



# Terms and Conditions of Sale and Delivery of Bilfinger Engineering & Maintenance GmbH

# BILFINGER

## 1. Scope

- 1.1. These general terms and conditions of sale and delivery are applicable to all present and future deliveries, services and offers to the customer, even if they are not expressly included again.
- 1.2. Any provisions that deviate from these general terms and conditions, in particular the customer's terms and conditions, shall not apply, even if we do not separately object to their validity in individual cases. They do not become part of the contract even if we accept or execute orders with the knowledge of these deviating terms and conditions of the customer.

## 2. Offers and Conclusion of Contract

- 2.1. All offers are subject to change unless otherwise stated in the offer. Offers can only be accepted within 30 days. We may accept orders within 30 days.
- 2.2. If the customer's order deviates from our offer, a contract is not concluded until we confirm the order in writing or text form.
- 2.3. Verbal agreements require our confirmation in writing or text form.
- 2.4. As a matter of principle, we are under no obligation to verify the correctness of any information or specifications provided by the customer on which we base our offer or order confirmation, or to verify whether the execution of the order infringes any third-party industrial property rights. We will inform the customer of any risks that we identify.
- 2.5. We reserve all rights to offers, cost estimates, samples, specimens, illustrations, descriptions, models, calculations and any other documents originating from us or from third parties and made available to the customer. The customer may not make these documents and items available to third parties, either as such or in terms of content, or use them himself or through third parties, nor reproduce them without our consent. He shall return these items and any copies in their entirety if they are no longer required by him in the ordinary course of business or if negotiations failed to lead to the conclusion of a contract.
- 2.6. In the case of business transactions within the scope of electronic commerce, Section 312 i Paragraph 1 Sentence 1 Nos. 1 to 3 and Sentence 2 of the German Civil Code (*Bürgerliches Gesetzbuch* - BGB) do not apply unless the customer is a consumer within meaning of the BGB.
- 2.7. The conclusion of the contract is subject to the condition that we are not or are only partially obligated to perform towards our customer in case of incomplete or improper self-delivery, i.e. delivery by our suppliers. This shall only apply in the event that we are not responsible for the non-delivery, partial delivery or improper delivery by our suppliers. In the event of non-delivery, partial delivery or improper delivery, we shall inform the customer immediately and refund any consideration already paid.

## 3. Changed Services, Additional Services

If changed services or additional services that go beyond already agreed services are ordered by the customer, the provisions of the concluded contract

shall also apply to these changed services or additional services.

## 4. Prices, Payments, Payment Default

- 4.1. Our prices apply only to the agreed upon scope of services or delivery. Additional and special services will be charged separately.
- 4.2. Unless specifically agreed otherwise, travel times are considered reimbursable times and will be invoiced in accordance with our current hourly rates. Travel expenses will be charged in accordance with the actual expenditure.
- 4.3. Waiting times for which we are not responsible will be charged in accordance with our current hourly rates, unless expressly agreed otherwise.
- 4.4. Unless specifically agreed otherwise, our prices are ex works. Freight costs, packaging costs, public charges and customs duties will be paid by the customer.
- 4.5. If, in accordance with the contract, a delivery or service is provided more than four months after the contract has been concluded and if in the interim the prices of our suppliers, the costs incurred by us (e.g. wages, material costs, energy costs) or levies payable by us increase or if levies are newly introduced or if we generally increase our prices, we shall be entitled to adjust the price accordingly, unless we have expressly agreed in writing or text form to a longer fixed price period.
- 4.6. Our prices are net prices plus the applicable statutory value added tax.
- 4.7. Our invoices are payable immediately without deductions, unless stipulated otherwise. The timeliness of payment depends on the receipt of the money by us. The deduction of a discount requires a separate agreement in writing or text form.
- 4.8. The customer shall be considered in default after the due date of the payment, even if no reminder is issued. We are entitled to charge interest on arrears at the statutory rate. If we can prove that we have incurred further damages due to the delay, we are entitled to assert such damages.
- 4.9. In case of default of payment as well as justified doubts about the solvency or creditworthiness of the customer, we are entitled – without prejudice to any of our other rights – to demand advance payment for deliveries and services not yet performed and to make all claims arising from the business relationship due immediately. If the advance payment is not made within two weeks without justified reason, we are entitled to withdraw from the contract without prior notice.

## 5. Performance and Quality of Services, Use of Subcontractors

- 5.1. We shall perform the services on our own responsibility. We are obligated to deploy sufficiently qualified, professionally trained and reliable personnel for the provision of our services.
- 5.2. We may also use subcontractors and temporary workers to fulfill our performance obligations.
- 5.3. We ensure that the personnel deployed by us, including temporary workers and personnel of our

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subcontractors, are registered and socially insured in accordance with the applicable statutory provisions and, if required, have a valid residence and/or work permit.

- 5.4. We observe the accepted state of the art and the statutory and administrative provisions as they exist at the time of the conclusion of the contract. Our deliveries and services are of standard commercial condition and of average quality, unless we have expressly agreed otherwise in writing or text form. Information on the object of the delivery or service (e.g. weight, dimensions, utility values, load-bearing capacity, tolerances and technical data) as well as representations of the same are descriptions or markings. These are only considered to be guarantees if we have expressly agreed to this in writing or text form. Deviations that are customary in the trade and deviations that occur due to legal regulations or represent technical improvements are permissible insofar as they do not impair the usability for the contractual purpose.
- 5.5. Partial deliveries and partial services are permissible insofar as this is not unreasonable for the customer.
- 5.6. If the customer is in default of acceptance, we shall be entitled to demand reimbursement of any expenses incurred by us.

### 6. Obligations of the Customer and Provision

- 6.1. The obtaining of the necessary official or other permits, expert opinions and certificates is not part of our scope of services and is the responsibility of the customer, unless expressly agreed otherwise.
- 6.2. The customer is obligated to provide us with all information and documents (schedules, project-related documentation, repair programs, drawings, descriptions, safety regulations, specifications, sketches, etc.) required for the execution of the deliveries and services complete and free of errors in good time prior to the execution of any services.
- 6.3. The customer is obligated to ensure that all necessary preliminary work, e.g. other trades, provision of equipment, materials is carried out in good time so that unhindered and speedy processing of the order is ensured.
- 6.4. Insofar as the procurement or provision of facilities, workshops, vehicles, tools, equipment, machines as well as consumables, spare parts and operating materials required by us for the execution of the services is not expressly part of our services, the customer shall provide these at his own expense.

### 7. Performance and Delivery Dates

- 7.1. Stated performance and delivery dates are non-binding unless expressly agreed otherwise.
- 7.2. The delivery or performance period does not commence until all technical and commercial questions in connection with the order have been clarified and the customer has duly fulfilled all of the obligations required for our delivery or performance, in particular has handed over to us all necessary documents and information in full and without errors.
- 7.3. Should hindrances or delays occur for which we are not responsible, agreed performance and delivery

dates will be automatically extended by the duration of the hindrance or delay plus a reasonable mobilization period. In this case, we are entitled to reimbursement for any additional costs caused by the hindrance or delay.

- 7.4. Insofar as we are in default and the customer suffers damage as a result, we shall only be liable in the event of minor negligence up to a maximum of 5% of the agreed net remuneration. Further claims due to delay are governed exclusively by Section 15.
- 7.5. Within the framework of the statutory provisions, the customer may only withdraw from the contract due to a delay in delivery or performance if we are responsible for the delay.

### 8. Place of Performance, Shipping, Transfer of Risk

- 8.1. The place of performance is our respective factory, unless expressly agreed otherwise.
- 8.2. The goods are shipped at the risk of the customer. The risk of accidental deterioration or accidental loss is transferred to the customer upon notification of readiness for shipment and separation of the delivery goods. This is also applicable if we have assumed additional services such as loading, transport or unloading and in the event of partial deliveries.
- 8.3. If the shipment or the handover is delayed due to circumstances for which the customer is responsible, the risk passes to the customer upon notification of readiness for shipment. In such a case, we may invoice goods as delivered and store them at the expense and risk of the customer.
- 8.4. Upon express request and at the expense of the customer, we will insure the goods against theft, breakage, transport, fire and water damage or other insurable risks.
- 8.5. In the case of works, the transfer of risk shall take place upon acceptance of the work.

### 9. Retention of Title

- 9.1. Goods delivered by us to the customer remain our property until full payment of all our present and future claims arising from the contract and an ongoing business relationship (Secured Claims), against the customer. These goods as well as any goods taking their place and covered by the retention of title in accordance with the following provisions are hereinafter referred to as "Reserved Goods".
- 9.2. As long as the customer is willing and able to duly fulfill his obligations toward us, he may dispose of and/or process the Reserved Goods in the ordinary course of business.
- 9.3. Our retention of title extends to the new products resulting from the processing of the reserved goods. In the event of processing, combination or mixing with items not belonging to us, we acquire co-ownership in the ratio of the invoice value of our Reserved Goods to the invoice values of the other materials.
- 9.4. The customer hereby assigns to us by way of security any claims against third parties arising from the sale of those goods or the product in total or in the amount of our co-ownership share, if any, pursuant to the preceding paragraph. We accept the assignment. The customer remains authorized to collect the claim in



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addition to us. We may only revoke this authorization in the case of a collateral event.

- 9.5. As long as we retain title, the customer will handle and store Reserved Goods, insofar as they are available to him, with care and will carry out necessary and customary inspection, maintenance and upkeep work at his own expense.
- 9.6. For the duration of the retention of title, the customer may neither pledge nor assign by way of security the Reserved Goods and the assigned claims. Access by third parties to the Reserved Goods, for example by way of seizure or confiscation, as well as damage or destruction must be reported to us immediately in writing or text form. The customer shall bear all costs necessary to cancel the seizure and to recover the Reserved Goods, insofar as those costs cannot be collected by third parties.
- 9.7. In the event of a breach of the obligation to treat the Reserved Goods with care or of any other contractual obligations by the customer as well as in the event of default in payment of Secured Claims (Collateral Event), we shall be entitled to take back the Reserved Goods, even if we have not withdrawn from the contract. In the event of a Collateral Event, we will be entitled to realize the Reserved Goods and/or the assigned claims, whereby the proceeds will be set off against the customer's liabilities less reasonable realization costs.
- 9.8. If the realizable value of the securities exceeds the Secured Claims not only temporarily by more than 10%, we will release excess securities of our choice at the request of the customer.
- 9.9. In the event that retention of title is not permissible or only permissible to a limited extent under the statutory provisions applicable in the customer's country, our aforementioned rights shall be limited to the extent permitted by law.

## 10. Acceptance

- 10.1. In the case of works, acceptance must take place within three working days of notification of completion at the latest. Acceptance is considered to have taken place if we have set a reasonable deadline for acceptance, the customer has not given notice of at least one defect within this deadline in writing or text form and we have pointed out this legal consequence to the customer when setting the deadline.
- 10.2. Defects must be recorded in the acceptance protocol. Only significant defects entitle the customer to refuse acceptance.
- 10.3. If works or services are interrupted over a longer period of time, we are entitled to demand that the customer carry out an acceptance/partial acceptance and/or confirm a delivery by countersigning the delivery bill.

## 11. Rights in case of defects

- 11.1. The rights of the customer in the event of defects of quality and defects of title are governed by the statutory provisions, unless otherwise stipulated in the following.
- 11.2. In the event of a purchase, the customer will immediately check whether the delivered item or the

rendered service is of the contractually agreed quality and suitable for the intended use. Furthermore, the provisions of Section 377 German Commercial Code (*Handelsgesetzbuch* – HGB) apply.

- 11.3. To the exclusion of any further rights of the customer, we will, at our discretion, remedy any defects in the delivered goods or works notified in due time or subsequently deliver or perform defect-free goods or works (subsequent performance). Unless the nature of the defect or other circumstances indicate otherwise, subsequent performance shall be deemed to have failed at the earliest after the second unsuccessful attempt. If the subsequent performance fails, if we seriously and finally refuse the subsequent performance, if we do not comply with a reasonable deadline set by the customer for the subsequent performance or if the subsequent performance is unreasonable for the customer, the customer may, in accordance with the statutory provisions, reduce the compensation (*Minderung*) or, if no construction work is the subject of the liability for defects, withdraw from the contract at his discretion. In the event of withdrawal from the contract, the customer in case of intent or negligence will be liable for the loss and deterioration of the goods and/or works as well as for any benefits not derived from the goods and/or works. The provisions of Sections 282 and 283 BGB remain unaffected.
  - 11.4. Should the subsequent performance fail, if we seriously and finally refuse the supplementary performance, if we do not meet a reasonable deadline set by the customer for the subsequent performance or if the subsequent performance is unreasonable for the customer, the customer may remedy the defect himself or have it remedied by a third party at our expense.
  - 11.5. Claims for defects can only be asserted if the delivery or work is used as intended and in accordance with the relevant technical specifications, there has been no faulty assembly or commissioning by the customer or third parties, there has been no faulty or improper operation or handling, the settings specified or approved by us have not been changed and no unsuitable operating materials or operating materials not approved by us have been used.
  - 11.6. The liability for defects further does not include normal wear and tear, faulty maintenance or damage to the delivered goods or works by the customer or third parties.
  - 11.7. The mere performance of subsequent performance by us does not constitute an acknowledgement of a defect in the delivered goods or works.
  - 11.8. Rejected goods may only be returned with our express consent. In the event of a justified notice of defect, we will reimburse the costs of the cheapest shipping method.
- ## 12. Statute of limitations
- 12.1. Claims for defects for works become statute-barred five years after acceptance in the case of a building and a work whose success consists in the provision of planning or supervisory services for this.



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12.2. Claims for defects arising from a purchase contract become statute-barred five years after delivery in the case of a building and in the case of an item which has been used for a building in accordance with its customary manner of use and has caused the defectiveness thereof.

12.3. All other claims will become statute-barred 12 months after the statutory commencement of the limitation period, unless a longer limitation period is stipulated by law.

## 13. Work results

13.1. We grant the customer a non-exclusive, sub-licensable right of use to all work results created or procured by us within the scope of our delivery and services. This right of use shall apply to all types of use insofar as the use relates to the creation, operation, maintenance, repairs, modification and/or dismantling of our goods and services. The right of use also includes the authority to complete our delivered goods and services without our involvement. The right of use further applies to the procurement of spare parts and/or the tendering of other services in connection with our goods and services.

13.2. All work results which we produce in connection with the goods and services and the handover of which is contractually owed, such as, for example, samples, models, technical and other drawings, plans, documents, will be handed over to the customer at the agreed times, otherwise at the latest upon delivery or acceptance of the contractually owed goods and services.

13.3. With the compensation for the respective contract, all possible claims to copyright compensation or compensation due by law with regard to the work results to which we are entitled are fully settled.

## 14. Force Majeure

Force majeure shall be all unforeseeable events or events which - even if they were foreseeable - are beyond the control of both contracting parties and whose effects on the performance of the contract cannot be prevented by reasonable efforts of the contracting parties. This includes, but is not limited to, war, warlike condition, riot, revolution, rebellion, insurrection, tumult, uprising, blockade, embargo, governmental order, governmental decree, sabotage, strike (including a concentrated strike), slowdown, lockout, shortage of energy or raw materials, traffic disruption, epidemic, pandemic, fire, flood, storm surge, other severe weather on the scale of a catastrophe, earthquake, landslide, lightning strike.

If we are not responsible for the event of force majeure, this releases us from the obligation to deliver or perform for the duration of the disruption and to the extent of its effect. Delivery or performance deadlines are automatically extended by the duration of the disruption plus a reasonable mobilization period. If delivery or performance is delayed by more than one month as a result, we are entitled to withdraw from the contract with regard to the quantity affected by the disruption in delivery or performance. We are not obligated to procure replacements.

## 15. Liability

15.1. We are liable for intent and gross negligence in accordance with the statutory provisions. We will only be liable for minor negligence in the event of a breach of material contractual obligations (contractual obligations whose fulfillment is a prerequisite for the performance of the contract). In the event of minor negligence, our liability is limited to the typical damage foreseeable at the time of conclusion of the contract.

15.2. Regardless of this limitation, we are liable for damages in accordance with the provisions of the Product Liability Act (*Produkthaftungsgesetz* – ProdHaftG) and in the case of defects which we have fraudulently concealed or the absence of which we have guaranteed.

15.3. Any liability for damages beyond the scope of this provision is excluded, regardless of the legal grounds.

15.4. The provisions above do not apply in the event of liability for injury to life, limb or health.

## 16. Set-Off, rights of retention

16.1. The customer is only entitled to set-off and to assert rights of retention if and to the extent that its counterclaims are undisputed or have been legally established.

16.2. Furthermore, the assertion of rights of retention by the customer is only permissible if the counterclaims result from the same legal relationship.

## 17. Prohibition of Assignment

The assignment of a claim existing against us to third parties without our consent is excluded. Section 354 a HGB remains unaffected.

## 18. Sanctions

We shall be released from all obligations arising from or in connection with the contract (including, inter alia, warranty and compensation for damages), if impediments exist due to national or international regulations of foreign trade law or an embargo and/or other sanctions which prevent fulfilment of the contract. Once we are released from our obligation to fulfil the contract, we shall only be entitled to payment for supplies and services rendered until the date on which the right is exercised as well as for the supplies and services ordered that cannot be returned or revoked.

## 19. Export control

19.1. The goods in the scope of supply/service or any replica or copy thereof will not be used for activities related to nuclear weapons or the unsafeguarded nuclear fuel cycle. The goods will not be used for any activity related to the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological, radioactive or nuclear weapons. The goods will be used for civil end-uses only.

19.2. The customer is obliged not to pass on the goods, any replica or copy thereof within the scope of the supply/service either directly or indirectly to countries, persons or companies, which are subject to an EU



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and/or UN embargo relevant to the goods or which are on an applicable EU and UN sanctions list. The customer is obliged to endeavor that this obligation is passed down the supply chain.

- 19.3. In case the export or re-export of the goods or of any replica or copy thereof is subject to an approval requirement by the EU, such goods shall not be exported or re-exported without approval by the competent authorities.
- 19.4. The customer is obliged to notify us immediately of any breach of the obligations assumed in the aforementioned export control clauses of which the customer becomes aware and to provide us with the relevant information without delay. We ourselves or through external third parties are entitled to verify compliance with these obligations assumed in the aforementioned export control clauses after prior notification and during normal business hours. Any such verification shall take into account the legitimate confidentiality interests of the customer.
- 19.5. In the event of breach of obligations assumed in the aforementioned export control clauses, we are entitled to terminate the contract with immediate effect, to demand the return of the goods subject to a prohibition of onward transfer, to claim damages and/or to assert a contractual penalty of a maximum of 3% of the contract price. Contractual penalties paid shall be credited against any claim for damages.

## **20. Confidential information and data protection**

- 20.1. During the performance of this contract, we and the customer will have access to Confidential Information of the respective other party. The use of Confidential Information is only permitted within the scope and for the purpose of the agreed contractual activities. The parties undertake to treat the Confidential Information received as confidential.
- 20.2. "Confidential Information" refers to commercially, legally, in terms of taxes or technically sensitive or advantageous information of one party that becomes known to the other party. Confidential Information also includes any information that is identifiable in any way as "confidential" or "proprietary" or whose confidential content is obvious. "Personal data" in accordance with Article 4 No. 1 of the German Data Protection Regulation (GDPR) is to be understood as Confidential Information.
- 20.3. Exempt from the confidentiality obligation is (i) information that is publicly known or becomes generally known without any conduct in breach of duty on the part of the recipient, its officers, employees, consultants or other agents and (ii) information that is already known to the recipient at the time of disclosure without any obligation of confidentiality on the part of the recipient.
- 20.4. The parties undertake to comply with the statutory and contractual provisions on data protection when processing the Confidential Information. This includes (i) the obligations of a data controller under data protection law (Article 24 GDPR), (ii) the data protection principles (Article 5 GDPR), (iii) the adoption of state-of-the-art technical security measures (Article 32 GDPR) and (iv) the obligation of

employees to maintain data confidentiality (Article 5 (1) (f) GDPR). If the contractor is or becomes a processor in accordance with Article 4 No. 8, 28 GDPR, it shall separately conclude a commissioned processing agreement with the customer for the respective service provision.

- 20.5. The duty of confidentiality does not apply to information that the recipient is required to disclose in order to comply with legal, judicial or other mandatory regulatory obligations. In such case, the recipient will, to the extent permitted by law, promptly notify the other party in writing prior to disclosure and, to the extent feasible, take steps in consultation with the other party to prevent or minimize disclosure.
- 20.6. The disclosure of information provided to third parties is only permitted in compliance with the provisions of data protection law and provided that (i) such third parties are consultants who are obligated by law or by their professional code of conduct to maintain confidentiality, (ii) the third party is required by the contractor to perform the contract and is subject to comparable confidentiality obligations, (iii) the party providing the information consents in writing to such disclosure, or (iv) to companies affiliated with the recipient within the meaning of Sections 15 ff of the German Stock Corporation Act (*Aktiengesetz* - AktG), provided that such companies are subject to comparable confidentiality obligations.
- 20.7. Upon termination of the contract, at the latest within fourteen (14) days after written request by the party providing the information, the recipient shall return to the party providing the information all Confidential Information on hand and any further documents prepared on the basis of such Confidential Information, or confirm in writing to the party providing the information the destruction of the information and documents. This does not apply if and insofar as there is an obligation to retain data by law or on the basis of official or court orders and in the case of automated back-ups.
- 20.8. The obligations in this Section 20 continue to apply after termination of the contract for a period of five years or, in the case of personal data, for an unlimited period.

## **21. General provisions**

- 21.1. The entire legal relationship between us and the customer is governed exclusively by German law, under the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 21.2. In commercial business transactions, Frankfurt a.M. is agreed as the place of jurisdiction.
- 21.3. Should any provision in these terms and conditions or any provision in supplementary agreements be or become invalid in whole or in part, this does not affect the validity of the remaining provisions. In place of the invalid provision or the invalid part of the provision, the legally valid provision that comes closest to the purpose pursued by the invalid provision shall apply.