

# BILFINGER'S TERMS AND CONDITIONS OF SALE AND DELIVERY

## THE NETHERLANDS

### 1. Applicable territory

All current and future deliveries and services to the customer shall only take place on the basis of the present Terms and Conditions of Sale and Delivery. Provisions that deviate from these terms and conditions and, in particular, the terms and conditions of the customer shall not apply; this also applies if the validity thereof is not rejected expressly in the individual case. Terms and conditions that are worded differently shall only apply if and insofar as Bilfinger has expressly declared in writing that it agrees with them.

The customer shall be accepting the present terms and conditions by accepting the quotation.

Deviating provisions included in Bilfinger's quotations shall prevail above the present terms and conditions.

### 2. Quotations, concluding contracts, terms and rent

Bilfinger's quotations shall always be without obligation. A contract shall only be involved if Bilfinger has confirmed the customer's order in writing.

All verbally made agreements with regard to deliveries and services shall only be effective after they have been confirmed by Bilfinger in writing.

Announcements with regard to that which has been delivered or the services as well as figures thereof shall be deemed descriptions or markings. Bilfinger shall only be liable for this if this is guaranteed expressly in writing. Deviations within the margins that are usual in the trade are allowed insofar as they do not negatively impact the goal set down contractually.

Bilfinger reserves all rights with regard to the information and materials made available, in particular, tools, models, samples, images and calculations, with regard to the quotations and estimates of costs that it makes. The customer may not offer access to this information and materials to third parties without the permission of Bilfinger as such or as content. The customer may not announce these either or use or copy them through third parties.

Delivery terms are always free of obligation unless declared binding expressly by Bilfinger. If terms are exceeded, the customer must specify a suitable term for compliance. A delivery time specified by Bilfinger shall only start after all technical questions and problems related to this have been resolved and the customer has complied with the customer's obligations on time and in accordance with the provisions.

The customer must guarantee that the performance of the work can take place without interruptions and impedance.

The rental to be paid by the customer shall be calculated as from the date on which the items have been made available to the customer in the storeroom of Bilfinger in accordance with the agreement and/or notification up to the agreed termination date and/or the items have again be issued to Bilfinger or have been picked up by Bilfinger, respectively, insofar as the parties have not concluded an agreement that says otherwise.

Insofar as no other agreement that says otherwise has been concluded, the items shall be rented for specific periods of time, that is to say, a part of a day, days, weeks and/or months. The rental amounts to be paid are indivisible. The customer must pay the rental amount for the full period of time for a partial period of time (equal to the preceding periods of time at most).

Days with outage because of frost and set holiday days shall be included in full when determining the rental period and calculating the rental.

The parties shall have the right of terminating the rental agreement with regard to indefinite rental agreements provided that a period of notice of one (1) week and the above provisions are observed.

Bilfinger shall retain the full entitlement on compliance of all obligations that exist for the contractor based on the agreement including entitlements to compensation with regard to items and/or items that have been lost after termination of the rental agreement whatever the reason for the termination may be.

The customer shall be fully responsible and liable for the items taken over based on the rental agreement as from the moment of transfer of the items to the customer up to the moment when they have been returned to the Bilfinger storeroom.

The items may never be sublet, offered for sale, sold, transferred, encumbered or made available for use to others in any way whatsoever by the customer. The customer may not remove and/or place or have placed the items at other locations or workshops without the permission of Bilfinger other than the location or workshop for which they are intended.

The customer must treat the items with due diligence. The customer must, moreover, insure the items for their replacement value in relation to all damage, risks, faults and theft.

The customer must pay for any damage to the items that has occurred during the rental period regardless of the cause of the damage unless this damage is the result of standard wear and tear.

If it has been agreed that the items shall be rented in an installed condition and the installation and/or disassembly of the items has/have been delayed as a result of force majeure with regard to Bilfinger, this shall not lead to the agreed date on which the rental starts changing.



If it has been agreed that the rented item must be picked up by Bilfinger when the rental period ends, the customer must ensure the materials are ready after a prior notification regarding this for transport. If this obligation is not met, Bilfinger shall be entitled to charge for the additional costs that this may create.

The customer shall be responsible for ensuring that the Bilfinger items are not mixed with similar items from third parties during the rental period.

Should, however, mixing take place anyway, the customer must pay for the created damage where the damage shall be determined on the basis of these items that belong to Bilfinger. This measure shall be implemented extrajudicially.

The customer is responsible for and must ensure the following at the customer's own expense and risk that:

- The structure of the building in or on which the rented item shall be installed is suitable for this goal;
- Any drawings, specifications and/or instructions on which the work to be performed by Bilfinger is based are verified and that the specified sizes and other data are checked;
- All impedances at the building site are removed before the start of the installation work, inconvenient level differences in the substrate are levelled and that the substrate is sufficiently strong to support the structures to be installed for Bilfinger;
- The customer has the permits that are required for installation and disassembly, respectively;
- Installations, systems and similar are available free of charge for the Bilfinger employees on site for the relevant objectives and that the scaffolding and scaffolding structures erected/ placed by Bilfinger are earthed based on the applicable regulations of the authorities.

If the customer should not or should not fully meet an obligation or a number of the customer's obligations, it shall be assumed that this is an imputable shortcoming of the customer of such an extent that Bilfinger shall be entitled to terminate the agreement because of this reason. All the damages and losses that ensue as a result of this for Bilfinger shall be completely at the expense of the customer.

The customer shall be liable for theft, faking and/or damage to materials as from the time when Bilfinger has delivered the materials in full or in part at the building site or the other relevant delivery location or when the materials are taken out of Bilfinger's storeroom.

Bilfinger shall not be liable for any physical harm to people, damage to buildings, installations and other issues or any other damage that may or may not be the direct result of actions or omissions and failures to act of Bilfinger itself, its employees or other people it may deploy when performing the installation work unless gross negligence or an intentional act is involved. An exception is made with regard to cases when Bilfinger must pay compensation based on legal provisions.

All drawings prepared, calculations drawn up, descriptions defined and models and tools used by Bilfinger at the instructions of the customer shall remain the property of Bilfinger and Bilfinger shall also hold all the relevant copyrights with regard to this issue.

### 3. Calculation, settlement and default

Bilfinger's prices shall only apply for the agreed services and delivery (/deliveries). They shall be based on factors that apply that apply on the quotation date with regard to the determination of prices. If changes occur with regard to the above price-determining factors after the agreement is concluded but before its execution, Bilfinger shall be entitled to implement a corresponding price adjustment. This applies, in particular, with regard to material prices, transport costs, wages, insurance premiums, taxes and import duties.

Counterclaims may only be settled by the customer with Bilfinger claims and/or an appeal may be made to a right of suspension when the counterclaim has not been disputed or it has been ascertained in law.

All prices shall be exclusive of VAT. Insofar as an agreement has not been concluded that is worded differently expressly and in writing, the following shall apply with regard to payments made to Bilfinger:

- 30% after the agreement is concluded
- 30% when the work starts
- 40% after delivery

If the customer should cancel the order in full or in part, Bilfinger shall be entitled to 100% of the price with regard to the already executed part of the order and to at least 15% of the price for the part that has been cancelled. Bilfinger shall also be entitled to compensation for every other proven damage or loss that is greater than 15% of the price for the part that was cancelled.

All payments must be made within 14 days after invoice date to the bank account specified by Bilfinger. If the customer does not meet the customer's payment obligation in full within 14 days, the customer shall be deemed in default without a notice of default regarding this being required.

Bilfinger shall be entitled to demand advance payments and/or to demand cash on delivery from the customer. Bilfinger shall also be entitled to demand a suitable and reasonable security for the payment claim to be expected at all times from the customer.

Bilfinger shall be entitled to demand immediate and full payment should the customer pay late. Any additional costs related to continuing being in default and, in particular, extrajudicial collection costs, shall be at the expense of the customer.

Bilfinger shall be entitled to charge the customer either the interest rate that is usually used in the trade or the statutory interest rate plus 2 percentage points for the period in which the customer was in default with payments.

The delivery and service obligations of Bilfinger shall be deferred for as long as the customer continues to be in default with a payment that is already due and payable.

Despite the aforementioned provisions, Bilfinger shall be entitled to claim the payments in full if:

- The customer again acts contrary to the obligations vested on the customer contractually after payment has been demanded from the customer in writing and a suitable term for compliance with the agreement has been made;

- The customer requests that payment be deferred, becomes insolvent, files an application to be declared bankrupt/submits a petition for debt adjustment, cannot pay or an asset that belongs to the customer is seized;
- The customer ceases to trade or stops operating an essential part of its/his operations, disposes of its/his company and/or continues with operations in a different manner.

Bilfinger shall, moreover, be entitled to defer the obligations that apply to Bilfinger based on the agreement and/or to terminate the agreement in full or in part in the aforementioned cases. Bilfinger shall, in this case, be entitled to demand payment of the contractual price plus any additional costs that may have ensued.

#### 4. Delivery, shipment and risk transfer

The delivery shall take place "ex storeroom" at Bilfinger through the transfer to the customer and/or at the time when the means of transport with which the items are transported to the destination location and the transfer location of the items drives up to the entrance. The customer commits to ensuring that the destination location can be easily reached by a normal means of transport.

The shipment of the items shall be at the risk of the customer when they are shipped to the destination location and the delivery address. Bilfinger shall be free to choose the means of transport.

The shipment costs shall always be at the expense of the customer.

The risk with regard to damage or loss of the items shall be transferred to the customer when the items are transferred to the customer's care. Items that are ready for shipment must be called off immediately. If this does not take place, Bilfinger shall be entitled to store the items at the expense and risk of the customer.

The transfer of the risk with regard to the services delivered (except for the pure delivery) shall take place at the moment of take-up thereof by the customer. Bilfinger shall be entitled to make partial deliveries. Despite the above, the risk in case of damage or destruction as a result of force majeure or other circumstances that cannot be averted and for which Bilfinger cannot be held responsible shall pass to the customer.

The delivery and service shall be deemed completed when Bilfinger has informed the customer that the service has been realised or the customer makes use of the service prematurely.

All shipments shall be counted and checked carefully by Bilfinger to ensure correctness of the item quantities specified on the delivery form and/or consignment note. The customer must check these item quantities and must inform Bilfinger about any found differences immediately. If the customer does not report differences immediately to Bilfinger after receiving the items, it shall be assumed that the item quantities on the delivery form and/or consignment note are correct.

Complaints with regard to the quality and usability of the delivered items must be notified to Bilfinger within 7 days after delivery of the items. If such a report does not take place or it does not take place on time, the customer shall forfeit all its/his claims against Bilfinger.

Delivered items can only be returned by the customer after Bilfinger has declared in writing to agree to this return.

The return shall take place at the expense and risk of the customer insofar as another agreement has not been made otherwise expressly.

#### 5. Retention of title

All items delivered by Bilfinger shall continue to be the property of Bilfinger until the customer has met its/his payment obligations based on the agreement. This shall also apply to any compensation as well as to collection costs and claims for interest.

The customer shall not be entitled to resell delivered items. In such a case, however, the customer shall be obliged to inform the third buyer about Bilfinger's retention of title. The customer shall pass on all claims that may have arisen in relation to reselling the delivered items to Bilfinger.

The customer must maintain the items that belong to Bilfinger with due diligence. The customer must insure the items against all damage and risks for the book value charged by Bilfinger. If the items should be lost as a result of damage or a risk, the payment made by the insurance must be transferred to Bilfinger. The customer must inform its/his insurance companies about this obligation and must inform Bilfinger about the names and addresses of the insurance companies. Bilfinger shall be entitled to inform the insurance companies that the payments to be made by the insurance for the items that are the property of Bilfinger, must be paid to Bilfinger.

#### 6. Facilities

The customer must make available to Bilfinger all facilities that are required for the performance of the services that have been set down contractually free of charge and on time, in particular, power, compressed air and water as well as scaffolding facilities and objects in the sense of the Dutch Working Conditions Act.

If these facilities are not made available or are not made available in time by the customer, Bilfinger shall be entitled to demand compensation from the customer for loss of time, additional costs, etc.

#### 7. Bilfinger services and claims under a guarantee

The customer must determine immediately whether the delivered or supplied service complies with the quality agreed contractually and is suitable for the contemplated goal.

Bilfinger shall remove faults that are reported within 6 months after delivery/transfer besides faults that are not directly visible insofar as the customer can prove that these faults are solely the result of a faulty service of Bilfinger.

The term shall start upon delivery/transfer to the customer and when the service is taken up by the customer, when providing services (instead of deliveries), respectively.

Faults that are reported on time with regard to the delivered issues or the provided services shall be removed by repair and/or delivery of issues that do not have the fault at the discretion of Bilfinger.

Bilfinger shall be entitled to refuse removing any faults if the customer does not meet its/his existing contractual obligations or does not meet them on time with regard to Bilfinger. This shall also apply to cases in which Bilfinger has become aware that the customer may not comply with its/his contractual obligations.

If Bilfinger must perform work to remove faults at a different location than the originally agreed location of the service, Bilfinger shall be entitled to charge for travelling and accommodation costs.

The customer must inform Bilfinger immediately, that is to say, within 2 calendar days at the latest after any faults may have been found, in writing about any faults because, if not, rights with regard to the guarantee shall no longer apply.

The right of the customer to the guarantee shall be null and void when the customer tries to remove the fault or has third parties remove the fault without written permission from Bilfinger.

## 8. Liability

The statutory liability of Bilfinger is limited to the contract price at most. With regard to framework agreements, the contract price is deemed to be the smallest order regarding which individual prices form the foundation. The liability is limited, in any case and not just with regard to framework contract to € 50,000 at most. Cases of direct trading losses and consequential losses of whatever nature are excluded from the liability. Cases of infringements of patents, licences or other third-party rights are also excluded from liability as a result of the use of the information of the customer and damage or loss of issues and information made available by the customer.

The customer must indemnify Bilfinger regarding all claims.

Liability shall, in any case, only be involved insofar as the liability insurance of Bilfinger offers cover for the relevant case and for the amount for which this cover applies.

## 9. Period of limitation

All claims and, therefore, also claims under the guarantee shall no longer apply after one year after the day of delivery.

## 10. Force majeure

Cases of force majeure and other faults or events that cannot be foreseen when the agreement is concluded (for example, disruptions at the company, exceedance of the delivery terms or breach of contract and/or force majeure of suppliers, energy or raw material shortages, traffic disruptions and strikes and exclusions and decisions of the authorities) for which Bilfinger cannot be deemed responsible, shall free Bilfinger completely from the obligation to deliver and supply the services, respectively, for the duration of the disruption/fault. The deferral of the delivery of services by Bilfinger shall not release the customer from its/his obligations to pay for services already delivered.

In case of force majeure, Bilfinger shall be entitled to terminate the agreement in full or in part extrajudicially or to defer its execution without Bilfinger having to pay compensation of any type.

## 11. Validity clause

If a provision of the present terms and conditions should be null and void in full or in part, this shall not affect the validity of the other provisions. The legally valid arrangement shall apply that is the most similar to the goal of the provision that is null and void instead of the null and void provision or the part of the provision that has become null and void.

## 12. Applicable law and competent court

The present Terms and Conditions of Sale and Delivery shall be governed by Dutch law. The competent court is the court of Rotterdam unless Bilfinger should prefer the competent court of the location where the customer is established.

The present Terms and Conditions of Sale and Delivery have been filed with the Chamber of Commerce in Rotterdam under number 2003 5820.