which these general terms and conditions of purchase are referred to.
- 1.2. The Contractor declares its consent to the exclusive application of the Client's general terms and conditions of purchase for the respective order as well as for any subsequent business. If agreements different to those of these general terms and conditions of purchase are made in an order or in a contract, the general terms and conditions of purchase shall apply subordinately and in addition thereto.
- 1.3. The application of different general terms and conditions of the Contractor is hereby rejected.

**2. Conclusion of contract, subsidiary agreements, inadmissible advertising**

- 2.1. The contract is concluded in accordance with the order, unless the Contractor objects to the conclusion of contract in writing within one week following receipt of the order.
- 2.2. Verbal subsidiary agreements require the written confirmation of the Client in order to be effective.
- 2.3. The use of orders for reference and/or advertising purposes is inadmissible, unless the Client consents to this use in writing beforehand.

**3. Drawings, models, tools**

The Client's property rights and/or copyrights and/or other trade mark rights are reserved on all illustrations, drawings, models, samples, calculations, construction plans and other documents, which the Client has provided or paid for with the purpose of order execution; these documents may only be used for order completion work and may not be duplicated and/or made accessible to thirds without the express written agreement of the Client. The documents, any copies made and/or tools provided are to be returned to the Client after the order

is complete without being asked and free of charge. The Contractor also has to impose the obligations above to thirds to which it makes the documents of the Client accessible.

The Contractor commits itself to treating the present contract and the information and documents obtained within the framework of the latter confidentially and to only making them accessible to thirds as far as this is unavoidable for executing the contract. Organs and employees as well as contracting parties of the Contractor are to be committed to the appropriate confidentiality.

The Contractor is liable to the Client for any damage caused by a culpable offence on its part or by thirds to which it has made the documents or the information accessible.

**4. Responsibility of the Contractor**

The Client's agreement to drawings, calculations and other documents does not affect the sole responsibility of the Contractor for its services and/or for risks emanating from them. This also applies for proposals, recommendations and other involvement by the Client.

**5. Inspections**

- 5.1. After prior notification in due time, the Client or its employees and/or thirds designated by it shall have admission to the manufacturing and assembly sites as well as the storehouses of the Contractor and/or its subcontractor (supplier, planning office etc.), in order to examine, among other things, the status of the work, the use of suitable material, the deployment of the necessary specialists and the professional execution of the service ordered.
- 5.2. Such inspections are carried out without any legal effect, for example regarding a possible acceptance or claims for defects of the Client; an inspection shall replace neither an acceptance nor shall it represent one, nor shall it in any way limit the sole responsibility of the Contractor for its services and/or risks emanating from them. In particular, no objection of contributory negligence of the Client can be derived from an inspection.



**General Terms and Conditions of Purchase (AEB) (2012)**

**6. Spare parts**

The Contractor guarantees that, for every order, spare and wearing parts will be available for a period of at least 10 years after the defect liability period has expired.

**7. Transport of dangerous goods, marking of dangerous materials, packaging**

7.1. It is up to the Contractor to examine, before accepting the order, whether the articles and/or their components specified in the order are classified as dangerous goods (e.g. paints, adhesives, chemicals or inflammable, oxidising, potentially explosive, inflammable, poisonous, radioactive or corrosive goods or goods with a tendency towards self-heating) in the country of origin, country of destination and/or all transit countries. In such cases the Contractor has to inform the Client immediately and in detail. It has to send the Client the binding declarations necessary in accordance with legal requirements for their forwarding, correctly filled out and with a legally binding signature, no later than at the time of its written order confirmation.

7.2. The Contractor is obligated to consider the nationally and internationally applicable regulations in each case for the packaging, marking and declaration of dangerous goods. Any different and/or additional national regulations of the respective receiving country are also to be considered if the receiving country was designated in the order.

7.3. The Contractor is responsible for all damage which occurs as a consequence of incorrect data in the binding declarations or because existing regulations were not considered when handling dangerous goods (packaging, forwarding, storage etc.). The Client's obligations arising from the regulations on dangerous substances remain unaffected by this.

**8. Export licence**

The Contractor is obligated to inform the Client in writing and no later than at the time of its order confirmation, whether and to what extent national export licenses are necessary for the order as a whole or in

part or similar legal or official requirements are to be fulfilled or the services are subject to export restrictions.

**9. Prices, terms of payment, delay**

9.1. The contract prices agreed upon are given exclusive of the legal value added tax.

9.2. The prices are given FCA (designated place) in accordance with INCOTERMS 2010.

9.3. Payments are effected after full and proper performance of the contract within 14 days with a deduction of 3% cash discount, within 30 days with a deduction of 2% cash discount or within 60 days net without deduction, calculated from the first working day from receipt of a proper invoice by the Client.

9.4. If the performance of certain services and/or the provision of security has been agreed, the invoiced amount become due and payable not until this requirement has been met. If the Client has provided security to a third because of possible defects of the services of the Contractor, the invoice amount will only become due when the Contractor provides security for the Client at the appropriate amount.

9.5. Any payments on account which may have been agreed do not release the Contractor from its duty to indicate and invoice all services in a specified final invoice.

9.6. After maturity, the Client is only in default of payment following a reminder.

9.7. The Client does not come into default of payment if it erred in good faith regarding the existence of an objection raised against the claims for remuneration of the Contractor or of an asserted right of lien.

9.8. If a delay in payment by the Client is based on negligence, default interest is limited to 5 (five) percentage points above the base rate (§ 247 BGB (Civil Code)), as far as the Contractor cannot prove that a higher damage arose for it as a consequence of the delay.

9.9. Payments by the Client do not mean under any circumstances an acknowledgment of professional and faultless service in the sense of an acceptance.



**General Terms and Conditions of Purchase (AEB) (2012)**

**10. Offsetting, right of lien, company group clearing**

- 10.1. The Client is entitled to offsetting rights and rights of lien to the legal extent.
- 10.2. The Client is also entitled to offsetting rights and rights of lien due to claims it has against enterprises which are affiliated with the Contractor in terms of § 15 AktG (Companies Act).
- 10.3. Disputes regarding the amount of the remuneration to be paid to the Contractor do not entitle the Contractor to discontinue its services wholly or in part, not even temporarily.

**11. Dates, delayed services**

- 11.1. Dates indicated in the order are binding. Premature services and/or partial performance require the written agreement of the Client.
- 11.2. The Contractor is obligated to inform the Client immediately in writing if circumstances arise or become recognisable which show that the dates cannot be kept.
- 11.3. The Client is entitled to demand 0.2% of the contract price, but no more than 5% in total, as a contractual penalty alongside fulfilment for each begun day of a culpably missed deadline in accordance with number 9.1. The asserting of further damage and/or of further claims due to late service (including the right to withdrawal and/or compensation for damages in lieu of the service) is not excluded by this. The right of the Client to demand the contractual penalty lasts until the final invoice / payment even if it did not reserve this right when accepting the service.
- 11.4. Without prejudice to its other and/or further claims, the Client can, in the case of delay following the unsuccessful expiration of an appropriate respite set by it, perform the service not yet provided by the Contractor or have it performed by a third party at the Contractor's expense, if the Contractor finally and irrevocably refuses the service or if there are special circumstances which justify this taking mutual interests into consideration.

In the case of substitute performance, the Contractor will procure all information necessary for this and hand over all documents in its possession to the Client at its own expense.

In this case of any own or third party trade mark rights thereon, it will, at its own expense, provide the Client with the necessary rights of use for the substitute performance to the necessary extent or immediately exempt the Client from claims arising from these third party rights.

By concluding the contract, the Contractor declares its consent to the use of its trade mark rights for the substitute performance by the Client or by thirds instructed by the latter.

**12. Claim assignment**

Claims against the Client may be only be assigned with its prior written agreement. This does not apply for assignments in the context of an extended retention of title. § 354a HGB (Commercial Code) remains unaffected.

**13. Passage of risk**

The Contractor bears the risk in accordance with the delivery conditions agreed upon with it in each case, and if none are agreed upon, until the acceptance.

**14. Documents**

The Contractor is obligated to indicate the order number of the Client as well as the markings agreed upon by contract on all shipping documents and/or delivery notes; otherwise any consequences (e.g. further delays, additional costs) will be at its own expense.

**15. Liability for defects, notice of defects, recourse**

- 15.1. The Contractor guarantees that its services meet the acknowledged rules and the state of the art as well as the standards and regulations (including safety, industrial safety and accident prevention regulations) in the country of the Contractor and in the country of destination, have the agreed properties and warranted characteristics and are otherwise free from defects of title and material defects.



**General Terms and Conditions of Purchase (AEB) (2012)**

15.2. The Client has the right arising from the legal liability for defects including the rights from § 478 BGB (Civil Code) (recourse of the entrepreneur) without restrictions.

The Client is entitled to eliminate the defect himself or have it eliminated by thirds at the expense of the Contractor.

The Client can demand an advance from the Contractor on its necessary expenditure due to this.

15.3 As far as the Client has the right to eliminate defects by himself in accordance with the preceding number 15.2, number 11.4 is applied regarding the obligations of the Contractor.

All costs incurred by defect elimination, in particular for disassembly, assembly, travel, freight, packaging, insurance, customs duties and other public charges, tests and technical acceptances, are to be borne by the Contractor.

15.4 The claims of the Client due to defects prescribe 36 months after the passage of risk. If the service is a building or if it is intended for a building and caused the defectiveness of the latter, the period of prescription is 5 years. Longer legal periods of prescription remain unaffected; §§ 438 paragraph 3, 479 and 634a paragraph 3 BGB (Civil Code) also remain unaffected.

15.5 As far as and as long as services cannot be used as stipulated by contract as a consequence of supplementary performance work by the Contractor, the period of prescription for defects extends by the duration of this supplementary performance work. For services rectified and/or replaced in the context of the liability for defects, the period of prescription starts over when the repair or the substitute service is accepted, although for no longer than five years from the passage of risk, and in the case of building services, for no longer than seven.

**16. Product liability, exemption, insurance cover**

16.1. As far as the Contractor is responsible for a product fault or the injury of legal or official safety regulations, it has to exempt

the Client from any claims for compensation by thirds on the first written request. Moreover, the Client has the right to reimbursement of all expenditure which the Client has in connection with recalls prompted by it for this reason in particular; as far as is possible and reasonable, the Client will inform the Contractor about the nature and extent of recalls beforehand. Further legal claims are reserved.

16.2. The same applies if product faults are down to services by subcontractors (suppliers, planning offices etc.) of the Contractor.

16.3. The Contractor is obligated to keep itself sufficiently insured against product liability and claims for compensation by thirds and to prove this to the Client in writing at any time on request, in particular by written confirmation from the insurer of the Contractor.

**17. Liability for environmental damage**

The Contractor is liable for all damage caused in connection with its own activities or those of its auxiliary persons by violation of the regulations on environmental protection. It has to exempt the Client in this connection from any claims for compensation by thirds on first written request. Moreover, it has to compensate for the damage caused for the Client.

**18. Liability**

18.1 The Contractor is liable within the framework of the legal regulations.

18.2 The Contractor exempts the Client on first written request from all claims for damages which are asserted against the Client in connection with its activity or that of its assistants or vicarious agents.

**19. Force majeure**

In particular natural disasters and war are considered as events of force majeure.

**20. Cancellation/withdrawal**

Without prejudice to its other rights to voluntary cancellation and to cancellation for an important reason, the Client can cancel the contract without giving notice if the Contractor stops its payments or insolvency proceedings or comparable



**General Terms and Conditions of Purchase (AEB) (2012)**

legal proceedings are applied for or such proceedings are initiated or their initiation rejected due to a lack of assets.

**21. Rights of thirds**

The Contractor vouches for the fact that its services do not injure any rights of thirds, in particular trade mark rights and/or copyrights. In case of any third party claims, the Client has to exempt the Contractor from any such claims on first written request. The exemption obligation refers to all expenditure which has inevitably accrued for the Client from and/or in connection with a claim.

**22. Subcontracting**

The Contractor requires the prior written agreement of the Client in order to exercise rights of lien against its subcontractors (suppliers, planning offices etc.).

In order to avoid rights of lien being exercised by the subcontractors of the Contractor, the Client is entitled to make direct payments to subcontractors which, if they concern justified claims of the subcontractor, are considered as payment in lieu of fulfilment with respect to the Contractor.

In each case thirds, in particular subcontractors, which the Contractor uses for the fulfilment of its obligations arising from the order or which it otherwise involves in connection with its services, are vicarious agents of the Contractor.

**23. Partial ineffectiveness**

In the case of individual contractual provisions being ineffective, the effectiveness of the remaining contractual provisions remains unaffected. The contracting parties commit themselves to replacing these ineffective contractual provisions immediately, by way of supplementary arrangement, with an agreement which comes closest to the economic result of the ineffective contractual provision.

**24. Place of fulfilment**

The place of fulfilment for the services of the Contractor is the application site agreed upon, and for payments of the Client it is its registered place of business.

**25. Jurisdiction, applicable law**

25.1 If the Contractor is a merchant, a corporate body under public law or a special fund under public law, the area of jurisdiction for all kinds of proceedings is the registered office of the Client; the Client can also bring action against the Contractor at the general area of jurisdiction of the latter.

25.2 The law of the Federal Republic of Germany applies excluding conflicts of law; the applicability of the UN Convention on Contracts for the International Sale of Goods is excluded.

**26. Code of conduct**

The Client is committed to the principles of ethics, integrity and respect for the law. The Contractor also commits itself to integrity and a law-abiding and ethical conduct which corresponds to the principles of the Global Compact initiative of the United Nations and the code of conduct<sup>1</sup> of Bilfinger SE for subcontractors and suppliers.

---

<sup>1</sup> Annex to these general terms and conditions of purchase