BiLFINGER

General Conditions for Purchase of Software

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Rev.	Date	Description	Author	Checked by

General Conditions for Purchase of Software

1   Definitions

CLIENT means the party purchasing the SOFTWARE, being the legal entity as mentioned in the Purchase Order, as well as his legal successors in title;
VENDOR means the party supplying the SOFTWARE;
SOFTWARE means the delivery of software, all documentation belonging thereto and the implementation thereof where required under the CONTRACT on the computer system of CLIENT, all in accordance with the CONTRACT;
CONTRACT consists of the Purchase Order signed by CLIENT and VENDOR, all listed documents mentioned in the Purchase Order, and any special agreements made between CLIENT and VENDOR.

2   Conflicts

Where conflicts occur between or within the contents of the CONTRACT, codes and/or regulations, the most stringent and/or severe requirements for the VENDOR apply. In case of doubt VENDOR shall inform CLIENT in a timely fashion and CLIENT will thereupon indicate the applicable condition.

3   Laws

a)   VENDOR warrants that all SOFTWARE will comply with all applicable codes, laws and regulations.
b)   VENDOR shall indemnify, exonerate and hold CLIENT free and harmless from and against any liability, or penalty imposed upon CLIENT, resulting from each contravention or alleged contravention of the applicable codes, laws and regulations.
c)   In respect of codes and regulations the parties will review applicability on a case-by-case basis

4   Inclusions

All costs of delivery of the SOFTWARE and/or other requirements for supply as laid down in the CONTRACT and as required by applicable laws are included in the contract price, unless specifically stated otherwise in the CONTRACT. Where installation, implementation and other associated services for the SOFTWARE are required by CLIENT these are specifically identified in the CONTRACT.

5   Changes to CONTRACT

Changes will be settled in accordance with the CONTRACT or – if not mentioned therein – will be agreed upon between CLIENT and VENDOR. No substitution or modification by the VENDOR will be permitted except on specific written authority of CLIENT.

6   Expediting

VENDOR warrants the timely performance of all of its obligations in accordance with the CONTRACT. If VENDOR encounters delays in obtaining materials and deliverables from his sub-suppliers or in receiving information from CLIENT, VENDOR shall immediately advise CLIENT.

7   Tests

a)   Where implementation services have been purchased by the CLIENT, the implementation of the SOFTWARE is completed when VENDOR - in presence of CLIENT - has demonstrated that the implemented SOFTWARE functions are in accordance and comply with the CONTRACT or unless otherwise specified in the CONTRACT, that the SOFTWARE functions substantially in accordance with the documentation supplied with the SOFTWARE. The SOFTWARE is deemed to have been placed in use from the time that the implementation has either been tested successfully according to CLIENT or the CLIENT has made operational use of the SOFTWARE.
b)   If implementation by VENDOR is not part of the work to be performed by VENDOR under the CONTRACT, VENDOR agrees that:

1.   within a reasonable time after the supply of the SOFTWARE, CLIENT can perform tests in order to check whether the SOFTWARE complies with the CONTRACT or unless otherwise specified in the CONTRACT, that the SOFTWARE complies substantially with the documentation supplied with the SOFTWARE;
2.   VENDOR - if CLIENT establishes that such compliance does not exist - shall at his own expense promptly either repair, replace the SOFTWARE to ensure said compliance, after which CLIENT can repeat said tests on the same conditions.;
3.   failure to test by CLIENT and/or any other authority designated by CLIENT, within the Guarantee

period shall not relieve VENDOR of responsibility to ensure that the SOFTWARE complies with the documentation supplied with the SOFTWARE nor be interpreted in any way to imply acceptance thereof by CLIENT.

c) If the implementation by VENDOR is not part of the work to be performed by VENDOR under the CONTRACT, the SOFTWARE is deemed to have been placed in use at the time of supply, unless it should appear within the Guarantee period that the SOFTWARE does not comply with the CONTRACT or unless otherwise specified in the CONTRACT does not comply with the documentation supplied with the SOFTWARE. In that case the SOFTWARE is deemed to have been placed in use at the time that the SOFTWARE as yet complies with the CONTRACT or unless otherwise specified in the CONTRACT complies with the documentation supplied with the SOFTWARE.

8 Guarantees

a. The SOFTWARE, the implementation and possible corrective work shall comply with reasonably expected industry standards. If the SOFTWARE or any part thereof and/or the implementation and/or the possible corrective work is found not to be in accordance with the CONTRACT at any time before or within thirty (30) days from the date the SOFTWARE has been placed in use, VENDOR shall at his own expense immediately take all measures to repair, replace or refund the purchase price of the SOFTWARE.

b. Performance Warranty. VENDOR warrants for a period of thirty (30) calendar days from the date of shipment, or date of completion of the acceptance test, if applicable, that the SOFTWARE shall perform in accordance with the documentation supplied with the particular SOFTWARE. Reference data and Solutionware are provided "as is" and without any warranties whatsoever.

c. Software Media Warranty. VENDOR warrants for a period of thirty (30) calendar days from the date of shipment, or date of completion of the tests required consequent to paragraph 7 above and agreed with VENDOR if applicable, that, under normal use, software delivery media will be free of defects in material and workmanship.

d. Vendor does not warrant that the SOFTWARE will meet CLIENT's requirements, and under no circumstances does Vendor warrant that any Vendor SOFTWARE will operate uninterrupted or error free.

e. VENDOR warrants and represents that it has the right to grant licenses for its SOFTWARE.

The foregoing warranties are void if failure of a warranted item results, directly or indirectly, from an unauthorized modification to a warranted item; an unauthorized attempt to repair a warranted item; or misuse of a warranted item, including without limitation use of warranted item under abnormal operating conditions or without routinely maintaining a warranted item. CLIENTagrees to notify VENDOR promptly of any suspected defects in software delivery media or this Software Product.

If under the law ruled applicable to this agreement a greater warranty is mandated, then vendor warrants the software product to the minimum extent required by said law.

VENDOR's entire liability and CLIENT's exclusive remedy shall be, at CLIENT's sole discretion either
   i.   the repair or replacement of any warranted item which does not meet the respective warranties given above, or
   ii.   a refund of the purchase price of the warranted item

The above warranties are in lieu of all other warranties, express or implied, and represent the full and total obligation and/or liability of VENDOR.

Except as provided herein, Vendor makes no representations or warranties with respect to the SOFTWARE express or implied, including the implied warranties of merchantability and fitness for a particular purpose. If under the law ruled applicable to this agreement any part of the above disclaimer of expressed or implied warranties is invalid, then VENDOR disclaims express or implied warranties to the maximum extent allowed by said law.

9   Loss or damage

Up to the time that the SOFTWARE is placed in use, VENDOR retains the risk of loss of and damage to the SOFTWARE or any part thereof. If loss or damage occurs after this time, CLIENT is entitled against payment of the material cost and in case of damage on submission of the damaged SOFTWARE, to obtain a new copy to be provided by VENDOR.

10   General liability

With regard to the services rendered by VENDOR, his sub-suppliers, agents or employees in respect of the supply, implementation, placing in use, instruction, correction, etc., VENDOR agrees to indemnify CLIENT with respect to all damage and/or injury or death resulting from acts of VENDOR, his sub-suppliers, his agents or employees, while on the premises of CLIENT.
VENDOR indemnifies CLIENT from all claims, suits, actions and proceedings whatsoever, including those on account of damage and/or injury or death on the side of VENDOR, his agents or employees or other persons on account of said acts.

11   Passing of ownership

The ownership of the physical media which contains   SOFTWARE shall at the latest pass to CLIENT at the time of supply. Otherwise the SOFTWARE is a proprietary product of the VENDOR and relevant third parties and is protected by copyright laws and international treaty. Title to this SOFTWARE or any copy, modification, or merged portion of this SOFTWARE shall at all times remain with VENDOR and such third parties. The SOFTWARE is licensed, not sold.

12   Errors in delivery

SOFTWARE delivered or made available in error or SOFTWARE deliverables in excess of the quantity called for in the CONTRACT will be returned at VENDOR's expense and risk.

13   Payment

VENDOR shall submit a separate invoice for each payment due in accordance with the payment conditions stated in the CONTRACT. Invoices will be paid in accordance with the payment terms included in the Purchase Order, or, in addition to or failing such payment terms, within 90 calendar days computed from the date of VENDOR's fulfillment of the specified conditions and the date of receipt of VENDOR's invoice, provided such invoice is properly drawn and accompanied by the required supporting documents. If invoices and/or supporting documents require correction the time of payment will be computed from the date of receipt of the corrected invoice and/or documents.

14   Use of software

VENDOR warrants that the CLIENT is permitted to use the SOFTWARE in accordance with the VENDOR's current Software License Agreement which for the purpose of licensing is hereby incorporated into this CONTRACT by reference hereto.

15   Copies

For back-up purposes CLIENT is permitted to reproduce the SOFTWARE in whole or in part.

16   Escrow

a)   On mutual agreement between the VENDOR and the CLIENT an escrow agreement will be concluded using an escrow party to be designated by VENDOR with regard to SOFTWARE, which is placed at CLIENT's disposal and of which the intellectual (property) rights are not CLIENT's. The VENDOR has standing escrow agreements   and all costs related to extending such escrow agreements for the benefit of the CLIENT shall be for CLIENT's account.

17   Developments

Providing CLIENT has entered into a Software Maintenance Agreement with VENDOR, VENDOR shall promptly inform CLIENT of any new software development and immediately offer to CLIENT updated, enhanced and completely new versions of the SOFTWARE, for a price as stated in the CONTRACT, or such other price to be mutually agreed upon. Use of the original version of the SOFTWARE remains

permitted.

18   Assignment

Neither VENDOR nor CLIENT shall assign any of its rights or delegate any of its obligations under this CONTRACT without the prior written consent of the other, provided that such consent shall not be unreasonably withheld, except that VENDOR may assign its rights and obligations under this CONTRACT without the approval of the CLIENT to an entity which acquires all or substantially all of the assets of the VENDOR or to any subsidiary, affiliate or successor in a merger or acquisition of the VENDOR

19   Rights of third parties

a)   In the event of any proceeding (suit, claim, or action) against CLIENT, its Affiliates and Approved Contractors arising from allegations that the licensed Software Products and Documentation or part thereof, furnished by VENDOR under this Agreement (hereinafter "Product") infringes a third party's patent, copyright, or trademark protected in the member countries of (i) both the Bern Convention and WCT ("WIPO Copyright Treaty") or (ii) both the Bern Convention and TRIPS Agreement ("The Agreement on Trade-Related Aspects of Intellectual Property Rights"), VENDOR shall, if such infringement does not result solely from modifications, enhancements, or additions to the Product made by CLIENT, an Affiliate or Approved Contractors or any person or entity, acting under the direction or control of the CLIENT, its Affiliates or Approved Contractors or CLIENT's, its Affiliates' or Approved Contractors' use of any Product in combination with other products not furnished by VENDOR, and provided CLIENT or its Affiliates promptly notifies VENDOR in writing of said proceedings, defend CLIENT's, Affiliates' or Approved Contractors' right, or interest in the Product, and said infringement claim at VENDOR's expense and VENDOR shall pay any judgment or settlement against the CLIENT or Affiliates resulting from said proceeding. VENDOR shall make such defence by counsel of its own choosing and CLIENT, its Affiliates and Approved Contractors shall reasonably cooperate with said counsel. VENDOR shall have sole control of said defence and settlement of any such claim.

b)   In the event any such infringement is found by a court of competent jurisdiction to be caused by modifications, enhancements or additions to the Product made by the CLIENT, its Affiliates or its Approved Contractors or any person or entity, acting under the direction or control of the CLIENT, its Affiliates or its Approved Contractors or CLIENT's, its Affiliates' or its Approved Contractors' use of the Product in combination with other products not furnished by VENDOR, CLIENT agrees to reimburse VENDOR any reasonable defence expenses inclusive of reasonable attorneys fees which may have been expended by VENDOR in defence of said claim, as well as to pay any judgment rendered against VENDOR as a result of said proceedings.

c)   In the event any Product furnished hereunder is, in VENDOR's opinion, likely to become the subject of a claim of infringement, or does become the subject of a claim of infringement, of any duly issued Berne Convention countries' patent, copyright or trademark of a third party, VENDOR at its option and expense may, either procure for CLIENT and its Affiliates the right to continue using the Product, or modify the Product to make it non-infringing but functionally the same, or replace the Product with a non-infringing equivalent.

20   Confidentiality

All engineering data, designs, drawings and other documents supplied to the VENDOR by the CLIENT are confidential and shall not be used for any purpose whatsoever other than in connection with the VENDOR's obligations under the CONTRACT. Also VENDOR shall not get into any of CLIENT's data, which is not required for the execution of the work. Unauthorized entrance or distribution is a reason for termination of CONTRACT.

21   Immediate termination

a)   If either the VENDOR or the CLIENT commits a material breach of this CONTRACT which is incapable of remedy, then the non breaching party shall issue written notice of immediate termination to the other. If either the VENDOR or the CLIENT becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him or if a winding up petition is submitted, that party is also considered to be in material default. In such case the non breaching party may immediately (partially) terminate the CONTRACT.
CLIENT may at any time terminate the CONTRACT or any part thereof for any reason crucial to

CLIENT providing that the CLIENT's obligations accrued prior to such termination shall remain due.

22   Termination by CLIENT for other reasons

CLIENT may terminate the CONTRACT in whole or in part by written notice to VENDOR. In such event CLIENT shall make payment to and VENDOR shall accept payment of that part of the purchase price(s) that corresponds with the part of the CONTRACT already executed at the date the termination becomes effective.

23   Force Majeure

a) Force Majeure is defined as an occurrence which is not for the risk of the party affected and which cannot be reasonably foreseen, controlled or prevented and materially affects the execution of the CONTRACT. Reasons like ordinary hazards of shortage of labour or material or transport, rejection of material, strikes other than general strikes, default of sub-suppliers, price or wage increase, etc., shall not be considered as Force Majeure.

b) If and as far as compliance with the contractual obligations is not possible as a result of Force Majeure, compliance of such obligations shall, provided that the party affected has timely notified the other party and proven such occurrence, be suspended for the duration of the Force Majeure. In that case the corresponding obligation of the other party shall be suspended for the same time.

c) No financial claims based on Force Majeure against CLIENT and/or VENDOR may be submitted or maintained.

24   Publicity

Without CLIENT's prior written approval VENDOR shall not make public any details of the CONTRACT and/or CLIENT.

25   Disputes

All disputes arising in connection with the Agreement shall be finally settled by the competent civil court in Abu Dhabi, the United Arab Emirates in accordance with the rules of the Abu Dhabi Commercial Conciliation and Arbitration Center at the Abu Dhabi Chamber of Commerce and Industry. The arbitration proceedings shall be conducted in the English language.

26   Governing law

The Contract shall be construed, interpreted and applied in accordance with the laws of the United Arab Emirates (UAE). The "United Nations Convention on Contracts for the International Sale of Goods" (Vienna, 11 April 1980) will not be applicable.

27   Language

All correspondence and documents in connection with the CONTRACT shall be in the English language.