

**1 GENERAL PROVISIONS**

1.1 Contract shall mean the separate contract document, these General conditions for IT Procurement and any appendices, agreed amendments or variations to said documents.

Products shall mean any hardware, firmware, software and technical or user documentation, either singly or collectively, to be provided by Contractor pursuant to the Contract.

Services shall mean installation, implementation, testing, support, maintenance and other services, either singly or collectively, to be performed by Contractor pursuant to the Contract.

1.2 In the event of any conflict between the provisions of the Contract, the various contract documents shall be given priority in the following order:

- the separate contract document
- these General conditions for IT Procurement
- all appendices in the order they are listed

1.3 Notices, claims, etc. which the Contract requires to be presented in writing, shall be sent by letter, fax or confirmed electronic mail to the other party's appointed representative.

**2 GENERAL OBLIGATIONS OF CONTRACTOR**

2.1 The Products and Services shall in all respects meet the specifications of the Contract, and shall in addition be of high quality and fit for the Products and Services' intended purpose. Contractor shall perform the Services with that degree of skill, care, diligence and good judgement normally exercised by recognised professional firms performing work of the same or similar nature.

2.2 The Products and Services shall be provided in compliance with applicable laws and regulations. Contractor shall obtain and maintain all permits necessary for the fulfilment of the Contract and shall, whenever requested by Buyer produce documentation showing that necessary permits have been obtained.

2.3 Contractor shall not assign parts of the Products or Services to subcontractors without Buyer's prior written consent. Such consent does not exonerate Contractor from any of any obligations pursuant to the Contract. Non-compliance with this provision shall be considered as substantial breach of contract.

2.4 Contractor shall have a satisfactory system for HES assurance and quality assurance suitable for the Products and Services. Buyer is at any time entitled to carry out, and Contractor shall assist in carrying out, audits at Contractor's or any subcontractors' premises.

2.5 If the Contract appoints key personnel in Contractor's organisation, such personnel shall not be replaced without Buyer's prior written approval. Such approval shall not be unreasonably withheld.

2.6 Contractor shall, at his own expense, immediately replace personnel who in Buyer's sole opinion conduct themselves in an improper manner or are unsuitable to perform the work required under the Contract.

2.7 When work is carried out at Buyer's premises Contractor shall comply with any rules in force relating to safety and working conditions. Buyer will, upon Contractor's request, inform of its own rules.

2.8 Contractor shall, to the extent necessary, cooperate with third parties in order to allow the Products and Services to be provided in accordance with the requirements of the Contract.

2.9 Contractor shall give Buyer notice in writing of any and all circumstances related to the Products and Services which can be significant for the avoidance of failures, stoppages, losses, etc. in any or all of Buyer's activities.

**3 PROGRESS DELIVERY****3.1 Progress**

If Contractor should have cause to believe that he will be unable to deliver the Products and/or perform the Services in accordance with the contract schedule, he shall immediately notify Buyer in writing stating the reason for the delay, the effect on the contract schedule and furthermore include a proposal on how the delay can be minimised. Contractor shall bear own costs incurred to minimise the delay unless the delay is caused by Buyer.

Contractor is liable for losses suffered by Buyer which could have been avoided if Contractor had given notice of the delay in due time.

**3.2 Delivery**

Unless otherwise agreed, delivery shall be deemed to have taken place when a) the agreed Products have been handed over to Buyer and agreed installation and acceptance tests have been completed, or b) the agreed Services have been completed.

**4 VARIATIONS, SUSPENSION AND CANCELLATION****4.1 Variations**

Within the scope of what the parties could reasonably have expected at the time the Contract was entered into, Buyer may require variations with regard to the quality and/or the quantity of the Products and Services as well as the contract schedule.

If Contractor finds that a variation is required, Buyer shall be notified in writing, without undue delay.

Variations shall be approved by Buyer by means of a written variation order before Contractor initiates the variation work.

When Buyer requires a variation, Contractor shall, without undue delay, submit a written confirmation describing the variation work together with an estimate of any effects on the contract price and the contract schedule. Contractor shall not initiate the variation work until Buyer has responded in writing to Contractor's confirmation.

Compensation for variation work shall be in accordance with the prices, norms and rates contained in the Contract and the original price level of the Contract. If a variation entails cost saving for Contractor, Buyer shall be credited accordingly

If the parties disagree as to the amount to be added to or deducted from the contract price or other consequences due to a variation, Contractor shall implement the variation without awaiting the final outcome of the dispute.

**4.2 Suspension**

Buyer may temporarily suspend the delivery of the Products and/or the performance of the Services, in whole or in part, by written notification to Contractor. Following such notification Contractor shall, without undue delay, inform Buyer of the effects the suspension will have on the delivery of the Products and/or the performance of the Services. Contractor shall resume the work immediately after notification by Buyer.

If the suspension period exceeds 90 days, Contractor is entitled to cancel the Contract by notice in writing to Buyer.

During the suspension period, Buyer shall only compensate Contractor for documented and necessary expenses in connection with demobilisation and mobilisation of personnel.

**4.3 Cancellation**

Buyer may cancel the Products and/or Services, in whole or in part, with immediate effect, by written notification to Contractor.

Following cancellation Buyer shall only pay the unpaid balance due to Contractor for the Products already delivered and/or that part of the Services already performed, and pay documented and necessary expenses incurred as a direct result of the cancellation.

**GENERAL CONDITIONS FOR IT PROCUREMENT****5 PAYMENT DETAILS**

- 5.1 Unless otherwise agreed, all payments to the Contractor by the Buyer will only be made within 60 days after receipt of a correct invoice.
- 5.2 The invoices shall set out the contract name; contract number, Products and Services provided and other agreed references shall be quoted on all invoices which shall also clearly indicate what the invoiced amount relates to in reasonable detail, as well as any payments received and shall be addressed to the invoicing address specified by the Buyer. All payments to the Contractor by the Buyer will be made by wire transfer to a bank account in the Contractor's name in the country where the Products and Services are to be provided under the Contract or in the country of the Contractor's main (registered) business seat. Buyer is entitled to return invoices that do not meet these requirements.
- 5.3 If it has been agreed that Contractor shall provide a bank guarantee, Buyer shall not be obliged to make any payments prior to receipt of such guarantee.
- 5.4 Buyer is entitled to deduct any prepayments and accrued liquidated damages against Contractor's invoices. Furthermore, any disputed or insufficiently documented amounts, as well as any amounts owed by Contractor to Buyer or Buyer's affiliated companies may be set-off against Contractor's invoices. Affiliated companies shall in this respect mean any company where Bilfinger Norway AS directly or indirectly controls 50 % or more of the share capital.
- 5.5 Contractor shall submit a final invoice within 45 days after Buyer has accepted the Services as completed. The final invoice shall include all claims to be made by Contractor pursuant to the Contract. Claims not included in the final invoice cannot be submitted later.
- 5.6 Failure to produce documentation showing that income tax has been paid according to law entitles Buyer to withhold payment until Contractor either produces such documentation, or provides satisfactory security for payment of such taxes. Buyer may recover from Contractor at any time any liability incurred by Buyer as a consequence of Contractor failing to pay in the required taxes.
- 5.7 Buyer is entitled to audit at Contractor's premises all payments for reimbursable work for up to two years after receipt of the final invoice

**6 BREACH OF CONTRACT****6.1 Delay**

Delay exists when Contractor fails to comply with the time limits stated in the Contract, unless the delay is caused by Buyer. With respect to the provision of maintenance services and/or system support services, time constraints shall be calculated from the time at which the requirement for support is communicated to Contractor in writing.

If the Products and/or the performance of the Services has such defects that Buyer's intended purpose with the Products and/or Services are substantially unsuccessful, this shall be considered as delay.

Contractor is liable for delay pursuant to Article 6.2.

**6.2 Effects of delay**

Unless otherwise agreed, liquidated damages shall accrue at a rate of 0.3 % of the total contract price per day by which Contractor is delayed. Liquidated damages shall, however, not exceed 15 % of the total contract price.

In the event that the provision of maintenance services and/or system support services are delayed, liquidated damages shall accrue at a rate of 5 % of the agreed annual maintenance fee for each day such services are delayed. Total liquidated damages shall, however, not exceed the value of the annual maintenance fee.

If the delay is caused by gross negligence or wilful misconduct on the part of Contractor or someone for whom he is responsible, Buyer may, instead of the liquidated damages, claim compensation for the losses suffered due to the delay.

Article 6.4, 2nd paragraph shall apply accordingly in the event of delay.

Buyer may terminate the Contract if the maximum of liquidated damages has incurred or the delay constitutes a substantial breach of Contract. In such case, Article 6.4, 4th paragraph shall be apply accordingly.

**6.3 Defects**

Contractor is liable for any defect in the Products and/or Services pursuant to Article 6.4.

Buyer shall issue a written notice of defect within reasonable time after the defect has been discovered, and in no event later than 24 months after delivery of the Products and/or Services. The same time limit applies in respect of rectification work, calculated from the time the rectification work was delivered. The time limit for making a notice of defect does not commence as long as rectification work or other activities necessary to comply with the contractual requirements are performed.

**6.4 Liability for defects**

When Buyer notifies Contractor of a defect, Contractor shall commence rectification of the defect without delay. The rectification work shall be postponed upon Buyer's request provided that Buyer has a justified reason for requiring such postponement. Rectification work shall be performed for Contractor's account.

If Contractor fails to remedy the defect within reasonable time, and with respect to the provision of maintenance services and/or system support services not within the time limitations agreed in an appendix to the Contract, Buyer is entitled to remedy the defect himself or employ a third party to do so for Contractor's risk and account, or to reduce the contract price accordingly. The same shall apply if awaiting Contractor's remedy will cause substantial inconvenience to Buyer. In such event, Contractor shall be notified prior to initiating of the rectification work. The reduction of the contract price shall at least be equivalent to the amount of liquidated damages for which Contractor would be liable had rectification been handled as a part of maintenance services.

Buyer is entitled to claim compensation for losses suffered due to defects. Such compensation is limited to cover direct losses unless Contractor, or someone Contractor is responsible for, has acted with gross negligence or wilful misconduct.

Buyer may terminate the Contract if a defect constitutes a substantial breach of Contract. In such event, Buyer is entitled to reject Contractor's offer to remedy the defect. In the event of termination, Buyer shall be entitled to an irrevocable, non-exclusive and royalty-free right to use all software which comprise a part of the Products and/or Services to be delivered hereunder. Article 8.2, 1st paragraph shall apply accordingly in the event of termination.

**6.5 Indemnification**

Contractor shall indemnify Buyer if the supply of Products and/or the performance or result of the Services constitute an infringement of any third party copyrights, patent rights or other intellectual property rights, except when this is necessary due to Buyer's specifications and Contractor did not know or ought to have known that such an infringement would occur

**7 FORCE MAJEURE**

- 7.1 Force majeure means an occurrence beyond the control of the party affected, provided that such party could not reasonably have foreseen such occurrence at the time of entering into the Contract and could not reasonably have been expected to avoid it or overcome its consequences.
- 7.2 A party shall not be considered in breach of the Contract to the extent it is shown that he was unable to fulfil his contractual obligations due to force majeure. Each party shall be responsible for its own costs resulting from force majeure.
- 7.3 The party invoking force majeure shall notify the other party thereof without undue delay. Such notice shall also include the cause of the delay and the presumed duration thereof.
- 7.4 Each party is entitled to cancel the Contract if the force majeure situation continues, or it is obvious that it will continue, for more than 60 days.

**GENERAL CONDITIONS FOR IT PROCUREMENT****8 RIGHTS TO PRODUCTS, SOFTWARE AND DOCUMENTATION, CONFIDENTIALITY, VENDOR DECLARATION AND ASSOCIATED TERMINATION RIGHT****8.1 License rights to the Products**

Contractor, or the party represented by him, shall hold the intellectual property rights to the Products to be provided under the Contract. Buyer is hereby granted an irrevocable, non-exclusive right to use the number of licenses and copies of Products as is specified in the Contract. Further, Buyer shall have the right to make security and back-up copies of such Products.

**8.2 Rights to developed and adapted software**

If the software, or parts thereof, together with models, reports, specifications and similar documents are specifically developed and/or adapted for Buyer, and which Buyer compensates Contractor to develop under this Contract, the software, or parts thereof, are Buyer's sole property as and when the software is developed and/or adapted. Contractor shall ensure that Buyer is granted access to all such information regarding such software, including source codes necessary to exercise Buyer's proprietary rights in an appropriate manner, and the right to make changes and modifications in the software.

Contractor is only entitled to utilise the software developed specifically for Buyer with Buyer's prior written approval. The parties shall agree on the conditions for such utilisation, including Contractor's remuneration to Buyer. Contractor shall indemnify Buyer from and against all claims in connection with Contractor's utilisation of such software.

**8.3 Confidentiality**

All information exchanged or otherwise transferred between the parties shall be treated as confidential and shall not be disclosed to any third parties without the written consent of the other party.

A party may nevertheless make such information available to third parties provided that the information was already known to that party at the time the information was received, that the information is or becomes part of public domain other than through a fault of either of the parties, is rightfully received from another source without an obligation of confidentiality or it is due to applicable laws and regulations.

Information may also be disclosed to third parties to the extent necessary for execution of the Contract or utilization of the Products or the results of the Services provided, that the receiver of such information shall be bound by a confidentiality obligation similar to this Article.

Without Buyer's written consent, Contractor shall not issue any press-release or otherwise advertise that this Contract has been entered into.

**8.4 Vendor Declaration and Associated Termination Right**

Vendor Declaration: The Contractor is obliged to comply with the signed Vendor Declaration. The Vendor Declaration sets out the applicable minimum standards. If and to the extent compliance with the Vendor Declaration would violate applicable law, applicable law shall prevail. The Buyer shall have the right to amend the Vendor Declaration in the event of any changes in legal, administrative or institutional requirements, jurisprudence or ethical business principles. The Buyer shall inform the Contractor of any amendments to the Vendor Declaration.

Associated Termination Right: The Contractor acknowledges and agrees that any breach of this Clause 8.4 (Vendor Declaration and Associated Termination Right) will be deemed a material breach of contract entitling the Buyer to terminate the Contract at any time and with immediate effect, without any obligation to pay any outstanding fees or make any other payment. The Buyer shall not be obliged to compensate any damage or loss suffered by the Contractor as a result of a termination under this Clause 8.4 para. 2 (Associated Termination Right).

**9 ASSIGNMENT OF THE CONTRACT**

Buyer is entitled to assign his rights and obligations pursuant to the Contract, fully or partly, to any third party. Contractor may not assign his rights and obligations pursuant to the Contract without Buyer's written consent. Buyer shall have the right to terminate the Contract in the event that Contractor, directly or indirectly, comes under the control of a different legal entity than at the time of Contract signature. Article 6.4, 4th paragraph shall apply accordingly in the event of such termination.

**10 APPLICABLE LAW AND LEGAL VENUE**

The Contract shall be governed by Norwegian law. A party may only bring a dispute in connection with the Contract before the appropriate court of the other party's legal domicile. Contractor also agrees to have litigation brought before Oslo Tingrett/City Court.