



Standard

Terms and Conditions of Purchase

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Approved by
Procurement Manager

Procurement

1. Notes and Definitions

Any references to “Bilfinger”	Bilfinger UK Ltd
The Purchaser	Shall mean Bilfinger UK Ltd
The Vendor	Shall mean the person, firm or Company with whom the order is placed
The Client	Means the person, firm or company who has appointed the Purchaser to carry out the works
The Principle Contract	Means the contract between the Purchaser and the Client
The Goods	Shall mean any item of whatsoever nature or service, including but not limited to design, raw materials, finished or semi-finished materials or articles, parts, spares, commodities, etc. and whether one or a number of items, whether or not identical or similar including any such materials, articles and commodities supplied in connection with the services as described in the order or as otherwise agreed to be supplied by the Vendor
The Order	Shall mean the order or subsequent amendment to order, placed by the Purchaser for the supply of the goods
The Price	Shall mean the price agreed for the Goods and/or Services as specified in the Order and includes carriage, packaging and insurance
The Services	Shall mean work and/or services or any of them to be performed by the Vendor for the Purchaser as specified in the Order
The Specification	Shall mean the technical description (if any), drawing, sample or packaging of the goods contained or referred to in the order
HSEQ	Health, Safety, Environment and Quality

2. General

- 2.1 No responsibility will be accepted by the Purchaser for any order or amendment unless issued on the official order form of the Purchaser duly signed on behalf of the Purchaser.
- 2.2 Nothing herein shall deprive the Purchaser from its rights under common Law or Statute Law
- 2.3 The Vendor warrants that the transaction and the Goods comply in all respects with Government Legislation, Regulations, Codes, and Orders applicable to the country of destination.

3. Variations of Goods and Services

The Purchaser reserves the right by notice in writing to modify the scope of supply of Goods and/or Services and any alteration in the agreed price caused by such modification shall be agreed in writing between the Purchaser and Vendor. The Vendor must notify the Purchaser within 5 working days of the effect to price and delivery.

4. Variations of Terms and Conditions

Neither the Purchaser nor the Vendor shall be bound by any variation, waiver of or addition to these conditions including without limitation any standard terms of sale of the Vendor, except as agreed by both parties in writing and signed on their behalf by the duly authorised representative, and shall supersede any previous agreements including without limitation any quotation or acceptance forms in respect of the same.

5. Quality, Remedies, Liens

- 5.1 Subject to these conditions, the Goods and Services to be provided shall:
- 5.1.1 Conform as to quantity, quality and description and any specification or standards stated or referred to in the Order;
 - 5.1.2 Be of first class materials and workmanship throughout and be executed with reasonable care and skill by properly qualified and experienced persons;
 - 5.1.3 Be equal in all respect to any samples, patterns, demonstration or specification provided or given by either party;
 - 5.1.4 Be capable of any standard or performance specified in the Order;
 - 5.1.5 If the purpose for which they are required is indicated in the Order, either expressly or by implication, be fit for that purpose;
 - 5.1.6 Comply with any statutory rule, regulation or code that may be in force relating to the manufacture and/or supply of the Goods and/or the Services; and
 - 5.1.7 Be in accordance with a quality assurance system equivalent or similar to ISO9000.
 - 5.1.8 Be unencumbered in title and free and clear of any liens.
- 5.2 Unless specified otherwise in the Order and without prejudice to the Vendors obligations in law, the Vendor shall replace or repair free of charge any Goods and/or Services which are or become defective within a period of 12 months from putting in to service or 24 months from delivery whichever is the sooner. Where such defects or failures are as a result of faulty design, erroneous instructions or data as to use, inadequate or faulty materials or workmanship or any other breach of the Vendors warranties whether expressed or implied. Such replacements or repairs shall be subject to the obligations above for a period of 12 months after replacement or repair.
- 5.2.1 If any defect which the Vendor is obliged to remedy under this Clause is not remedied within an agreed time, the Purchaser may elect to remedy such defect and the Vendor shall indemnify the Purchaser against all reasonable resultant costs.
 - 5.2.2 The Vendor will keep the Purchaser indemnified in respect of all loss, damage, injury, costs and expenses which result, directly or indirectly, from defective Goods, or Services supplied or provided by the Vendor or any breach of clause 5.1 and / or clause 7 by the Vendor.
- 5.3 The Vendor shall be responsible for any errors or omissions in any drawings, calculations, packing details or other particulars supplied by it, whether such information has been approved by the Purchaser or not,

provided that such errors or omissions are not due to inaccurate information provided in writing by the Purchaser.

6. Copies of Sub-Orders

The Vendor shall provide the Purchaser, immediately they are placed, with two copies of all sub-orders placed specifically in connection with the Order unless expressly waived by the Purchaser for specific sub-orders.

7. Inspection and Testing

- 7.1 The Purchaser's representative and any representative of its customer may progress, inspect or test the Goods or Services at any reasonable time at the Vendor's works or at the work of any of the Vendor's subcontractors or assignees. For this purpose, the Vendor will arrange for access to the Vendor's works or any such other works when requested by the Purchaser. The Vendor shall ensure, when placing orders, that it facilitates the Purchaser's rights under this Clause.
- 7.2 If specified by the Purchaser, the Vendor will give adequate notice of any tests at the Vendor's works which the Purchaser is entitled to attend and will provide, by arrangement, the Purchaser with such test certificates as the Purchaser or its customer may reasonably require. Any inspection, checking, approval does not relieve the Vendor of any liability under the Order nor does it imply acceptance of the Goods or Services.
- 7.3 The Purchaser reserves the right, at its option, either to reject any Goods or Services in whole or in part (whether or not the same have been delivered to and accepted by the Purchaser) or to cancel the Order or any part of the Order or to delay acceptance of the whole or any part of it without any further payment or charge for storage or delay in any of the following circumstances:
- 7.3.1 Failure by the Vendor to comply strictly with the description, specification and drawings relating to Goods to be supplied or Services to be carried out and/or failure to comply with any British or other standard specification where applicable;
- 7.3.2 If the Goods or Services are below the specified standard or fail to pass any inspection or test in accordance with the Order; or
- 7.3.3 If the Vendor otherwise fails to comply with any of its obligations under the Order.

8. Performance Delay

- 8.1 Unless otherwise agreed in writing, any time or period given for delivery, despatch, performance or completion shall be of the essence. The Vendor shall notify the Purchaser of any potential delay in delivery, despatch, completion or performance as soon as it becomes aware of such circumstances.
- 8.2 The Purchaser reserves the right to reject the Goods or Services not delivered or performed on time and/or to cancel the whole or any part of the Order of which such Goods or Services form part and/or to return any Goods already delivered which by virtue of such rejection or cancellation are no longer of use. Such rights of rejection, cancellation or return shall be available to the Purchaser irrespective of the cause of delay without prejudice to the Purchaser's right to damages and any other remedies against the Vendor for breach of contract and without any liability of whatever nature on the Purchaser.
- 8.3 No concession with respect to delays in delivery, despatch, completion or performance shall be construed as a waiver of any of the Purchaser's rights and remedies unless such waiver is specifically agreed in writing and signed by a duly authorised representative of the Purchaser.
- 8.4 In addition to the rights above, the Vendor is liable to pay liquidated damages for delay if he fails to deliver, despatch, complete or perform within the time or period given, provided that liquidated damages have been stipulated in the respective Order.

9. Delivery and Packing

- 9.1 Deliveries made in advance of the Purchaser's requirements may be returned to the Vendor at the Vendor's expense or accepted at the Purchaser's option. If the Purchaser accepts them, the Purchaser shall be entitled to defer payment to align with the payment terms and delivery date stated in the Order.
- 9.2 Phased delivery Orders only. An Order shall indicate the Purchaser's estimated requirements for delivery of the Goods or completion of Services. The Purchaser will not accept delivery of Goods or performance of Services or be in any way liable to pay for any Goods or Services which are not in accordance with an Order unless the Purchaser has given the Vendor written release or performance instructions which are directly attributable to that Order.
- 9.3 No responsibility is accepted for Goods delivered or Services performed in excess of the Order. The Purchaser shall take reasonable steps to notify the Vendor of such excess whereby the Vendor shall remove such excess quantities at its own expense.
- 9.4 All Goods must be adequately protected against extremes of temperature, damage and deterioration in transit and/or storage and delivered carriage paid in accordance with the Purchaser's instructions (if given) and the packages of Goods must bear the description and the quantity of the contents and the Purchaser's Order number.
- 9.5 Deliveries shall be made to the address stated in the Order and shall be off-loaded and placed as notified by the Purchaser at the time of delivery. If Goods are incorrectly delivered the Vendor shall be responsible for any additional expense incurred in delivering them to the correct destination.
- 9.6 The Vendor shall submit with the Goods full instructions for use and clear warning in respect to anything which may reasonably be done or omitted to be done in relation to the Goods and which could render them unsafe.
- 9.7 The Purchaser accepts no liability for any materials used for packing or cases unless previously agreed. The Purchaser will not accept any responsibility for returning any packing nor will the Purchaser accept any cost or incur any loss for that packing being collected. Where the Vendor provides packing or containers of any form that is returnable the Vendor shall collect such packing or containers within 10 days of being notified by the Purchaser that such packing or containers are available for collection. If the Vendor fails to collect the Purchaser shall be entitled to dispose of such packaging and charge the disposal cost to the Vendor.
- 9.8 The Purchaser will not be responsible for any failure to give notice to carriers of loss, damage, delay, or non-delivery.
- 9.9 The Vendor agrees on request to supply the Purchaser with any necessary declarations and documents stating the origin of the Goods.

10. Price and Payment

- 10.1 Unless the Order expressly accepts or stipulates any provision for Price variation and the basis of such variation, the Price or rate for the Goods and any Services is fixed and not subject to variation unless the Purchaser expressly agrees in writing signed by a duly authorised representative of the Purchaser. Invoices in excess of the order value may be rejected.
- 10.2 Failure by the Vendor to attend to any of the following details may mean delay in payment.
- 10.2.1 Failure by the Vendor to send all the relevant documentation, a separate advice note with the Goods, drawings, test certificates or any other documentation reasonably required for the Goods supplied or Services performed.

10.2.2 Failure by the Vendor to mark clearly the Order number and Purchaser's job number (when requested) on the consignment package, packing notes, invoices, monthly statements and all other correspondence relating to them.

10.3 Unless otherwise agreed, payments will be made 60 days from the end of the month following the receipt of a properly submitted and valid invoice. .

11. Title and Risk

11.1 Title to the Goods shall pass to the Purchaser on delivery to the place specified in the Order or as otherwise agreed without prejudice to any right of rejection or other right which may accrue or have accrued to the Purchaser under these conditions or otherwise.

11.2 Goods shall be at the risk of the Vendor until title to the Goods passes to the Purchaser even where the delivery has been delayed or postponed by the Purchaser or at the Purchaser's request.

11.3 All Goods rejected or returned for any reason shall be at the risk of the Vendor during transit back to the Vendor.

12. Force Majeure

If either party shall be delayed in fulfilling its obligations under the Order by reason of circumstances beyond its control, it shall notify the other party of those circumstances with any supporting documentation reasonably required by the other party, the performance of the obligations shall be suspended for such time as the circumstances aforesaid last and the party affected shall not be liable for any delay occasioned thereby. Provided that if such delay shall extend for an unreasonable time the party not affected by the circumstances may, by notice in writing, terminate the Order and no liability shall by reason of such termination attach to either party. Costs arising from Force Majeure circumstances shall be borne by the party incurring such costs.

13. Purchasers Property

13.1 All designs, tools, patterns, drawings, dies, materials, specifications and other items supplied by the Purchaser shall remain the Purchaser's property. The Purchaser's property shall be maintained by the Vendor in good condition, shall be kept confidential and not be used for any purpose other than carrying out this Order or any subsequent Order placed by the Purchaser and shall be returned or delivered to the Purchaser carriage paid on request. The Vendor will be responsible for making good any loss of or damage to such items howsoever arising excepting fair wear and tear in respect of tools, patterns and dies.

13.2 The Vendor will keep the Purchaser full indemnified (except in respect of designs provided by the Purchaser) against all claims of whatsoever nature (including those for royalties, damage or other losses) arising from infringement of patents, registered designs, unregistered designs, design rights, copyrights, trademarks or any other intellectual property rights in relation to the Order and in relation to the use of articles or processes pursuant to the Order.

13.3 The Order and its subject matter shall be treated as confidential between the Vendor and the Purchaser and shall not be disclosed by the Vendor (or any permitted subcontractor or assignee) to any third party or used by the Vendor (or any permitted subcontractor or assignee) for advertisement, display or publication without the Purchaser's prior consent in writing.

13.4 The Vendor agrees neither to quote nor to supply parts made with the Purchaser's designs, tools, patterns, drawings, dies or specifications to any third party without the Purchaser's prior consent in writing.

13.5 The Vendor agrees that all rights (including ownership and copyright) in any reports, tracings, designs, drawings, field notes, requisitions, specifications, computer programs (data files and other software in whatever form), and other documents or records developed by Vendor for use, or intended use in

connection with the Order and all inventions, improvements, developments, creations, patents, models, designs, discoveries or other forms of intellectual property made under the Order shall be the sole property of the Purchaser.

- 13.6 The provisions of this clause 13 shall apply during the continuance of this Contract and after its termination howsoever arising.

14. Insurances

The Vendor will at all times insure and keep itself insured with a reputable insurance company against all insurable liabilities under the Order and in respect of the Goods or Services or any matter which is subject to indemnities under these terms and conditions and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium due thereunder. The Vendor will provide all facilities, assistance and advice required by the Purchaser or the Purchaser's insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Vendor's performance of the Order. Any maximum or limitation of coverage of the insurance of the Vendor shall not be construed or interpreted as a limitation of liability or limitation of indemnification of the liability of the Vendor towards the Purchaser.

15. Indemnification

Where the Works includes an element of design the Vendor shall indemnify the Purchaser against any liability, claim, loss, damage, cost or expense incurred by the Purchaser or arising otherwise in connection with any act, omission or neglect on the part of the Vendor, its agents or servants in or in connection with the execution of the Works.

The Vendor will keep the Purchaser indemnified against any claim in respect of loss or damage to any movable or immovable property of any nature or type whatever of the Purchaser or any third party and against any claim in respect of the death of or personal injury to any person whether in contract or tort or otherwise arising under common law, statute or otherwise as a result of breach of any statutory or common law duty or of any act or omission on the part of the Vendor or any of its employees, subcontractors, assignees or agents or as a result of the performance or non-performance of the Order or otherwise however arising wherever such loss, damage, death or personal injury occurs (including, but not limited to the Purchaser's premises).

16. Assignment and Subcontracting

- 16.1 The Vendor shall not without the consent in writing of the Purchaser assign or transfer the Order of any part of it to any other person.
- 16.2 The Vendor shall not without the consent in writing of the Purchaser subcontract the Order any part of it other than for materials, minor details or for any part of the Goods of which the makers are named in the Order or the specification. Any such consent shall not relieve the Vendor of any of its obligations under the Order.

17. Publicity

The Vendor must not, without the Purchasers written consent, advertise or publicly announce or in any way publicly indicate that the Vendor supplies or has supplied Goods or Services to the Purchaser.

18. Health and Safety

The Vendor warrants that the Goods to be supplied in accordance with the Order will be safe, in accordance with the current HSE standards, industry standards, legislation and requirements of the Purchaser and without risk to health when properly used and the Vendor will provide all necessary information in connection with the design, testing and use of them (whether or not such information has been requested by the Purchaser).

19. Licenses

If the performance of the Order requires the Purchaser to have any permit or licence from any government or other authority at home or overseas, the Order shall be conditional upon such permit of licence being available at the required time.

20. Insolvency, Bankruptcy etc.

If the Vendor, being an individual, becomes bankrupt or insolvent or has a receiving order made against him or compounds with his creditors or, being a company, is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administrator, the Purchaser shall be at liberty (but not bound) at any time after that:

- 20.1 to cancel all or any part of the Order immediately by notice and to collect immediately all material, goods, tools or articles of any description sent to the Vendor for any purpose and at the Purchaser's option but at the cost of the Vendor retain any Goods in respect of a cancelled Order, or
- 20.2 to give the Vendor or the receiver, liquidator or other person the option of carrying on with the Order subject to his providing a guarantee up to an amount to be agreed for the due and faithful execution of the Order.

21. Termination

Without prejudice to any other rights or remedies which the Purchaser may have the Purchaser may terminate the Order if:

- 21.1 The Vendor shall be in breach of any of these Conditions, and such breach shall continue for seven days after the Purchaser shall have given written notice thereof. Any breach in terms of HSEQ provisions and any breach of Code of Conduct rules shall entitle Purchaser to terminate the Goods or Services immediately
- 21.2 If the employment of the Purchaser is terminated for any reason under a Principle Contract then the employment or works of the Vendor under the Order shall thereupon also be terminated.
- 21.3 Upon such termination under clause 21.1 and clause 20 herein or if the reason for termination of the Purchaser's employment under clause 21.2 was due to any default of the Vendor then subject to clause 21.4 the Purchaser shall have the right to suspend further payment to the Vendor forthwith and the Vendor will become liable to the Purchaser for any costs, loss or damage suffered by the Purchaser arising out of or in connection with such termination.
- 21.4 Upon such termination under Clause 21.1 and Clause 20 herein and if so required by the Purchaser the Vendor shall assign to the Purchaser the benefit of any rights and order placed and shall deliver or otherwise make available to the Purchaser all drawings, design, calculation, materials and work carried out in connection with the Sub-Contract Works to be used by the Purchaser for the sole purpose of completing the Sub-Contract Works.

22. Notices

- 22.1 Any notice or other document to be served under this agreement must be in writing and delivered or sent by prepaid first class letter post or facsimile transmission to the registered office of the recipient.
- 22.2 Any notice or document shall be deemed served if delivered, at the time of delivery; if posted, 48 hours after posting; and if sent by facsimile transmissions, at the time of transmission.

23. Arbitration

If at any time, a question, dispute or difference whatsoever shall arise between the Purchaser and the Vendor upon or in relation to or in connection with the contract either party may give to the other notice in writing of the existence of such question, dispute or difference and at the request of either party the same shall be referred to the arbitration of a person to be mutually agreed upon or failing agreement within 14 days of receipt of such notice to be appointed by the President for the time being of the Institute of Electrical Engineers /Mechanical Engineers/Civil Engineers as appropriate to the nature of the order. In either case the award of the Arbitrator shall be binding on the parties. Arbitration proceedings shall be carried out in accordance with and subject to the Arbitration Act 1979 or any statutory modification or re-enactment thereof.

24. Invalidity

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

25. Code of Conduct

The Supplier shall abide by the Bilfinger Code of Conduct for Subcontractors and Suppliers. A copy of the Bilfinger Code of Conduct forms part of the Supplier Prequalification pack and is also available on request.

26. Governing Law

These conditions and any Order shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

Nothing in these conditions shall prejudice any condition or warranty (expressed or implied) or right or remedy to which the Purchaser is entitled in relation to the Order by virtue of statute or common law. The rights and remedies conferred on the Purchaser by these conditions are in addition to and in no way in substitution for any conditions, warranties or other rights or remedies conferred on the Purchaser or implied by law.

27. Suppliers & Subcontractors Bribery Act 2010

All Suppliers and Subcontractors engaged by Bilfinger must adhere to the Bribery Act 2010 and will be asked to sign a disclosure to attest their compliance.

28. Right to Offset

The Purchaser shall be entitled to set off from any payment due to the Supplier any claims which Bilfinger SE, the Purchaser or any company directly or indirectly controlled by Bilfinger SE might have against the Supplier.

29. Business Conduct

The following clauses describe the minimum standards that will need to be met by the Vendor to comply with the Purchaser's business conduct standards. Clauses shown in 29 Business Conduct shall take precedent over other clauses in this Agreement.

29.1 Compliance Obligation

The Vendor shall comply with all applicable laws and regulations including but not limited to anti-corruption, anti-money laundering, anti-terrorism, export control, economic sanction and anti-boycott laws, regulations and administrative requirements applicable to the Vendor's goods or its services.

29.2 Anti-Corruption Obligation

The Vendor hereby represents and warrants that neither payments nor any other advantages or favours have been or shall be, directly or indirectly, offered, promised, or provided to: (i) a private party, which as a result could lead to an improper advantage in relation to the business of the Purchaser; or (ii) a public official, member of the judicial system or any other government-related or state-owned entity or person ("Public Official") for himself or herself or another person or entity, in order to influence official action, or any Public Official.

29.3 Termination Right

The Vendor acknowledges and agrees that any breach of the Business Conduct Clauses set out in these terms and conditions of this Agreement will be deemed a material breach of contract entitling the Purchaser to terminate the Agreement at any time and with immediate effect, without any obligation to pay any outstanding fees or make any other payment. The Purchaser shall not be obliged to compensate any loss suffered by the vendor as the result of a termination under this Clause (Termination Right).

29.4 Books and Records

The Vendor shall keep full records in relation to the performance of this Agreement. The content of these records shall include, but not be limited to full and accurate description of performance of the Vendor and its Subcontractors (e.g. details of service providers, timesheets, and relevant correspondence or summaries thereof), all expenditures, all payments made and any other documents created or received in connection with this Agreement with the Purchaser.

29.5 Payment Details

All payments to the Vendor by the Purchaser will be made only after receipt of an invoice referring to the Agreement and setting out details of the services provided and/or products delivered, by transfer to a bank account in the Vendor's name in the country where the services are to be provided or goods received where the Vendor has established or maintains its principal place of business.

30. Business Conduct

The Vendor is obliged and undertakes to comply with any German, EU and US laws and provisions applicable to the import, export or re-export of the goods being subject of this contract. The Vendor is not entitled to supply or incorporate in its supply any US goods which are subject to US EAR (Export Administration Regulation) or to involve US persons, unless the Purchaser has given its express prior consent. The Vendor shall inform the Purchaser of all information necessary for the export of the goods and provide the Purchaser without delay, but no later than two weeks after the binding order, the relevant data by means of the form "Export Restriction Statement" (see attachment) for all goods supplied under this contract and agrees to keep the Purchaser informed at any time of any changes by written notice. Within said period of time, the Vendor shall provide to the Purchaser in writing the suppliers-declaration of preferential origin (for EU suppliers) and certificates of preference (for non-EU suppliers). The Vendor shall indemnify and hold harmless the Purchaser from all loss, damage and third party claims resulting from a breach of any of the aforementioned obligations, unless such breach is not attributable to the Vendor.