



**BILFINGER**

# Terms and Conditions of Sale and Delivery of Bilfinger Maintenance GmbH

## 1. Scope of Application

All current and future deliveries and services rendered to our contract partners (hereinafter referred to as "Customers") shall be done exclusively on the basis of these present General Terms and Conditions. Any deviation from these present terms and conditions – in particular terms and conditions of the Customer – shall not be applicable, even if we do not specifically object to their validity in the individual case. Even if we make reference to any communication containing or referring to terms and conditions of a customer or of any third party, this does not constitute any consent to such terms and conditions.

We draw your attention to the fact that special terms and conditions may apply for specific deliveries and services, supplementing or modifying these present Terms and Conditions of Sale and Delivery.

## 2. Conclusion of Contract, Delivery, Default

All our offers are without obligation. They can be accepted only within 30 days. We may accept orders within 30 days.

All contracts involving our deliveries and services that do not comply with the written form requirement must be confirmed by us with hand-written signature or by fax in order to become valid. Unilateral legal declarations concerning the contractual relationship, in particular termination, require written form with hand-written signature to be valid; the written declaration may also be transmitted by fax.

Any particulars indicated on the subject-matter of deliveries or services (e.g. weights, measurements, utility values, load carrying capacities, tolerance values and technical data) and representations thereof are merely descriptions or designation features. Any more stringent liability cannot be derived therefrom unless we have expressly guaranteed their binding effect in writing. Customary deviations and deviations due to legal provisions or technical improvements shall be permitted, provided that the suitability for the contractual purpose is not impaired.

Any contractual changes and amendments after conclusion of

contract are only possible by mutual agreement in consideration of additional costs and rescheduling appointments.

We reserve all rights in the offers and cost estimates made by ourselves and in tools, auxiliary materials, patterns, samples, illustrations, descriptions, models, calculations, data sets (even if based on various orders) and other records originating from us or from a third party and made available to the Customer. Without our consent the Customer may not make such objects or the content thereof accessible to third parties and he may not disclose, copy or use such objects or have them used by third party. Upon our request, the Customer shall return all such objects and any copies thereof, if they are no longer required by the Customer in the ordinary course of his business or if negotiations have failed to result in the conclusion of a contract.

Contracts based on our offers and cost estimates have to be treated as confidential.

In case of business transactions within the scope of electronic data transmission, § 312 i, paragraph 1, sentences 1 to 3 and sentence 2, German Civil Code (Bürgerliches Gesetzbuch – BGB) shall not apply, unless the Customer is a consumer within the meaning of the German Civil Code.

Any terms of delivery indicated are without engagement, unless they are explicitly stated to be binding.

It is a pre-requisite for the beginning of a period of delivery indicated by ourselves that all technical questions connected with it have been clarified and that the obligations of the Customer have been met regularly and in due time.

Partial deliveries are possible if reasonable for the Customer.

Our liability for losses caused by delay due to minor negligence shall be limited to 5 % of the agreed purchase price. The Customer shall be entitled to terminate the contract only in accordance with his statutory rights. Our further claims depend on part 7.

The Supplier shall be entitled to terminate the Contract in accordance with the statutory rights however just in the case of delay.

## 3. Invoicing, Set-off, Default in Payment

Our prices shall apply solely to the extent of deliveries and services actually agreed. Additional and special services shall be charged separately.

Unless otherwise agreed in writing, all prices are given by us on an ex works basis. The Customer shall bear all additional costs of freight, packing costs in excess of standard packing, public fees and duties.

Our invoices show net amounts payable immediately net cash unless otherwise agreed. Payment shall be considered to have been made on the day payable sum is received. Unless otherwise agreed in writing, no cash discount shall be available to the Customer. As far as applicable the amounts charged are based on the weights at the time of consignment.

The Customer is in delay at the latest on the due day there is no need for a reminder.

Immediately upon delay of payment or from the due date if the Customer is a businessman within the meaning of the German Commercial Code (HGB) – we are entitled to demand interest of 9 percentage points above the basic rate of interest. The assertion of further damage is not excluded.

If by agreement any delivery or service is made more than four months after conclusion of contract and if in the meantime the prices of our suppliers or expenses incurred by us (e.g. freight charges and wages) or levies that we have to pay have been increased or if new levies have been introduced or if we have increased our prices generally, then we shall be entitled to adjust the price accordingly, unless such price has been expressly confirmed as being fixed.

The Customer may only set off against our claims or assert any right of retention in this respect, if his counterclaim is uncontested or confirmed by declaratory judgement.



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In the event of default in payment or of legitimate doubts as to the Customer's liquidity or creditworthiness, we shall be authorised – notwithstanding any other rights to which we are entitled – to demand advance payment for deliveries not yet made and to declare all claims from such business relationship due for immediate payment. Our delivery obligations shall be suspended as long as the Customer is in default with any payment due. We shall be entitled to terminate the contract without warning if the Customer fails to provide security within two weeks after the due date without legitimate reason.

#### **4. Passing of risk, Shipment, Place of delivery**

The Place of delivery is our respective factory. Unless otherwise agreed, the risk passes to the Customer, as soon as the delivery has been handed over to the person carrying out the transport or has left our works for delivery.

If our employees help with loading work, they act exclusively at the Customer's risk and not as parties assisting us in performing our obligations.

If it is expressly agreed, that transport shall be undertaken by us without having agreed to deliver at the Customer's place of business, the risk is transferred to the Customer at the start of loading, at the latest however on leaving the work of the place of performance. This also applies if we have expressly agreed to bear the costs of transport or partial deliveries are made.

Unloading and storage shall be at the responsibility of the Customer. All rules and regulations applicable to hazardous freight must be observed.

If dispatch or delivery is delayed due to circumstances attributable to the Customer, then the risk shall pass to the Customer as from the date where the goods are ready for dispatch. All storage costs incurred after the transfer of risk shall be borne by the Customer. This shall not affect any other claims.

If the Customer is in delay in accepting, we shall be entitled to claim refund of any expenditure associated therewith.

If it is expressly agreed, that cost of transport shall be borne by us, the following applies:

Increases in freight charges after conclusion of contract and any extra costs arising from transportation obstacles or from delays in transportation beyond our control shall be borne by the Customer. If we take back all or any goods, the Customer shall pay the costs thus incurred irrespective of the reason for taking the goods back.

The following shall apply generally: Only upon the Customer's express request and at Customer's expense will we insure the consignments against theft, damage through breakage, transportation, fire, water or any other insurable risk.

#### **5. Force Majeure**

Cases of force majeure and other disruptive events unforeseeable on the date of conclusion of contract (e.g. operational breakdown, delay or failure of delivery on the part of our own suppliers, shortage of energy supply or of raw materials, traffic disturbance, strike, lockout and administrative order), epidemics and pandemics beyond our control shall release us from our obligation to perform for the duration of such disruptive event and to the extent of the effects thereof. If this results in a delay of the delivery or service by more than one month, we shall be entitled to rescind the contract in respect of the quantities affected by such disruption. We have no obligation to provide any substitution for the Customer.

#### **6. Claims based on defects**

The Customer shall verify immediately whether the object delivered or the service rendered complies with the contractually agreed quality and is suitable for the intended purpose of use. Besides, the regulations of § 377 German Commercial Code (Handelsgesetzbuch – HGB) shall apply.

If the notification of defects of the objects delivered or services rendered was made in time, we shall at our choice repair such defects or provide substitute delivery or improve the services (supplementary performance

– Nacherfüllung), excluding any further rights of the Customer. If such supplementary performance fails, the Customer may subject to further legal regulations reduce the remuneration or – unless the liability for defects refers to construction works – at his choice rescind the contract. In the event of rescission, the Customer shall be liable for any intentional or negligent actions that cause destruction or loss of the goods as well as for failure to derive benefits from the goods. The regulations of §§ 282 and 283 German Civil Code shall remain unaffected thereof.

We shall be entitled to refuse to remedy defects in accordance with our statutory rights.

The Customer is sole responsible for providing evidence that his claim is justified. That applies for our defaults as well. § 476 BGB (German Civil Code) remains unaffected.

Deliveries and services subject to a notification of defects may not be returned unless with our explicit consent. In the event of justified complaint we shall refund the cost of the cheapest means of transportation.

#### **7. Liability**

We assume liability according to the legal regulations for damage caused intentionally or by gross negligence of the owner / the executive body or employees with managerial functions – irrespective of the cause in law and irrespective of whether the damages are instead of the performance or supplementary to the performance. In cases of minor negligence we shall only be obliged to compensate damages or expenses, if such negligence results in the breach of an essential contractual duty. In case of minor negligence, our liability shall be limited to typical damages which are foreseeable at the time of the conclusion of the contract.

Regardless of the limitation above, we are liable for damages according to the regulations of the Product Liability Act and in case of defects fraudulently concealed or within our guarantee for freedom from defects.



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Any liability for damages beyond these regulations is excluded, irrespective of the legal cause.

The preceding regulations are not applicable in case of liability for fatal injury, personal injury or injury to the health of a person.

## 8. Non-assignment clause

The Customer shall be not entitled to assign claims against us to third parties without our prior written consent. § 354 a HGB (German Commercial Law) remain unaffected.

## 9. Statute of Limitation

Claims asserted against us for violation of contractual obligations attributable to us are subject to the statute of limitation after expiry of a period of one year. This shall not apply for wilfully committed violation of obligations and for claims of the Customer resulting from defects according to § 438 paragraph 1, No. 2 and § 634 a, paragraph 1, No. 2, German Civil Code. With regard to the beginning of the statute of limitation the legal regulations shall apply. The rights of a consumer according to § 475 German Civil Code shall remain unaffected.

## 10. Retention of Title

We retain our title to all items supplied by us until the Customer has satisfied all our claims arising under the contractual relationship.

Our retention of title shall also cover any new products made by processing the retained goods. In the case of processing, connecting or mixing of retained goods with items not belonging to us, we shall acquire co-ownership in the new products at the ratio of the invoiced value of the retained goods in proportion to the invoiced value of the other materials.

As long as the Customer is willing and able to duly fulfil his obligations towards us, he may in the ordinary course of business dispose of the goods owned or co-owned by us. The following details shall apply:

a) If the Customer grants to his own customer a respite before paying the purchase price, then he shall retain title to the processed goods in front of such

customer. Without such retention of title, the Customer shall have no authority to dispose of the retained goods.

b) By way of security for all our claims from our business dealings with him, the Customer here and now assigns to us all claims arising from the sale of retained goods, including bills of exchange and cheques. If any goods are sold wherein we are entitled to co-ownership, such assignment shall be restricted to a share in the claim corresponding to our co-ownership share. In the event of goods being processed under a contract for work and services, claims of remuneration for performance are here and now assigned to us up to an amount corresponding to our co-ownership share. The Customer shall only be authorised to re-sell or otherwise use the retained goods, if it is guaranteed that the claims resulting therefrom will pass to us.

c) In the event of an assigned claim being included in a current invoice, then the Customer here and now assigns to us from the current account a portion of the balance corresponding in amount to such assigned claim (including a corresponding portion of the final balance). If interim balances are drawn up and if it is agreed that these be carried over, then that amount from the interim balance whereto we are entitled in line with the above arrangement shall be treated in the following balance as having been assigned to us.

d) Customer is authorised to collect all and any claims assigned to us, until we revoke this arrangement.

As long as we retain title, the Customer – as far as he may dispose over the retained goods – shall treat and store these goods with care, carry out the usual inspections and keep them in good repair and maintenance as required at his own expense. For the duration of our retention of title, the Customer may neither pledge the retained goods, nor assign them by way of security. We must be notified immediately in writing or by fax of any third party attachment or seizure of the retained goods and of any damage or destruction of the retained goods. The Customer has to bear all costs required for lifting the seizure or attachment and

for recovering the retained goods, unless they can be collected from third party.

If the Customer violates his obligation to treat the retained goods with care or any other obligation to exercise due care or in the event of default in payment of secured debts, we shall be entitled to take back the retained goods. Our taking back of the goods shall only constitute a rescission of the contract, if we make a written statement to this effect. On taking goods back, we are entitled to realise them and upon deduction of reasonable realisation costs, the proceeds therefrom shall be offset against Customer's liabilities. A corresponding proceeding is applicable in all other cases where Customer's behaviour constitutes a breach of contract.

If the realisable value of the collateral exceeds the claims to be secured not only temporarily by more than 10%, we will at Customer's request release securities to this extent at the choice of the Customer.

If, under the laws effective in the country of the Customer, retention of title is not admissible or admissible to a certain extent only, our rights indicated herein above are restricted to the extent legally admissible.

## 11. General Provisions

All legal relations between us and the Customer shall be governed exclusively by the laws of Germany. Application of the UN Convention Relating to a Uniform Law on the International Sale of Goods is excluded.

Frankfurt a.M. is agreed as venue in commercial business transactions.

If any provision in these present terms and conditions or in any supplementary agreements should be or become entirely or in part invalid, this shall not affect the validity of the remaining provisions. The invalid provision or the invalid part thereof shall be substituted by a legally effective provision coming as close as possible to the purpose of the invalid provision