

GENERAL CONDITIONS OF PURCHASE (GCP 05/2022)

Edition: May 2022



BiFINGER

Unless otherwise expressly agreed in writing, the following conditions shall apply.

1. ORDER

The Contractor's offer shall comply with the specification and the wording of the Contractor. The Contractor shall set out any notes or deviations in their offer, in writing, in a concrete and understandable manner. Regardless of any offers submitted, all orders and all changes and supplements thereto shall only become legally binding for the Purchaser - please refer to order for company name and address - in so far as they were placed in writing or by telefax by the relevant purchasing department of the Purchaser. The Contractor may only take other declarations into account if he has informed the relevant purchasing department without delay and has obtained its written acknowledgement. These Purchaser's Conditions of Purchase shall be deemed accepted by the Contractor at the latest upon execution of the order by the Contractor. The Contractor's conditions (e.g. offers, Condition of Sale) shall only become binding without exception for the Purchaser if they have been expressly acknowledged in writing by the Purchaser. Verbal or telephone orders as well as supplements and changes to orders placed by the Purchaser shall only become binding for the Purchaser upon receipt of his written or telefaxed confirmation.

The order date is the date on which the order was placed.

The order is to be confirmed or rejected in writing by the Contractor within ten days from the order date. Should the Contractor fail to confirm the order to the Purchaser within the prescribed period, the agreement shall become effective with the stated contents of the order.

As long as the order has not been acknowledged through a confirmation of order applying to the entire contents of the order, the Purchaser reserves the right to withdraw from the order without stating any reasons, without the Contractor being entitled to assert any claims on whatever grounds. Withdrawal shall be deemed timely if it has already been sent before the declaration of acceptance was received.

Any deviations from the order are to be clearly emphasised and shall only become effective upon the express written or telefaxed approval by the Purchaser. Unconditional acceptance of the goods shall by no means signify such approval.

2. PRICES

All prices are fixed prices excluding VAT, including all taxes, duties etc. and including all expenditures incurred by the Contractor in connection with the execution of deliveries and services, such as e.g. transport and insurance etc.

Unless stipulated otherwise in the order, the prices shall be quoted "Delivered at place" (DAP), in accordance with Incoterms 2020. The price shall include all costs for related documentation, technical inspection, painting, corrosion protection, marking etc. The costs and responsibilities for export customs clearance (with the Contractor's own documentation) for supplies to foreign countries shall also be borne by the Contractor.

3. PAYMENT

Unless otherwise agreed, payment shall be effected by the Purchaser upon submission of a valid invoice (see point 4) and after meeting all requirements stated in the order, especially concerning the supply of correct documentation, within 30 days of receipt of invoice with 3 % discount or within 45 days with 2% discount or within 60 days net at the discretion of the Purchaser. C.O.D. consignments shall not be accepted (with the exception of written special agreements). Complaints regarding the goods/services delivered shall entitle the Purchaser to withhold due payments completely. By effecting payment, the Purchaser does not acknowledge the correctness of deliveries and services and therefore, does not waive his entitlement to fulfillment, warranty, claims for damages etc.

The Purchaser shall not waive his rights by effecting payment.

The agreed payment period shall not commence - subject to complete, defect-free delivery / service in conformity with the contract - until after the expiry of an inspection period of seven calendar days after receipt at the email address rechnungen.bur@bifinger.com provided that the complete documentation, in accordance with the requirements, is available.

Payments shall be made exclusively by bank transfer on the weekly payment date specified by Bilfinger Bohr- und Rohrtechnik GmbH. The timely payment is fulfilled if the payment is made at the latest on the following Wednesday (outgoing) (1x weekly payment date). Invoices received between 07 December and 07 January of each year are deemed to have been received on 07 January. Payments shall be made exclusively by bank transfer to a bank account held in the name of the contractor in the country in which the contractually owed services are to be provided or in which the contractor has its principal place of business.

The issue of the transfer order to the bank is decisive for the timeliness of the payment.

4. INVOICING

Deliveries and invoices shall be made in compliance with the contract and separately per purchase order. Invoices are to be submitted to the Purchaser one-fold (please refer to order for company name and address) with a copy of the notification of delivery or delivery note, construction invoices are to be supplied fivefold, service invoices are furthermore to be supplemented by confirmations of service. Point 5 shall additionally apply to consignments subject to customs duties.

Contractors from an EU country also have to state

- the applicable tax rate or reference to tax-exemption status and movement of goods
- date of issue
- number of invoice
- the UID (unique identification number) of the Contractor

in all invoices in addition to the statutory requirements prescribed.

The Purchaser shall be entitled to offset claims, against claims that companies in which Bilfinger SE has a direct or indirect holding of at least 50 % (companies in the Bilfinger Group) have against the supplier or the Contractor. Furthermore, the Purchaser shall be entitled to offset his claims against counterclaims which the supplier or the Contractor has against one of the above-mentioned companies in the Bilfinger Group. All the companies in which Bilfinger has a direct or indirect holding of at least 50 % and which have the registered trade mark, the logo, indicating Bilfinger, are members of the Bilfinger Group.

Invoices will only be accepted if sent to the email address rechnungen.bur@bifinger.com. Invoices sent to other (in particular personalised) email addresses shall be deemed not to have been delivered and shall not be processed. Each invoice must show the associated order number, the project name, the project number, the service performed, the cost centre, the service recipient, and payments received. Furthermore, it must be addressed to the invoice address indicated by the customer. A separate email must be sent for each invoice. Each invoice must be accompanied by the proof of performance signed by the customer (acceptance protocol(s), delivery note(s), timesheet(s), etc.). The invoice as well as the associated proofs of performance (delivery note(s), acceptance protocol(s), time sheets, etc.) must be combined in one document. Other documents which are not invoices (e.g.: order confirmations, reminders, newsletters, etc.) sent to the above-mentioned email address will be deleted and considered as not delivered.

5. PACKAGING AND SHIPMENT

The Client's terms and conditions of delivery and packaging guidelines apply. If the Contractor is not aware of those, they shall request them from the Client. Insofar as the Client provides the transport, they shall agree with the Client's procurement department in case of time-critical shipments, before they take special measures for transport (e.g. air freight, express service), otherwise any costs shall be borne by the Contractor. The Contractor shall provide a valid proof of preference (such as movement certificate, certificate of origin, etc.). Separate instructions given by the Client shall be observed. Unless otherwise provided for in Client's terms and conditions of delivery, the freight documents accompanying the goods must not contain any values.

The Purchaser shall only carry the costs for transport insurance if this has been expressly agreed. In the event of non-compliance with the Purchaser's regulations concerning shipment, packaging, customs clearance or documentation, all risks, damage and costs shall be at the expense of the Contractor and due payment of invoices shall be postponed accordingly until provision or production of the missing documentation. Especially products subject to regulations such as e.g. hazardous goods regulations are to be classified, packed and labelled in accordance with the regulations, all statutory safety data sheets are to be enclosed.

6. DEADLINES

Delivery dates are to be strictly adhered to. Deliveries before the due date are only permitted with the written authorisation of the Purchaser and do not entitle the Contractor to earlier payment.

The Contractor shall immediately advise the Purchaser in the event it becomes known that the agreed deadlines cannot be met. A full written report of the reasons and extent of such delays shall be sent immediately to the Purchaser.

For supplies and services, the date of delivery shall be the date on which all of the Contractor's respective obligations pursuant to the contract (including those regarding documentation) have been completely fulfilled and are free of defect.

In the event the Contractor does not comply with the agreed time periods, nor meet the intermediate or final deadlines set forth in the contract, the following penalties, in each case to be calculated from the total contract value, shall apply for the time that passes until the actual date of delivery. Such penalties may also be deducted from the Contractor's account receivable or any open invoices. All conditions shall apply concomitantly.

- Supplies and Services:

1% per week or part thereof for delay, up to maximum of 10% of the total order value;

- Documentation:

0,5% per week or part thereof for delay, up to maximum of 5% of the total order value;

The obligation to pay a contractual penalty shall commence for the Contractor at the time delinquency first occurs, in which case any fault of the Contractor shall not apply.

In the event of a defective delivery or supply, the time between taking over and the official complaint by the Purchaser shall not be subject to a contractual penalty. Reservations of the Purchaser upon acceptance of the delivery shall not be required to maintain a claim for contractual penalty.

The payment of a contractual penalty shall not relieve the Contractor from his obligation of fulfillment and any related liabilities. The Purchaser shall be free to enforce any actual damages exceeding the contractual penalty.

7. WARRANTY / GUARANTEE

The Contractor shall warrant the contractually agreed and usually expected properties, completeness and fitness of their deliveries and services for a period of 24 months in case of moveable and 36 months for immovable objects and guarantees freedom from material defects and defects of title for the duration of this warranty period. The warranty period shall begin with the acceptance of the complete equipment by the final-customer (customer of the Purchaser). The warranty period shall also end at the latest after 36 months in the case of movable or 48 months in the case of immovable objects following complete fulfillment of the deliveries and services ordered by the Purchaser. Notwithstanding other rights of the Purchaser and independently of the Contractor's being at fault, the Purchaser reserves the right to have the discovered defects or damage repaired by third parties or to carry out repairs himself at the expense of the Contractor, if the Contractor does not comply with the request for remedy of defects within an appropriate period of time.

A Purchaser obligation to inspect the goods and to notify defects with respect to deliveries and services of the Contractor prior to commissioning or use is excluded. The guarantee period shall start anew in the case of replacement delivery and repair.

8. CLAIM FOR DAMAGES AND PRODUCT LIABILITY

The Contractor shall be liable to the Client to the extent permitted by law. In the event that the delivered goods show defects as defined in the Produkthaftungsgesetz [Product Liability Act] and if claims are raised against the Client on these grounds, the Contractor shall reimburse the Client for any and all expenses and shall indemnify and hold the Client harmless, in full. The Contractor will assign to the Client all of the claims for defects, guarantee and damages that they have against their contract partners on account of performance. The Client accepts this assignment. The Contractor is liable to supply a complete and easily understandable user manual and to keep all necessary documents and to ensure exact product observation. The Purchaser is furthermore obliged to perform product improvements without being asked, if he becomes aware of potential problems entailing liability issues.

9. SANCTIONS, EXPORT CONTROL AND ORIGIN OF GOODS

(1) The AG shall be released from all obligations arising from or in connection with the contract (including compensation for damages) if, after submission of a binding purchase order or conclusion of the contract, impediments occur due to national or international regulations of foreign trade law or an embargo and/or other sanctions which prevent the AG from fulfilling the contract.

(2) The AN is obliged to comply with any German and EU regulations as well as regulations of the USA, the United Kingdom and China applicable to the import, export or re-export of the goods (i.e. commodities, software, technology) being subject of the contract.

(3) Without the prior consent of the AG, the AN shall not be entitled to deliver goods subject to US EAR (Export Administration Regulation) or to incorporate them into deliveries or to involve US persons.

(4) Without the prior consent of the AG, the AN shall furthermore not be entitled to deliver goods subject to Chinese export control law or to incorporate them into deliveries.

(5) The AN shall provide the AG with all information necessary for the export of the goods by transmitting the relevant data for all goods supplied under this order by means of the form "Export Restrictions" (you can find it on: www.bur.bifinger.com - Company - Purchasing) or other suitable trading documents immediately after receipt of the binding order and free of charge. The AN agrees to keep the AG informed at any time of any changes that may occur by written notice.

(6) The AN shall provide the AG with legally compliant documents proving the origin of the goods with out delay and free of charge. For supply transactions within the EU, preference is given to supplier's declarations for goods with preferential originating status. Other ways of transmitting declarations of origin for the relevant supply transaction, e.g. declarations on trading documents, issuance of non-preferential certificates of origin or certificates of origin legalized by the chamber of commerce, shall be released by the AG immediately after receipt of the order.

(7) The AN shall hold the AG free and harmless from all damages, financial losses and claims by third parties which the AG may incur as a result of the AN having breached any of the above obligations, unless such breach of obligation is not attributable to the AN.

10. INDUSTRIAL PROPERTY RIGHTS

The Contractor shall ensure that the use of its supplies and services is not affected in any way by claims of third parties regarding trademarks, copyrights, patents, protected territories, etc., and that no boycott clauses, black lists etc., are violated. The Contractor shall immediately inform the Purchaser of any infringement of third parties' rights or any violation of boycott clauses or black lists etc. In this respect, the Contractor is liable to hold the Purchaser and/or the final-customer harmless of all third-party claims without limitations and to reimburse all expenses incurred.

Documents pertaining to inquiries are to be returned to the Purchaser with offers or following successful execution of the order without being asked.

No remuneration shall be granted for the processing of offers. It is hereby agreed that when submitting offers, technical offer documentation may be made available to third parties (engineering partners, customers etc.) as necessary without any entitlement of the Purchaser. Offer documentation shall not be returned.

11. OBLIGATION OF SECRECY

The Contractor shall keep secret all information and documentation of a commercial and technical nature directly or indirectly made available to him by the Purchaser and/or the final-customer and all subsequent Contractor information supplementing these within the frame of the offer and order processing, and shall use them exclusively to fulfil his contractual duties.

12. COPYRIGHT

The property and the exclusive right of use for all drawings, information and know-how made available by the Purchaser to the Contractor remains with the Purchaser. The Contractor acknowledges the Purchaser's exclusive copyright thereof.

13. PRIVACY POLICY ON CONTRACT

The Contractual Parties undertake to process the personal data transferred in the course of the master agreement in compliance with the provisions of the GDPR and the DSGVO [Data Protection Act]. In particular, the Contractual Parties shall use such personal data and their processing results only for the purposes of fulfilling their contractual and legal obligations in connection with the master agreement.

The Contractual Parties shall erase the data immediately if they are no longer required for the above purposes and if such erasure does not conflict with any legal retention obligations. The Contractual Parties undertake to oblige all persons engaged with data processing, in particular their own employees, to maintain data secrecy pursuant to the GDPR before commencing their activities. This shall in particular apply to any collection, processing and use of personal and company data performed by the Contractual Parties in connection with the master agreement. In particular, the obligation to secrecy for persons commissioned with data traffic shall survive even after they conclude their activities and are no longer employed by the Contractual Parties.

The Contractual Parties declare that sufficient security measures pursuant to the GDPR have been taken in order to prevent data from being used unlawfully or becoming accessible to third parties without authorization.

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Unless otherwise expressly agreed in writing, the following conditions shall apply.

14. FORCE MAJEURE

The Contractor shall be released either fully or partially from his obligation to meet deadlines in fulfillment of the contract in the event he is hindered by force majeure. Events of force majeure shall be exclusively fire, forces of nature, war and riot, provided that these events are unavoidable for the Contractor and were unforeseeable at the time of conclusion of the contract.

In the event the Contractor is impeded by an event of force majeure, he shall only be entitled to claim force majeure in the event he submits to the Purchaser immediately, or within 5 days at the latest, by registered mail a certificate issued by the authorities or the chamber of commerce of the Contractor's country, confirming the reasons, the commencement date and the expected duration and consequences of the event.

The Contractor shall make every effort to remove or minimise the hindrance caused by force majeure and any consequential damages as well as to continually inform the Purchaser of the current status of affairs.

Dates and deadlines which cannot be kept as a result of force majeure shall be postponed/extended by the duration of the effects of force majeure.

In the event force majeure exceeds 4 weeks, the Purchaser shall have the right to terminate the contract in whole or in part.

The Purchaser shall not be liable towards the Contractor for the consequences arising from any hindrance to the implementation of the contract due to force majeure.

15. TERMIN OF CONTRACT

In the event of a breach of contract, the Purchaser may withdraw from the contract completely or partly after granting the Contractor an appropriate additional period of time. Such breaches in particular include delays in intermediary or final delivery times, unauthorised subcontracting or any other fulfillment defects, which endanger contract fulfillment of the Purchaser towards his contractual partners.

In such cases the Purchaser shall reserve the right to execute or have executed the deliveries and services not performed or insufficiently performed by the Contractor at the cost of the Contractor. The costs incurred in this respect can be either directly invoiced by the Purchaser with an agreed payment period of 30 days after invoicing or deducted from the next due payment made by the Purchaser to the Contractor.

If the exercise of the right to substitutive execution requires access to proprietary rights, to documentation (such as e.g. shop drawings, calculations) or other information, the Contractor shall already now commit himself to granting the necessary rights, documentation and information to the Purchaser.

The Purchaser is also entitled to withdraw from the contract completely or partly at any time even without the Contractor being at fault. In such a case, the Purchaser is liable to pay the Contractor the contractual price in proportion to the already performed deliveries and services, and in addition, to reimburse the direct costs of deliveries and services in process or the cancellation of subcontracts as evidenced. Following notification of withdrawal, the Contractor is liable to undertake all efforts to keep the costs to be reimbursed to the Purchaser as low as possible. Should the Purchaser withdraw from the contract on the grounds of a contractual breach attributable to the Contractor, the Purchaser and/or the final-customer shall be entitled to the deliveries and services of the Contractor until that time. All costs in relation with the use shall be borne by the Contractor.

16. MISCELLANEOUS

The Purchaser reserves the right, also on behalf of the final-customer and/or their inspection bodies, to carry out inspections in the offices, production sites and warehouses of the Contractor and his subcontractors at any time, e.g. during design, planning, production and delivery preparation, delivery time checks as well as technical intermediary and final inspections (also packaging controls) and to reject faulty documentation as well as defective material. These controls and inspections do not relieve the Contractor of his responsibility and shall not be deemed as permission to carry out delivery/service.

All sub-Contractors of the Contractor, with the exception of those providing standard parts, are to be made known to the Purchaser without exception in due time and in writing and are to be authorised by the same in writing.

The transfer of property to the Purchaser shall take place simultaneously with the transfer of risk.

Third parties making declarations to the Purchaser on behalf of the Contractor shall be deemed as being authorised without limitations.

Any additional costs in connection with the order execution, which are neither stipulated in agreements or in the INCOTERMS 2020, shall be carried by the Contractor.

At the Purchaser's request, the Contractor shall agree to provide suitable storage to the Purchaser up to 3 months at his own risk and expense.

All deliveries to the Purchaser have to be effected free of ownership restrictions and third-party rights. Restrictions of the Contractor concerning this are also invalid without express contradiction by the Purchaser. The Contractor shall also be liable for his subcontractors' compliance with these General Conditions of Purchase. Notwithstanding the regulations in these General Conditions of Purchase, further legal rights of the Purchaser shall remain unaffected.

17. PLACE OF JURISDICTION

The place of jurisdiction for all disputes arising in connection with every valid contractual relationship between the Contractor and the Purchaser, which form the basis of these Conditions (including any dispute pertaining to the validity of agreement itself), shall be exclusively the Purchaser's place of business.

The Purchaser may however at his discretion also choose

- the relevant court at the place of business of the Purchaser, or
- the arbitration court of the Federal Chamber of Commerce in Vienna (place of arbitration proceedings: Vienna; language of proceedings German).

18. APPLICABLE LAW

Austrian substantive law shall apply to the agreement to the exclusion of national and international transfer standards and of the UN Commercial Law Agreement of 1980.

19. VENDOR DECLARATION

The contractor is obliged to comply with the Vendor Declaration (you can find it on: www.bur.bilfinger.com – Company - Purchasing).