

**1. Scope of Application**

- (1) Buyer (hereinafter AG) as referred to in the following Terms of Purchase shall be the company named on the letterhead of the Minutes of Negotiation/the Purchase Order.
- (2) The Terms of Purchase shall apply to all purchase agreements concluded between the Parties. They shall also apply where the Seller (hereinafter AN) is required to manufacture or produce the object of the purchase.
- (3) The present Terms of Purchase shall apply exclusively to all purchase agreements between the AG and the AN, unless the Parties have agreed expressly and in writing to apply the terms of sale or delivery of the AN.

**2. Conclusion of the Agreement**

- (1) The statements by which the Parties declare conclusion of the purchase agreement are to be made in writing. Said requirement as to the written form shall be deemed met also if the declarations are transmitted in electronic form or via telefax.
- (2) Should the AN deviate from the AG's order or the AG's specifications, then this is to be communicated to the AG separately in a timely manner.
- (3) Any proposals prepared by the AN shall be free of charge for the AG. In his offer, the AN is to adhere to the AG's specifications and the wording of the AG's inquiry. In the event of any deviations, the AN is to expressly and separately communicate them.

**3. Prices**

- (1) The agreed prices are for requested deliveries according to Incoterms 2020® EXW or FCA, place of dispatch 'net fixed prices including transport packaging. For requested transactions according to Incoterms 2020® CPT, CIF, DAP, DPU or DDP, Reception Point', the transport costs must be included in addition to the net fixed prices including transport packaging. Unless otherwise agreed in writing, no further costs will be reimbursed.
- (2) If the AN should reduce its prices by general declaration following the conclusion of the agreement, the prices valid on the day of delivery shall also apply to such agreement.

**4. Rescission**

The AG shall be entitled to rescind the agreement by written declaration prior to delivery of the object of purchase. In such cases the AN shall be entitled to claim his expenses incurred up to the time of rescission.

**5. Delivery Time**

- (1) The agreed delivery dates are binding. Timeliness of performance shall be determined by the handover of the object of purchase at the agreed place of performance (*Erfüllungsort*). The AN shall be entitled to early delivery only upon written consent of the AG. The AN shall immediately notify the AG in writing of any delivery delays, providing the expected date of delivery. The rights of the AG concerning delay shall remain unaffected.
- (2) In the event that the AG is in default of acceptance, the AN shall not be entitled to deposit the object of purchase.
- (3) Should the AG be in default of acceptance, the AG shall not be liable for any additional expenditure incurred as a result of the unsuccessful delivery of the requested object, nor for its storage or maintenance, unless the AG has caused such default intentionally or as a result of gross negligence.
- (4) In the event that the AN is in delay with performance of its obligations, the AN shall be liable to pay a contractual penalty amounting to 0.2% of the net contract price for each working day of delay that has elapsed, capped at 5% of the net contract price, provided that such penalty shall be taken into account by way of deduction when calculating any damages. All other rights of the AG concerning delay shall remain unaffected.

**6. Delivery, shipping, packaging, passing of risk**

- (1) The AN shall inform the AG of the dispatch of the object of purchase as early as possible via email, at the latest upon the dispatch having been effected. The ready to ship message and any other correspondence (such as shipping notice, shipping documents) must include the date of delivery, the ordering party of the Principal, the place of receipt, the project name and number, and the order number date of the purchase order.
- (2) The AN shall perform a quality control of the object of purchase and provide the AG with appropriate evidence of this by the time of the handover at the latest. The AG shall be entitled to monitor the AN's quality control upon prior notice. For this purpose the AN shall grant the AG access to its manufacturing and assembly sites and warehouses during normal business hours.
- (3) The AN shall package the object of purchase appropriately for transport to the place of delivery. The AN shall be obliged to take back the packaging material. If the object of purchase in the countries of origin, transit or destination known to the AN is subject to special public conditions of carriage and storage, the AN shall ensure that the object of purchase (except for Incoterms 2020® EXW and FCA shipping location) is duly labelled and transported in accordance with such conditions; and the AN shall make any necessary declarations in this respect. If the delivery is made to a construction site, the AN shall collect the packaging material within a reasonable period of time specified by the AG. Expenses incurred in this respect shall be included in the contract prices.
- (4) The place of performance (*Erfüllungsort*) depends on the agreed Incoterm.
- (5) All deliveries require an acknowledgement by way of a confirmation of receipt by an employee of the AG who is authorized to issue such confirmation. The confirmation of receipt shall not constitute any acknowledgement that the object of purchase is complete or possesses the contractually owed properties. The inspection carried out by the AG



pursuant to Sec. 377 of the German Commercial Code (HGB) is limited to obvious defects in the object of purchase. The AG may give notice of defects within 14 calendar days from discovery.

- (6) In the case of third country deliveries, the AN is to submit to the AG the following customs documents: transit accompanying documents (e.g. T1), freight documents, customs invoice or commercial invoice, as well as further documents that may be required for clearing the goods through customs.
- (7) The AN is to package, mark, and ship hazardous goods in accordance with the relevant national and international regulations. As concerns the delivery of the goods, the AN is to comply with all of the duties incumbent on suppliers (within the meaning of Article 3 No. 32 of Regulation (EC) No. 1907/2006 (referred to herein below as the "REACH Regulation")) under the REACH Regulation. In particular, he shall make available to the AG, in all of the cases provided for by Article 31 Clauses 1 through 3 of the REACH Regulation, a safety data sheet in accordance with Article 31 of the REACH Regulation, in the language of the recipient country.
- (8) Where a delivery has been agreed along with the installation of / services for the goods delivered, the transfer of ownership shall devolve following the due and proper installation / performance of the services and handover.
- (9) Where an acceptance has been provided for by law or has been contractually agreed, the risk shall devolve once the AG has accepted the goods. Where formal acceptance has been agreed, the devolution of the risk shall not occur before the successful acceptance by the AG has been confirmed in the record of acceptance. The payment of invoice amounts shall not take the stead of formal acceptance.
- (10) Where machines or systems are delivered, the AN shall install them and place them into operation should the AG so request. If the AN provides the jigs/equipment necessary therefor, the costs accruing in this regard are to be separately itemised and settled; otherwise, they will be considered as having been included in the proposal. Should the AN be required to perform any additional development work in order to fulfil the contract, the AG shall bear the corresponding costs therefor only if this has been previously agreed in writing.
- (11) Inasmuch as the AN makes available devices serving processing, measurement, and testing purposes, as well as gauges, the corresponding tool costs engendered thereby shall be itemised separately in the proposal and settled separately; otherwise, they will be considered as having been included in the proposal. Exclusively measurement and testing equipment and gauges may be used that have been calibrated.

#### **7. Export control, customs and preferences**

- (1) The AN is obliged to comply with all German and EU regulations as well as, if applicable in the specific case of delivery, US regulations that relate to the import, export or re-export of the goods, goods, software or technology covered by this contract. Respectively. Without the prior consent of the AG, the AN is not entitled to deliver US goods which are subject to the EAR (Export Administration Regulation) or to incorporate them in deliveries or to involve US persons.
- (2) The AN shall inform the AG of all information necessary for the export of the goods and shall provide the AG immediately, but no later than two weeks after the binding order, the relevant data by means of the form "[Export Restrictions](#)" for all goods supplied under this contract goods and undertakes to keep the AG informed of any changes in writing at any time.
- (3) Before the consignment is dispatched, the AN shall hand over to the AG original supplier declarations with preferential origin status or preference declarations in invoices or EUR.1 documents, but at least a certificate of origin
- (4) The AN indemnifies the AG against all damages, financial losses and claims of third parties which arise for the AG because the AN has violated one of the duties mentioned in paragraphs 1 to 3, unless the AN is not responsible for the breach of duty represented.

#### **8. Supply chain protection**

- (1) The AN shall take the necessary organizational instructions and measures, in particular in the areas of property protection, business partner, personnel and information security, packaging and transport, to ensure security in the supply chain in accordance with the requirements of corresponding, internationally recognized initiatives based on the WCO Safe Framework of Standards (eg AEO, C-TPAT). He protects his deliveries and services to the AG or to third parties designated by the AG against unauthorized access and unauthorized manipulation. He only employs reliable staff for such deliveries and services and obliges any subcontractors to take appropriate measures as well.
- (2) If the AN culpably violates the provisions of Section 1, the AG is entitled, without prejudice to further claims, to terminate the contract or to withdraw from it. If the elimination of the breach of duty is possible, this right may be exercised only after fruitlessly expiring a reasonable period for the removal of the breach of duty.

#### **9. Warranties**

- (1) The AN warrants that the object of purchase possesses the contractually agreed properties, is fit for the contractually intended purpose and in accordance with the state of the art and all applicable private-law and public-law standards. The AN further warrants that no rights of third parties - including trade mark rights, copyrights and patent rights – shall be violated as a result of its contractual performance.
- (2) The limitation period for defect claims shall be governed by Section 438 of the German Civil Code (BGB)
- (3) In the event of remedial performance, the AN shall bear the expenses under Section 439 para. 2 BGB in addition to the costs for removal and installation of the defective object of purchase. The AN shall also be obliged to compensate for any damages to other objects that may result from the removal and installation of the defective object of purchase and shall indemnify the AG from all third-party claims in this respect. If the AN delivers a non-defective instead of the defective object of purchase, the AN shall not be entitled to demand compensation for use from the.

- (4) The place of performance for remedial performance shall be the place where the object of purchase is located according to its intended purpose. If the object of purchase is installed in a building of third parties, remedial works shall be effected in agreement with the latter and with protection of their interests.
- (5) Upon receipt of the written notification of defects by the AG at the AN, the statute of limitations for warranty claims is suspended until the AN rejects the claims, declares the defect eliminated or otherwise refuses to continue negotiations on the claims raised. In the case of replacement deliveries and the removal of defects, the warranty period for replaced and reworked parts begins again, unless the Contractor has made the replacement delivery or the removal of defects only for reasons of goodwill or similar reasons and has previously notified the AG of this.
- (6) The AN shall assign to the AG on account of performance any claims it may have against its subcontractors based on defects, warranty or damages, and the AG shall accept such assignment upon conclusion of the purchase agreement. The AN shall be authorized to assert such claims against its subcontractors until further notice.

#### **10. Liability**

- (1) The AN shall be liable without restrictions in accordance with statutory provisions for all damages the AN or its vicarious agents may cause during the provision of the contractual services.
- (2) If a third party suffers damage as a result of a defect or fault in the object of purchase, the AN shall have sole responsibility unless such damage has been caused by the AG's wilful intent or gross negligence. If a third party asserts claims against the AG, the AG shall be entitled to be held harmless by the AN in respect of any liability towards such third party.
- (3) The AN shall submit proof to the AG of liability insurance having been taken out with a minimum coverage amount of €2,500,000.00 per occurrence and year, as blanket coverage for persons and property damages. The insurance cover must comprise, with the same coverage amounts, an enhanced product liability insurance with the cover modules 4.1 through 4.4 and the cover module 4.6 in accordance with the respectively applicable version of the Model Terms issued by the National Association of the German Insurance Industry (GDV) for the product-liability model, as well as an environmental liability insurance with the cover modules 2.6 and 2.7 in accordance with the Model Terms issued by the GDV for the environmental liability model.
- (4) The AN is to take out transport insurance if he bears the risk for the goods' transport, or if he must take out such transport insurance under the terms of delivery. The liability amount must correspond to at least 110% of the commercial value of the goods being transported.

#### **11. Retention of Ownership**

Ownership in the object of purchase shall be transferred to the AG upon handover to the AG or to a third party designated by the AG unless the Parties have agreed on a different form of ownership transfer. Any retention of ownership – in any form whatsoever – shall be excluded.

#### **12. Billing and Payment**

- (1) The receipt of a proper and verifiable invoice is a prerequisite for possible payments and payment deadlines.
- (2) The corresponding order number, the project name, the project number, the service performed, the cost centre, the service recipient and the payments received must be shown on each invoice. It must also be sent to the billing address given by the AG. A delivery note or proof of performance signed by the AG must be enclosed. Incomplete information or invoices that cannot be checked for other reasons will be rejected at the expense of the contractor. By rejecting invoices, payment deadlines are suspended and only start to run again when the relevant invoice is submitted again.
- (3) The payment period is 30 days after delivery or partial delivery and receipt of the invoice or partial invoice with 3% discount, 45 days after delivery or partial delivery and receipt of the invoice or partial invoice with a 2% discount, or without deduction within 60 days.
- (4) The agreed payment period begins only after a completely fault-free and contract-compliant delivery / service and the expiry of an audit period of seven calendar days after receipt of the invoice.
- (5) Electronic invoices are only accepted if they are sent to the agreed medium / address (e.g. an email address, an e-invoicing portal). Electronic invoices that are sent elsewhere, are deemed not to have been delivered and will not be processed. This applies in particular to sending to personalized e-mail addresses.
- (6) In case that the AG has specified a weekly payment run, payments are deemed to have been made on time if they are (outgoing) carried out in the following payment run after the payment period has expired. Invoices received between December 7<sup>th</sup> and January 7<sup>th</sup> of each year are agreed as having been received by January 7<sup>th</sup>.
- (7) Payments are made exclusively by transfer to a bank account in the name of the contractor in the country in which the contractually owed services are to be provided or the contractor has its main place of business. The only exception from payments to the contractor (AN) is, if the latter one has sold his receivables in the context of factoring. In such cases, the transfer must be made to a bank account held in the name of the factor in the country in which the factor has its main place of business.  
The issue of transfer order to the bank is decisive for the timeliness of the payment.  
In case the payments are too late, the AG owes default interest amounting to 5%-points above the respective base interest rate in accordance with § 247 of the German Civil Code (BGB).

**13. Assignment/Setoff/Right of Retention**

- (1) The AN may assign claims to payment of the purchase price only upon prior consent of the AG.
- (2) The AN shall be entitled to apply setoff or assert retention rights only if its counterclaims are undisputed or determined without further legal recourse. Rights of retention may only be exercised within the contractual relationship in which the AG's claims are based.

**14. Setoff with Claims of Affiliated Companies**

- (1) The term "affiliated companies" in this Clause means with regard to the AN affiliated companies within the meaning of Sec. 15 et seq. of the German Stock Corporation Act (AktG) and with regard to the AG companies which carry the name component "Bilfinger" in their respective company names. Upon request the AG will furnish the AN with a list of the affiliated companies of the AG.
- (2) The AG shall be entitled to offset claims of the AN arising out of or in connection with this purchase agreement
  - (a) against claims the AG may have against affiliated companies of the AN,
  - (b) against claims affiliated companies of the AG may have against the AN, and
  - (c) against claims affiliated companies of the AG may have against affiliated companies of the AN, or to exercise retention rights in this respect.
- (3) The AG shall be entitled to offset claims the AN may have against affiliated companies of the AG
  - (a) against claims the AG or affiliated companies of the AG may have against the AN, and
  - (b) against claims the AG or affiliated companies of the AG may have against affiliated companies of the AN.
- (4) In the claims constellations in sub-paragraphs (2) and (3), affiliated companies of the AG shall be entitled to the same rights to apply setoff or retention as the AG.

**15. Declarations of the Parties**

- (1) Any declarations of the AN in connection with this purchase agreement shall be addressed to the ordering unit of the AG.
- (2) All documents of the AN addressed to the AG shall include the order number, the ordering unit of the AG, the place of receipt, the project name as well as the number and the date of the order letter.
- (3) Amendments to the agreement as well as all unilateral legal declarations require written form for reasons of proof.

**16. Confidentiality and Data Protection**

- (1) The Parties undertake to keep the content of this agreement confidential, in particular with regard to conditions, and to comply with applicable data protection provisions. Notably, the Parties shall not publicly defame each other.
- (2) Each Party shall treat all confidential information which the other Party discloses to it in connection with the agreement as confidential without restrictions. Confidential information within the meaning of this provision shall be information, documents, or data designated as such or which are to be regarded as confidential due to their nature, in particular personal data (within the meaning of the DGSVO). This shall not apply to information which is accessible to the public or which has been in the possession of the other Party prior to its disclosure
- (3) The confidentiality obligation shall not apply to the disclosure of information to affiliated companies within the meaning of Sec. 15 et seq. AktG. Notably information within the framework of the supply chain and procurement management may be passed on to affiliated companies worldwide.
- (4) Furthermore, the Parties undertake to grant access to confidential information of the other Party only to those employees and subcontractors and suppliers who are entrusted with the provision of services within the scope of this agreement and with whom appropriate confidentiality and data protection agreements have been concluded. The aforementioned confidentiality obligations shall survive the termination of this agreement for a period of two years. With regard to personal data, the confidentiality obligation is unlimited in time.
- (5) To the extent that the AN is acting as a data processing agent for the AG, an agreement shall be concluded in order to ensure that the requirements for contract data processing (so-called "instructions") are complied with (see the data protection annex of this agreement for a sample of the requirements stipulated within Sec. 11 of the German Data Protection Act (BDSG)).
- (6) Without the prior consent of the AG, the AN shall not be entitled to use either the business relationship with the AG as such or its content for advertising purposes.

**17. Drawings, Models, Documents**

The AN may use drawings, models and documents received from the AG only for the purpose of contract negotiation and execution and shall not make them available to third parties. The AN is obliged to return to the AG such drawings, models and documents immediately upon request, at the latest upon termination of the agreement. They shall remain the property of the AG who shall also retain all other rights thereto.

**18. Spare parts**

- (1) AG is obliged to keep spare parts for the delivered products for a period of at least five years after delivery.
- (2) If AG intends to discontinue the production of spare parts for the delivered products, he will inform the AG of this immediately after the decision on the discontinuation. This decision must – subject to paragraph 1 – be made at least 6 months before production is discontinued.

**19. Vendor Declaration and Business Conduct**

(1) **Vendor Declaration**

The AN is obliged to comply with the Vendor Declaration. The current version of the Vendor Declaration is enclosed to these Terms & Conditions of Purchase and can be viewed on the website of the AG. 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 AG 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 AG shall inform the AN of any amendments to the Vendor Declaration.

(2) **Termination Right**

The AN acknowledges and agrees that any breach of this Clause 17 (Vendor Declaration and Business Conduct) will be deemed a material breach of contract entitling the AG to termination of contract at any time and with immediate effect, without any obligation to pay any outstanding fees or make any other payment. The AG shall not be obliged to compensate any damage or loss suffered by the AN as a result of a termination under this Clause 17 para. 2 (Termination Right).

**20. Applicable Law / Place of Jurisdiction**

In addition to these terms and conditions, the laws of the Federal Republic of Germany pertaining to the legal relationships between domestic parties shall apply exclusively, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). The place of jurisdiction between commercial partners shall be the registered office of the AG.

# Terms & Conditions of Purchase and Code of Conduct (T&C) Bilfinger SE - Germany



## Vendor Declaration

As part of our commitment to following the principals contained in the Bilfinger Code of Conduct, we expect our business partners to follow comparable standards in their conduct. Our expectations are set out here, in our Vendor Declaration, which you are contractually obliged to follow.

### *Compliance with laws and adherence to generally accepted standards*

As a vendor to Bilfinger we will:

- Comply with applicable laws and regulations, including relevant anti-corruption legislation
- Operate in accordance with generally accepted principles and standards relating to social and environmental responsibility, and internationally recognized human rights including laws preventing modern slavery

### *Anti-Bribery and Anti-corruption*

As a vendor to Bilfinger we will:

- Not partake in any form of corruption or bribery, and ensure that business decisions are not influenced through any improper or illegal payments, either through cash, gifts, travel or anything else of value including intangible benefits
- Refrain from presenting any invitations or gifts, or anything of value, to Bilfinger employees with an intention to gain any form of influence
- Disclose to Bilfinger any requests or pressure to provide bribes (any kind of benefit) in any form, either to Public Officials or any other parties, directly or indirectly, that may try to influence or provide an unfair business advantage

### *Books and records*

As a vendor to Bilfinger we will:

- Maintain complete books and records that accurately reflect all business transactions and expenditures that are prepared in accordance with applicable laws and regulations

### *Conflicts of interest*

As a vendor to Bilfinger we will:

- Avoid situations where our own interests conflict, or could conflict, with the business interests of Bilfinger
- Notify Bilfinger without delay, if we become aware of a conflict of interest, including if a Bilfinger employee has a financial interest in our company or is related to our company in any other way

### *Protection of assets and information*

As a vendor to Bilfinger we will:

- Contribute to safeguarding Bilfinger's assets from theft, misuse or waste
- Take necessary measures to protect, and keep Bilfinger data and information that is available to us confidential

### *Anti-competition and economic and trade sanctions*

As a vendor to Bilfinger we will:

- Not engage in any activities that could reasonably be construed as being anti-competitive, abusive or unfair, and comply with applicable anti-trust and anti-competition laws and regulations
- Comply with laws and regulations governing the export or import of goods, products and services, and those relating to economic and trade sanctions, and anti-boycott

### *Insider trading*

As a vendor to Bilfinger we will:

- Avoid insider trading by not buying or selling Bilfinger or another company's securities when in possession of insider information about Bilfinger that is not available to the investing public, and that could influence an investor's decision to buy or sell the security

### *Employees*

As a vendor to Bilfinger we will:

- Provide for safe workplaces that comply with international labour standards
- Ensure fair employment practices, and refrain from any form of unethical or illegal employment practices (such as harassment or physical assault, any form of slavery, servitude and forced or compulsory labour including, but not limited to child- labour)
- Not discriminate against employees on the grounds of their ethnicity, gender, sexual orientation, religion, ideology, disability or age
- Assure the rights of association and collective bargaining and provide employees with written agreements of employment, as governed by local legislation
- Ensure that wages, working hours, vacation and leave periods provided to employees and hired external contractors are in accordance with applicable law and/or agreements
- Adhere to all applicable data protection laws

## Terms & Conditions of Purchase and Code of Conduct (T&C) Bilfinger SE - Germany



### *Environment*

As a vendor to Bilfinger we will:

- Conduct our operations safely and minimize the environmental impact of our business activities
- Comply with applicable environmental legislation and permits

### *Communities*

As a vendor to Bilfinger we will:

- Respect the local community and seek to prevent and mitigate adverse impact on local community

### *Standards towards our own Vendors*

As a vendor to Bilfinger we will:

- Demand from our own vendors and subcontractors to adhere to the principles set forth in this Vendor Declaration
- Systematically include and follow up on these obligations in our business relationships with them

### *Material compliance and conflict minerals*

As a vendor to Bilfinger we will:

- Ensure that goods and materials provided to Bilfinger are not sourced in illegal or unethical ways
- Confirm the implementation of appropriate due diligence measures for the responsible sourcing of minerals to ensure compliance with relevant regulations.
- In case we produce, buy or trade with regulated Conflict Minerals (tantalum, tin, tungsten, gold, or any other mineral or its derivatives determined to be financing conflict) from the Democratic Republic of Congo (DRC) or adjoining countries, inform Bilfinger and upon request make our due diligence measures and results available to Bilfinger, to eliminate the possibility that such minerals are supplied to Bilfinger

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Bilfinger reserves the right to request further self-declarations, certifications or to take any other reasonable action as contractually agreed where there may be concerns.

In cases of concern or, if you become aware of any inappropriate action by Bilfinger personnel, you are encouraged to report these to the Bilfinger Reporting Line (see <http://www.bilfinger.com/en/responsibility/compliance/> for global phone numbers) or anonymously through our online reporting portal, available at the same link.