


**General Conditions for Purchase (GC-2)**  
**21 February 2018**

6	21-Feb-2018	General use/direct spend	Jan Roos 	MW 
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**1 Definitions**

- CLIENT means the party placing an order, being the legal entity as mentioned in the Purchase Order, as well as his legal successors in title;
- VENDOR means the party who delivers GOODS;
- ENGINEER means the party representing CLIENT and acting on behalf and for account of CLIENT;
- GOODS mean the goods, material and/or equipment to be supplied by VENDOR in accordance with the Contract;
- CONTRACT means the documents as specified in clause 2 of these General Conditions of Purchase.

**2 CONTRACT**

- 2.1** The CONTRACT consists of the Purchase Order signed by CLIENT and VENDOR, all listed documents mentioned in the Purchase Order, and any special agreements made between CLIENT and VENDOR.
- 2.2** Agreements, oral or in writing, made between VENDOR and un-authorized personnel of CLIENT or ENGINEER will not be binding on CLIENT.
- 2.3** Where conflicts occur between or within the CONTRACT, codes and/or (legal) regulations the most stringent and/or severe requirements for the VENDOR will apply. In case of doubt ENGINEER, if requested, will indicate the applicable condition.
- 2.4** Should any errors or omissions appear in the contract documents, VENDOR shall report the same to ENGINEER for correction before proceeding with the manufacture or delivery of GOODS. If VENDOR fails to do so, any consequences shall be for his account. VENDOR shall abide by and comply with the CONTRACT and their purport, and shall not avail himself of errors or omissions, should any exist, to restrict his obligations.

**3 Delivery terms**

Interpretation of the delivery terms as stipulated in the CONTRACT will be in accordance with "Incoterms", edition valid on the date of signment of the CONTRACT, as published by the International Chamber of Commerce (ICC).

**4 Local laws**

VENDOR warrants that GOODS will comply with all applicable Governmental codes, laws or regulations, local or national of the country in which GOODS are to be used and that he will, prior to the delivery of GOODS, provide ENGINEER with whatsoever Governmental or other authorisation documents and have whatsoever Governmental or other authorisation markings stamped on GOODS required for the use thereof.

**5 Prices**

All costs of labour, material, documentary and/or other (legal) requirements for supply at times and in quantities as laid down in the CONTRACT and as required by applicable codes, laws and regulations are included in the purchase price(s) unless specifically stated otherwise in the CONTRACT.

**6 Approval of VENDOR's documents**

Drawings, shop drawings and other documents supplied by VENDOR shall be delivered to ENGINEER as required by the CONTRACT. Approval of VENDOR's documents does not relieve VENDOR from his exclusive responsibility for their accuracy and/or correctness and does not relieve VENDOR from his obligation to comply fully with the CONTRACT.

**7 Changes**

ENGINEER may at all times request VENDOR to change, increase or decrease (part of the) GOODS. Any consequences will be agreed upon between CLIENT and VENDOR. No substitution or changes by VENDOR will be permitted except after specific written approval by ENGINEER.

**8 Expediting**

VENDOR shall expedite execution of the CONTRACT, including his orders to subcontractors. If VENDOR encounters delays in obtaining materials from his subcontractors or in receiving information from CLIENT and/or ENGINEER, VENDOR shall immediately advise ENGINEER in writing. CLIENT and/or ENGINEER reserve the right to visit VENDOR's or VENDOR's subcontractor's shop(s) to expedite to whatever extent deemed appropriate without releasing VENDOR from his obligations under the CONTRACT.

**9 Sub-Orders**

The General Conditions for Purchase are to be extended to all sub-orders issued by VENDOR in connection herewith. VENDOR shall supply CLIENT and/or ENGINEER with unpriced copies of his orders to subcontractors and any requested shipping information including that of subcontractors' orders when and as requested.

**10 Inspection**

VENDOR agrees that

- a) all inspections and tests shall be made as required by the CONTRACT;
- b) all GOODS furnished hereunder shall be subject to inspection by ENGINEER and/or CLIENT at all reasonable times and places before, during and after manufacture;
- c) when inspection is required under the CONTRACT, VENDOR shall give ENGINEER at least five (5) working days written advance notice of readiness for inspection;
- d) it is VENDOR's obligation to repair and replace without cost or delay anything found defective during inspection;
- e) such inspection or failure to inspect by ENGINEER and/or CLIENT or any other authority shall not relieve VENDOR of any responsibility or liability with respect to GOODS nor be interpreted in any way to imply acceptance thereof;
- f) if as a consequence of disapproval or any other cause for which VENDOR is responsible, inspection (in part) has to be repeated or has still to be performed, the extra costs for CLIENT and/or ENGINEER will be for the account of VENDOR.

**11 Guarantees**

- 11.1** All GOODS furnished shall be new and in accordance with the CONTRACT specifications and shall be of the best quality of their respective kinds incorporating first class workmanship throughout and applying the latest standard of technology. All GOODS shall be of the required size and capacity and be manufactured of proper materials to fulfil in all respects the operating conditions specified. All GOODS shall be free and clear of all liens, security interests and encumbrances.
- 11.2** The guarantee period of twelve (12) months will commence on the date GOODS are placed in use or operation and taken over by CLIENT, unless the factory guarantee is valid for a longer period, in that case the guarantee period will be the one which has been given by the manufacturer. If any GOODS do not comply with the specifications or are found defective or if any defect or fault originating from the design (if furnished by VENDOR and/or subcontractor), materials, workmanship or operating characteristics of any GOODS arise at any time before or within the guarantee period, VENDOR shall at his own expense promptly make such alterations, repairs and replacements as necessary so that said item conforms to the specifications to CLIENT's entire satisfaction. If VENDOR does not make such corrections promptly, CLIENT will make or have made the required alterations, repairs and replacements at VENDOR's expense. If the fault or failure to function properly cannot be corrected as set forth above, the defective GOODS shall be removed by or at the expense of VENDOR and VENDOR shall without cost to CLIENT promptly furnish a satisfactory item which completely fulfils the specifications and intent of the CONTRACT and/or ENGINEER or, at CLIENT's and/or ENGINEER's option, refund the full purchase price and cost of original transport to the point of installation. This provision is without prejudice to any other rights CLIENT may have.
- 11.3** The above mentioned guarantee shall also extend to cover the altered, repaired, replaced or substituted item from the time it is established to the satisfaction of CLIENT and/or ENGINEER that the item fulfils the specifications.
- 11.4** VENDOR will supply all maintenance and repair services and spare parts at fair remuneration during a period of ten years after expiration of the guarantee period.

**12 Passing of ownership**

The ownership of GOODS shall at the latest pass to CLIENT at the place of delivery as stated in the CONTRACT.

**13 Liability**

VENDOR is liable for and indemnifies CLIENT against all costs and/or damages arising from his whole or partial non-compliance with the CONTRACT. VENDOR's liability under this clause shall end five (5) years after acceptance of GOODS. This limitation of the duration of the liability does not apply in case of wilful misconduct, gross negligence or in case of damages suffered by CLIENT as a result of VENDOR's failure to fulfil his obligations under clause 17 of these General Conditions. CLIENT will give written notice to VENDOR of the nature and extent of the damages suffered. VENDOR will reimburse the damages within 30 days after receipt of said notice.

**14 Other supplies / errors in delivery**

In the event that VENDOR is required to incorporate in or to connect to GOODS to be supplied under the CONTRACT material or equipment which is supplied to VENDOR directly or indirectly by ENGINEER or CLIENT, or if VENDOR is required to hold materials or equipment on behalf of CLIENT, VENDOR shall be responsible for any loss or damage whatsoever of or to the material or equipment supplied to him from the moment it comes into his possession until moment he delivers it to CLIENT or a third party to whom VENDOR has been directed to deliver it.  
GOODS delivered in error or in excess of the quantity called for in the CONTRACT will be returned at VENDOR's expense (standard commercial plus/minus practice for bulk materials excepted).

**15 Payment**

VENDOR's invoices will be paid in accordance with the payment terms included in the Purchase Order, or, in addition to or failing such payment terms, within 60 days computed from the date of VENDOR's fulfilment of the specified conditions and the date of receipt of VENDOR's invoice, provided such invoice is properly drawn and accompanied by the required supporting documents. If invoices and/or supporting documents require correction the time of payment will be computed from the date of receipt of the corrected invoice and/or documents.  
CLIENT is entitled to balance all amounts due to VENDOR under the CONTRACT with amounts due by VENDOR under the CONTRACT.

**16 Assignment**

VENDOR shall not assign or transfer any of its rights or obligations under the CONTRACT without CLIENT's prior written approval.

**17 Intellectual property**

All intellectual property rights, created under the fabrication of the GOODS, the adjustments thereto, extensions thereto and/or relating (technical) information, documents, procedures, tasks, etc. will vest in CLIENT. As far as existing intellectual property rights and/or (technical) information, documents, procedures, etc. are with VENDOR and/or third parties, VENDOR will arrange an irrevocable right to allow free and unrestricted use by and for the benefit of CLIENT.  
VENDOR shall indemnify and/or hold harmless CLIENT and ENGINEER against any action, claim, demand, costs, charges and expenses arising from or incurred by reason of any infringement of trade name and/or other intellectual property rights of third parties in connection with GOODS or parts thereof, including the use of material or equipment and sale of products manufactured with GOODS.  
In the event of any claim being made or action brought against CLIENT and/or ENGINEER arising out of the matters referred to in this clause VENDOR shall be promptly notified thereof and shall at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise there from. CLIENT and/or ENGINEER shall at the request of VENDOR afford all available assistance for any such purposes. CLIENT and/or ENGINEER shall be reimbursed any expenses incurred in doing so.

- 18 Termination due to default**  
In case of **VENDOR's** failure to comply with any provision of the **CLIENT** may by giving written notice terminate the **CONTRACT** or a part thereof without further notice of default and without judicial or arbitral intervention and without cost or penalty to **CLIENT**. **CLIENT** shall be entitled in such case to take over wholly or partially the part of the **CONTRACT** already executed. In that case **CLIENT** shall pay and **VENDOR** shall accept payment of costs incurred prior to such termination that may under generally recognised accounting principles be reasonably allocated to the part of the **CONTRACT** taken over, less any prepayments made and less compensation for damage caused by **VENDOR's** default. In addition **CLIENT** shall be entitled to claims as provided for in the **CONTRACT** and/or in the applicable rules of law.
- 19 Termination by CLIENT**  
**CLIENT** may terminate the **CONTRACT** in whole or in part by written notice to **VENDOR**. In such event **CLIENT** shall pay and **VENDOR** shall accept payment of all costs incurred prior to such termination that may under generally recognised accounting principles be reasonably allocated to the execution of the **CONTRACT** plus a reasonable allowance for overheads and profit for the part of the **CONTRACT** executed less payments made.  
In case of termination for cause or for convenience, **VENDOR** will at **CLIENT's** request assign to **CLIENT** - to the extent required by **CLIENT** - the subcontracts to the **CONTRACT** entered into by **VENDOR**.
- 20 Force Majeure**  
Force Majeure is defined as any occurrence which cannot be reasonably foreseen, controlled and prevented by **VENDOR** and which materially affects the execution of the **CONTRACT**. Normal risks such as ordinary hazards of inclement weather, availability of labour or material or transport, rejection of material, strikes other than general strikes, fluctuation of prices or wages, bankruptcy or insolvency of **VENDOR**, etc. shall not be considered Force Majeure. **VENDOR** shall notify **ENGINEER** immediately in writing of an occurrence of Force Majeure. **VENDOR** claiming an extension of time because of Force Majeure shall have the burden of proof of the existence of a situation of Force Majeure and that the occurrence affects the progress of the execution of the **CONTRACT**. Extra costs caused by Force Majeure encountered by **VENDOR** will not be compensated by **CLIENT** and/or **ENGINEER**.
- 21 Confidentiality**  
All engineering data, designs, drawings and other documents supplied to **VENDOR** by **ENGINEER** and/or **CLIENT** are confidential and shall not be used for any purpose whatsoever other than for the execution of **VENDOR's** obligations under the **CONTRACT**.
- 22 Publicity**  
Without **CLIENT's** prior written approval **VENDOR** shall not make public any details of the **CONTRACT**, **GOODS** to be supplied or the purpose for which any **GOODS** to be supplied hereunder are to be used.
- 23 Disputes**  
All disputes arising in connection with the **CONTRACT** shall be finally settled by the competent civil court in The Hague, the Netherlands, or at **CLIENT's** option, by three arbitrators in accordance with the rules of the Netherlands Arbitration Institute ("Nederlands Arbitrage Instituut"), with exclusion of the possibility of binding advice as mentioned in said rules. In case of arbitration, place of arbitration shall be The Hague, the Netherlands. Upon **VENDOR's** request **CLIENT** will inform **VENDOR** within one month of his choice. Unless expressly permitted in writing by **CLIENT**, **VENDOR** shall not for reason of disputes and/or proceedings delay or suspend the execution of the **CONTRACT**.
- 24 Applicable law**  
The **CONTRACT** shall be governed by the law of the Netherlands. The "United Nations Convention on Contracts for the International Sale of Goods" (Vienna, 11 April 1980) will not be applicable.
- 25 ENGINEER's rights**  
**CLIENT** stipulates for the benefit of **ENGINEER** that **ENGINEER** has the same rights against **VENDOR** as **CLIENT** has under the **CONTRACT**, which stipulation **VENDOR** accepts.
- 26 Language**  
All correspondence and documents in connection with the **CONTRACT** shall be in the English language.
- 27 Compliance with Bilfinger Vendor Declaration**  
**VENDOR** shall comply with the Bilfinger Vendor Declaration. A current version of the Bilfinger Vendor Declaration is attached to the **CONTRACT** and is available on the Bilfinger website. The Bilfinger Vendor Declaration sets the minimum standards that must be applied. However, to the extent, the Bilfinger Vendor Declaration conflicts with the laws of the Netherlands, the law of the Netherlands shall apply. **CLIENT** may change the Bilfinger Vendor Declaration if there is change of legal, regulatory or institutional requirements, case law or ethical business standards relevant to the content of the Bilfinger Vendor Declaration.  
**CLIENT** will inform **VENDOR** of any changes or amendments to the Bilfinger Vendor Declaration. **VENDOR** shall comply with the latest version including the changes as far as it has been informed thereof.

## **28 Business Conduct Clauses**

### **28.1 Compliance Obligation**

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 VENDOR or its services.

VENDOR hereby represents and warrants that it and/or all of its shareholders, directors, officers, employees and subcontractors who will perform services under this CONTRACT are knowledgeable about the laws, restrictions and principles stated above and agrees to take appropriate steps to ensure compliance by any such persons with respect to the services to be performed under this CONTRACT.

### **28.2 Anti-Corruption Obligation**

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 CLIENT; 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.

### **28.3 No Public Official**

VENDOR hereby represents and warrants that (a) if VENDOR is an individual, neither VENDOR nor any close relative of VENDOR: (1) is a Public Official or (2) has any personal or business relationship or association with any Public Official who is or will be in a position to affect or influence the award of business or other advantages to CLIENT in any country in which VENDOR will provide services to CLIENT pursuant to this CONTRACT; and (b) if VENDOR is an entity, no director, officer, or shareholder, and no employee who will perform services under this CONTRACT is a Public Official or has any close personal or business relationship or association with any Public Official who is or will be in a position to affect or influence the award of business or other advantages to CLIENT in any country in which VENDOR will provide services to CLIENT.

### **28.4 Notification Duty**

If, during the term of this CONTRACT, VENDOR becomes aware that the representations and warranties set forth in clause 28.2 and 28.3 are no longer true and correct, VENDOR shall notify CLIENT in writing within fifteen (15) working-days. Whether or not notification within the fifteen (15) working-days is received, if CLIENT determines that the changed circumstances provide good cause to terminate this CONTRACT, the CONTRACT may be terminated in CLIENT's sole discretion.

### **28.5 Engagement of Business Partners**

VENDOR shall only be permitted to appoint subcontractors, intermediaries or other persons or entities with regard to CLIENT's business ("Business Partners") in case of prior written approval by CLIENT such approval shall not unreasonably be withheld. If permitted, VENDOR has to select Business Partners with regard to CLIENT's business with specific care. VENDOR shall take appropriate steps to ensure that Business Partners comply with all applicable laws as stated in clause 28.1 "Compliance Obligation" and the Bilfinger Vendor Declaration.

### **28.6 Books and Records**

VENDOR shall keep full records in relation to the performance of the CONTRACT. The content of these records shall include, but not be limited to full and accurate description of performance of 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 the CONTRACT with CLIENT.

VENDOR shall keep these records at least for the statutory retention period or a period of ten (10) years after full completion of this CONTRACT, whichever is longer.

### **28.7 Payment Details**

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

### **28.8 Report of Unlawful Conduct**

VENDOR shall promptly (within seven (7) working-days) report to CLIENT any alleged unlawful conduct by itself or by one of its shareholders, directors, officers, employees and subcontractors, if this conduct occurred in relation to business of CLIENT. CLIENT and/or Bilfinger will have the right to conduct its own internal investigation to the extent the allegation potentially relates to the business of CLIENT.

VENDOR shall disclose immediately (within one (1) working-day) upon awareness of any initiated internal investigations and investigations by authorities related to business of CLIENT.

### **28.9 Cooperation in Investigation**

VENDOR shall fully and in a timely manner cooperate with any investigation performed by Bilfinger and/or CLIENT into alleged breaches of these Business Conduct Clauses, including responding accurately and completely to all inquiries and providing any requested documents. This may include, but is not limited to, provide access to documents and personnel.

### **28.10 Right to Audit**

CLIENT shall be entitled, with the help of external advisers if deemed necessary, to audit all books, accounts, records, invoices, and accompanying documentation of the VENDOR in order to verify compliance by the VENDOR with these Business Conduct Clauses. VENDOR agrees that it and its controlling shareholders, directors, officers, employees and subcontractors will cooperate fully with CLIENT and its advisers in any such audit. Each party shall bear its own costs incurred in connection with such audits.

Business and trade secrets are excluded from audit, unless the audit is conducted by an Audit Firm with confidentiality obligations. Paragraphs containing business and trade secrets may therefore be redacted before documents are made available to CLIENT.

CLIENT or its designated representatives shall have the right to access, audit and review the books and records, costs and expenses related to this CONTRACT, and to keep copies thereof, to the extent relevant to this CONTRACT, at any time during and within ten (10) years after termination of this CONTRACT.

The audit provisions of the CONTRACT will survive any termination or expiration of the CONTRACT.

For as long as any information requested by CLIENT in connection with an audit is not provided by VENDOR, CLIENT may withhold payments or refuse any other contractual performance.

**28.11 Termination Right**

VENDOR acknowledges and agrees that any breach of the Business Conduct Clauses set out in this CONTRACT will be deemed a material breach of contract entitling CLIENT to terminate the CONTRACT at any time and with immediate effect, without any obligation to pay any outstanding fees or make any other payment. CLIENT shall not be obliged to compensate any loss suffered by the VENDOR as the result of termination under this clause 'Termination Right'. To the extent not consistent with the foregoing, the provisions on termination for cause as set out in this CONTRACT shall apply.

**28.12 Refund of Payments**

If CLIENT reasonably believes, and except to the extent that VENDOR proves to the contrary, that the event given rise to such a termination under clause 28.11 above (Termination Right) also constitutes a violation of the U.S. Foreign Corrupt Practices Act or any other applicable Anti-Bribery Laws, any claims for payment by VENDOR with regard to this CONTRACT shall be automatically terminated and all payments previously made shall be immediately refunded to CLIENT by VENDOR.

**28.13 Compensation for Damages**

In case of any breach of this Business Conduct Clauses, CLIENT shall be entitled to compensation for damages. VENDOR shall indemnify and hold harmless CLIENT, its affiliates, parent company (jointly "Bilfinger") or its employees, for any and all claims of third parties and all penalties, fines, sanctions, confiscation, forfeiture or disgorgement imposed upon Bilfinger, or its employees, in connection with any breach of this Business Conduct Clauses by VENDOR.

**28.14 Annual Financial Statements**

VENDOR must certify annually to CLIENT its ongoing financial stability and liquidity, and agrees to provide CLIENT, on an annual basis, its audited financial statements.

**28.15 Training and Certification**

VENDOR agrees to participate in any and all training required by CLIENT covering its commitments under the terms of this CONTRACT particularly in relations to the Compliance Obligation and the Anti-Corruption Obligation in clauses 28.1 to 28.2, at all reasonable times and with reasonable advance written notice. Where VENDOR has an equivalent Compliance program to Bilfinger, VENDOR shall provide annual confirmation that management and key staff in relation to this CONTRACT have undergone appropriate anti-bribery and corruption training.