



General Conditions for Purchase of Software (GC-4)
21 February 2018

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1 Definitions

- CLIENT means the party purchasing the SOFTWARE, being the legal entity as mentioned in the Purchase Order, as well as his legal successors in title;
- VENDOR means the party supplying the SOFTWARE;
- SOFTWARE means the delivery of software, all documentation belonging thereto and the implementation thereof on the computer system of CLIENT, all in accordance with the CONTRACT;
- 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 Conflicts

Where conflicts occur between or within the contents of the CONTRACT, codes and/or regulations, the most stringent and/or severe requirements for the VENDOR apply. In case of doubt VENDOR shall timely inform CLIENT and CLIENT will thereupon indicate the applicable condition.

3 Laws

- a) VENDOR warrants that all SOFTWARE will comply with all applicable codes, laws and regulations.
- b) VENDOR shall indemnify, exonerate and hold CLIENT free and harmless from and against any liability, or penalty imposed upon CLIENT, resulting from each contravention or alleged contravention of the applicable codes, laws and regulations.

4 Inclusions

All costs of the supply and labour as well as implementation of the SOFTWARE and/or other requirements for supply as laid down in the CONTRACT and as required by applicable codes, laws and regulations are included in the contract price, unless specifically stated otherwise in the CONTRACT.

5 Changes to CONTRACT

CLIENT is at all times entitled to modify the SOFTWARE. Changes will be settled in accordance with the CONTRACT or – if not mentioned therein – will be agreed upon between CLIENT and VENDOR. No substitution or modification by the VENDOR will be permitted except on specific written authority of CLIENT.

6 Expediting

VENDOR warrants the timely performance of all of its obligations in accordance with the CONTRACT. If VENDOR encounters delays in obtaining materials and deliverables from his subcontractors or in receiving information from CLIENT, VENDOR shall immediately advise CLIENT.

7 Tests

- a) The implementation of the SOFTWARE is completed when VENDOR - in presence of CLIENT - has demonstrated that the implemented SOFTWARE functions are in accordance and comply with the CONTRACT. The SOFTWARE is deemed to have been placed in use from the time that the implementation has been tested successfully according to CLIENT.
- b) If implementation by VENDOR is no part of the work to be performed by VENDOR under the CONTRACT, VENDOR agrees that:
 1. within a reasonable time after the supply of the SOFTWARE, CLIENT can perform tests in order to check whether the SOFTWARE complies with the CONTRACT;
 2. VENDOR - if CLIENT establishes that such compliance does not exist - shall at his own expense promptly take all measures necessary to ensure said compliance as yet, after which CLIENT can repeat said tests on the same conditions and at VENDOR's expense;
 3. failure to test by CLIENT and/or any other authority designated by CLIENT, shall not relieve VENDOR of any responsibility or liability with respect to the SOFTWARE nor be interpreted in any way to imply acceptance thereof by CLIENT.If the implementation by VENDOR is no part of the work to be performed by VENDOR under the CONTRACT, the SOFTWARE is deemed to have been placed in use at the time of supply, unless it should appear within a reasonable time thereafter that the SOFTWARE does not comply with the CONTRACT. In that case the SOFTWARE is deemed to have been placed in use at the time that the SOFTWARE as yet complies with the CONTRACT.

8 Guarantees

- a. The SOFTWARE, the implementation and possible corrective work shall comply and be performed in accordance with the CONTRACT and with the requirements and state of the art standards at the time of supply (or making available), implementation and corrective work respectively.

If the SOFTWARE or any part thereof and/or the implementation and/or the possible corrective work is found not to be in accordance with the CONTRACT or such requirements and standards at any time before or within twelve (12) months from the date the SOFTWARE has been placed in use, VENDOR shall at his own expense immediately take all measures necessary to ensure compliance of the SOFTWARE therewith as yet.
- b. The SOFTWARE shall be free of defects originating from faults in the design and/or material. If the SOFTWARE or any part thereof is found to be defective at any time before or within twelve months from the date the SOFTWARE has been placed in use, VENDOR shall without delay and at his own expense correct these defects.
- c. In case material faults result in the non-functioning of the SOFTWARE or any part thereof for consecutive periods of 12 hours or longer, these periods shall be accumulated and the guarantee period shall be extended with the total amount of hours of these periods. If the total of these periods amounts to ten (10) working days or more, provided that they result from the same fault, the guarantee period shall start again on the date the completely corrected SOFTWARE is put in use.
- d. In case a fault in the design results in failure of the SOFTWARE or any part thereof, the guarantee period shall start again on the date the completely corrected SOFTWARE is put in use.
- e. CLIENT will inform VENDOR of every defect as soon as possible after it is known to CLIENT.
- f. If VENDOR in violation of the obligations mentioned above does not timely take measures, CLIENT will take or have taken the required measures under VENDOR's responsibility and at VENDOR's expense.



- 9 Loss or damage**
Up to the time that the SOFTWARE is placed in use, VENDOR carries the risk of loss of and damage to the SOFTWARE or any part thereof. If loss or damage occurs after this time, CLIENT is entitled against payment of the material cost and in case of damage on submission of the damaged SOFTWARE, to obtain a new copy to be provided by VENDOR.
- 10 General liability**
With regard to the services rendered by VENDOR, his subcontractors, agents or employees in respect of the supply, implementation, placing in use, instruction, correction, etc., VENDOR agrees to indemnify CLIENT with respect to all damage and/or injury or death resulting from acts of VENDOR, his subcontractors, his agents or employees, while on the premises of CLIENT. VENDOR indemnifies CLIENT from all claims, suits, actions and proceedings whatsoever, including those on account of damage and/or injury or death on the side of VENDOR, his agents or employees or other persons on account of said acts.
- 11 Passing of ownership**
The ownership of the SOFTWARE shall at the latest pass to CLIENT at the time of supply.
- 12 Errors in delivery**
SOFTWARE delivered or made available in error or SOFTWARE deliverables in excess of the quantity called for in the CONTRACT will be returned at VENDOR's expense and risk.
- 13 Payment**
VENDOR shall submit a separate invoice for each payment due in accordance with the payment conditions stated in the CONTRACT. 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.
- 14 Use of software**
VENDOR warrants that the free and unrestricted use of the SOFTWARE by and for the benefit of CLIENT, for the purpose for which the CONTRACT was concluded, is permitted.
- 15 Copies**
For back-up purposes and for internal use CLIENT is permitted to reproduce the SOFTWARE in whole or in part.
- 16 Escrow**
- a) On CLIENT's first request, an escrow agreement will be concluded between VENDOR, CLIENT and an escrow party to be designated by CLIENT with regard to SOFTWARE, which is placed at CLIENT's disposal and of which the intellectual (property) rights are not CLIENT's and which to CLIENT's judgement are suitable for depot in escrow.
 - b) Each party bears her own costs for concluding the agreement as mentioned under sub a). All other costs related to this escrow agreement are for CLIENT's account.
- 17 Developments**
VENDOR shall promptly inform CLIENT of any new software development and immediately offer to CLIENT updated, enhanced and completely new versions of the SOFTWARE for a price as stated in the CONTRACT, or such other price to be mutually agreed upon. Use of the original version of the SOFTWARE remains permitted.
- 18 Assignment**
Neither the CONTRACT nor any interest therein shall be assigned or transferred to a third party by VENDOR except with the prior written approval of CLIENT.
- 19 Rights of third parties**
- a) VENDOR shall indemnify, exonerate and hold CLIENT, free and harmless from and against any claims, demands, costs, injunctions and costs arising from or incurred by an infringement or alleged infringement of any letters of patent, copyrights, registered trade names or any other rights of third parties, in connection with the SOFTWARE or any part thereof supplied or made available under the CONTRACT.
VENDOR shall be notified of such claims as soon as possible. VENDOR shall in his own name and for his own account act in the legal proceedings or prevent or end them by means of a compromise or where appropriate by means of a settlement.
 - b) If within or without legal proceedings it is found that the SOFTWARE or any part thereof infringes any intellectual proprietary right and as a result thereof CLIENT is not permitted to use the SOFTWARE, VENDOR shall for his account and in consultation with CLIENT either:
 - procure for CLIENT the right to continue using the SOFTWARE or the relevant part thereof;
 - replace the relevant part of the SOFTWARE with a non-infringing part which achieves the same result as the initial SOFTWARE;
 - modify the SOFTWARE so it becomes non-infringing;
 - take back the SOFTWARE or any part thereof on reimbursement by VENDOR of the purchase price, expenses, damages and interest.

Modification and/or replacement may not result in SOFTWARE that does not comply with the requirements of the CONTRACT.

20 Confidentiality

All engineering data, designs, drawings and other documents supplied to the VENDOR by the CLIENT are confidential and shall not be used for any purpose whatsoever other than in connection with the VENDOR's obligations under the CONTRACT. Also VENDOR shall not get into any of CLIENT's data, which is not required for the execution of the work. Unauthorized entrance or distribution is a reason for termination of CONTRACT.

21 Immediate termination

- a) Should CONTRACTOR, after ENGINEER's or CLIENT's demand for remedial action, in the opinion of ENGINEER or CLIENT not execute the WORKS or part thereof in accordance with the CONTRACT, then CLIENT may terminate the CONTRACT or any part thereof. If CONTRACTOR becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him or if a winding up petition is submitted, CONTRACTOR is also considered to be in default. In such case CLIENT may immediately (partially) terminate the CONTRACT.
CLIENT may at any time terminate the CONTRACT or any part thereof for any reason crucial to CLIENT.
- b) If the CONTRACT's obligations include the transfer of ownership of the SOFTWARE to CLIENT, CLIENT is, if exercising his right under a., entitled to take over wholly or partially the SOFTWARE already delivered.
In that case CLIENT shall pay to VENDOR and VENDOR shall accept payment of that part of the purchase price that corresponds with the accepted SOFTWARE, without prejudice to any other rights CLIENT may have under this CONTRACT and/or the applicable law.

22 Termination by CLIENT for other reasons

CLIENT may terminate the CONTRACT in whole or in part by written notice to VENDOR. In such event CLIENT shall make payment to and VENDOR shall accept payment of that part of the purchase price(s) that corresponds with the part of the CONTRACT already executed at the date the termination becomes effective.
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.

23 Force Majeure

- a) Force Majeure is defined as an occurrence which is not for the risk of the party affected and which cannot be reasonably foreseen, controlled or prevented and materially affects the execution of the CONTRACT. Reasons like ordinary hazards of shortage of labour or material or transport, rejection of material, strikes other than general strikes, default of subcontractors, price or wage increase, etc., shall not be considered as Force Majeure.
- b) If and as far as compliance with the contractual obligations is not possible as a result of Force Majeure, compliance of such obligations shall, provided that the party affected has timely notified the other party and proven such occurrence, be suspended for the duration of the Force Majeure. In that case the corresponding obligation of the other party shall be suspended for the same time.
- c) No financial claims based on Force Majeure against CLIENT and/or VENDOR may be submitted or maintained.

24 Publicity

Without CLIENT's prior written approval VENDOR shall not make public any details of the CONTRACT and/or CLIENT.

25 Disputes

All disputes arising in connection with the CONTRACT, which cannot be settled amicably, shall be finally settled by the competent civil court in The Hague, the Netherlands, or, if CLIENT so prefers, by three arbitrators in accordance with the rules of the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*). 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 agreed in writing by the CLIENT, VENDOR shall not for reason due to disputes and/or proceedings delay or suspend the execution of the CONTRACT.

26 Governing law

The Contract shall be construed, interpreted and applied in accordance with the laws of the Netherlands. The "United Nations Convention on Contracts for the International Sale of Goods" (Vienna, 11 April 1980) will not be applicable.

27 Language

All correspondence and documents in connection with the CONTRACT shall be in the English language.

28 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.



29 Business Conduct Clauses

29.1 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.

29.2 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.

29.3 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.

29.4 Notification Duty

If, during the term of this CONTRACT, VENDOR becomes aware that the representations and warranties set forth in clause 29.2 and 29.3 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.

29.5 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 29.1 "Compliance Obligation" and the Bilfinger Vendor Declaration.

29.6 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.

29.7 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.

29.8 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.

29.9 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.

29.10 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.



29.11 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.

29.12 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 29.11 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.

29.13 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.

29.14 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.

29.15 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 29.1 to 29.2, 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.