

# General Terms and Conditions of Sale (GTCS)



of Bilfinger Maschinenbau GmbH & Co KG

## 1. Application of the GTCS

These GTCS apply to all deliveries and services to be performed by Bilfinger Maschinenbau GmbH & Co KG (hereinafter: BMB). Commercial or legal provisions of the Customer only apply if we have agreed to them specifically and expressly in writing.

## 2. Offers

2.1. Our offers are subject to the approval of the responsible bodies within Bilfinger SE.  
2.2. If our order confirmation contains changes vis-à-vis the Customer's order, the changes shall be considered to have been approved by the Customer if he does not object in writing within five working days. Upon delivery and/or provision of services the Customer shall be considered to have recognized the terms and conditions of the order.  
2.3. We are entitled to use sub-contractors without obtaining the consent of the Customer.

## 3. Prices

3.1. If a fixed price is agreed, this applies until the contractually agreed completion date at the latest. As regards changes to the legal, regulatory, authorization or standardization situation or in the event of any other unexpected modifications after the date of submission of tenders, the Customer bears the risk, in terms of deadlines and costs, too.

3.2. Our supplies and services are charged according to time and expense. Expenditure of time is based on our time records, which are regularly provided to the Customer for information purposes. The current hourly rates, equipment rates and surcharge rates are applied. These provisions also apply in the event of impediments or delays for which we are not responsible.

3.3. All prices are understood to be exclusive of value added tax, taxes, fees or any other charges. Delivery prices are understood to be EXW (Ex Works) pursuant to the relevant Incoterms excluding the costs of packaging, loading, customs duty, etc. Hourly rates apply to our sites.

## 4. Components or tools provided by the Customer, rights of BMB

4.1. In the event of delays regarding components or tools provided by the Customer (materials, additional parts, drawings, etc.), we reserve the right to invoice extra costs in the amount of up to 20% of the delivery price.

4.2. It is mandatory that components or tools provided by the Customer are delivered as described in the offer or order confirmation respectively. The delivery note must contain the order number issued by BMB pursuant to the order confirmation as well as a parts list of the parts delivered. The components or tools provided by the Customer must be clearly assigned to the delivery note items and indicated accordingly. In the event of any deviations we reserve the right to charge the additional expense for handling the components or tools provided by the Customer.

4.3. In case of quality defects in the components or tools provided by the Customer or deviations from the agreed specifications we reserve the right to interrupt the production and only resume it when an agreement on cost coverage has been made with the Customer.

4.4. In case of provision of components or tools by the Customer (e.g. cast components, welded parts, pre-machined parts, etc.), the Customer shall define a reference surface. Furthermore, preliminary drawings of axles and plans as a reference for component alignment for mechanical processing shall be provided by the Customer. These references shall be communicated to BMB in the context of the order. Should no reference surface or preliminary drawing be defined by the Customer, BMB reserves the right to invoice the entire expenditure incurred in the compilation of these references.

4.5. Should the Customer fail to meet his obligations or not meet them in a timely manner or properly we are entitled to interrupt the deliveries and/or performance or to refuse these and to withdraw from the contract subject to a grace period. In case of any interruption, the delivery or performance time shall be extended by the period of the interruption at least. The new term for delivery and performance shall be agreed upon.

## 5. Transfer of risk

Usage and risk are transferred to the Customer upon delivery ex works or ex stock respectively, irrespective of the pricing agreed for the delivery.

## 6. Acceptance of the delivery and/or services

6.1. Should no acceptance test be agreed, the delivery or performance shall be considered to have been accepted by the Customer if the Customer does not complain to us about shortcomings in writing immediately after the delivery or performance.

6.2. If the acceptance of the delivery or performance is delayed through no fault of ours the acceptance shall be considered to have taken place after expiration of two weeks after our notice of completion.

6.3. The Customer is not entitled to refuse the acceptance if he cannot prove the existence of defects which prevent the proper use of our deliveries and/or services.

6.4. Interim and final acceptances may not exceed the scope specified in the offer, the order confirmation and the testing plan. Additional hours worked for acceptances will be invoiced separately to the Customer.

## 7. Payment terms

7.1. The contract price invoiced by us shall be paid within 30 days of the invoice date without any deduction. We are entitled to issue monthly partial invoices for orders whose execution period exceeds one month.

7.2. Payment to us shall take place – unless otherwise defined in our offer - in euros, by bank transfer to one of our business accounts. The Customer shall bear any costs arising from any other payment methods.

7.3. The Customer may only set off undisputed claims against our payment claims.

7.4. Payment shall only be deemed to have been made on the day on which it is at our disposal.

## 8. Retention of title

Until the complete payment of all our claims all items delivered by us including accessory components, spare parts and replacement parts remain our property. This also applies in the case of installation, mixing, combination or processing.

## 9. Force majeure

9.1. Force majeure is understood to include in particular war, acts of government and of other public administrations, natural disasters, fire, disruption of transportation or operations, energy shortages, strikes and any other unavoidable and unforeseeable events and releases the contracting party concerned from the performance of his contractual obligations for the period of the force majeure event and for an appropriate period for the elimination of its consequences. This does not apply to monetary

payments.

9.2. If a certain delivery and/or performance is no longer possible as a result of a force majeure event, the Customer shall be released from the pro-rata payment obligation and we shall be released from the obligation to deliver and provide services.

## 10. Warranty

10.1. The warranty period expires 24 months after acceptance by our Customer.

10.2. The Customer may only rely on the warranty if he describes to us the defects that have arisen specifically in writing and documents that an assessment of the defects and of the cause is possible.

10.3. We shall provide warranty that the object of delivery and performance exhibits all the contractually agreed and usually required features at the time of acceptance. In case of defects for which we are responsible we grant claims to rectify such defects either through repair or replacement exclusively or – should this not be technically possible or not economical – through a reduction in price. In the case of repair or replacement the warranty period shall be extended by the appropriate period. Any type of warranty, especially for repaired and/or replaced parts shall expire 48 months after the first acceptance at the latest.

10.4. A warranty only exists for those defects for which the Customer proves that they did not occur (1) on the instruction of the Customer OR (2) for deliveries and services by the Customer or by a third party tasked by the Customer respectively OR (3) are due to normal wear and tear OR (4) are due to force majeure, accident, fire, force majeure and natural disaster, a power surge or power cut OR (5) are defects to existing plant components (old plants) which are not included in the contract OR (6) are due to using the plant contrary to the agreement or through unsuitable use for other reasons (e.g. maintenance errors, excessive use, ...) OR (7) are due to interventions conducted contrary to our instructions (e.g. documentation, operating instructions) or contrary to official orders OR (8) are due to the use of materials, spare parts, etc., which were not supplied by us.

10.5. The warranty expires immediately if the Customer or a third party makes modifications or repairs to the deliveries, services and/or to plants which are maintained. We shall not accept any responsibility or any costs for any defects which are remedied by the Customer himself.

10.6. Should it only become apparent after the execution of deliveries and/or services to determine and/or remedy defects, that no warranty obligation exists for us, then the Customer is obliged to reimburse us for the delivery or services pursuant to item 3. of these GTCS.

10.7. Claims based on warranty are – to the extent permitted by law – conclusively regulated in this section.

## 11. Liability

11.1. As far as the basis and the amount of our liability is concerned, we are only liable within the limits of the cover of our liability insurance, however, up to a maximum of the amount of the respective order value. Any liability on our part vis-à-vis the Customer for loss of production or reduction in production, loss of productivity, replacement of energy and for lost profits and for indirect, direct and/or consequential damages of any kind is excluded. This limitation and exclusion of liability respectively does not apply if we were responsible for any damages which were caused willfully or due to gross negligence, if there is any damage to physical integrity or any other compelling legal reasons for liability exist.

11.2. Should a contractual penalty – of whatever kind, e.g. for delay or for failing to attain performance values – have been agreed, then this shall constitute lump sum compensation, by way of which all claims of the Customer (e.g. of any additional compensation) from the respective title have been satisfied.

11.3. The legally mandated precedence in rem restitution applies. Claims for damages fall under the statute of limitations at the end of the warranty period at the latest.

11.4. Claims based on the title of compensation are – to the extent permitted by law – conclusively regulated in this section.

## 12. Withdrawal from contract

12.1. The pre-requisite for a Customer to withdraw from a contract is a substantial delay in deliveries or performance on our part as well as the fruitless elapsing of any grace period agreed upon by the Customer and BMB in writing.

12.2. In the event of the Customer violating essential contractual obligations e.g. punctual payment, we are entitled, at our option, either to withdraw from the contract after setting a grace period or to suspend deliveries and/or performance until fulfillment of all outstanding claims.

12.3. In the event of our justified withdrawal we have a right to compensation for all damages suffered.

12.4. Should the Customer withdraw from the contract justifiably, we are entitled to receive payment for deliveries of goods and performance of services already made.

12.5. Any other consequences of the withdrawal are – to the extent permitted by law – excluded.

## 13. Confidentiality

13.1. Both parties to the contract are respectively obliged to keep confidential any data and information which became known to them in the course of fulfilling the contract. All our offer and project documentation, particularly plans, sketches, technical documentation may – without our written agreement - only be copied for internal operational purposes and may not be made accessible to third parties. At our request the Customer is obliged to return all documentation (including all copies) to us, especially if the order is not placed with us.

## 14. Place of jurisdiction, applicable law, severability clause

14.1. The parties to the contract agree on the place of jurisdiction being the competent court in Linz, Upper Austria. The substantive law of the Republic of Austria shall apply under exclusion of its conflict of law rules and the UN Convention on the International Sale of Goods.

14.2. Should individual provisions of these GTCS be or become, for whatever reason, invalid or unenforceable, the remaining provisions shall not be affected. Both parties to the contract undertake to agree on an effective and enforceable provision which is as close as possible to the spirit and purpose of the provision in question.

(dated June 2019)