



General Terms and Conditions

Preliminary remark

Our General Terms and Conditions form the basis for business transactions with our customers. Their purpose is to provide a preworded framework for simplified, accelerated and standardised conclusion of agreements. Deviating provisions, in particular general terms and conditions of the Customer, shall not apply, not even if we do not object to their application separately. Even if we are referred to in a letter containing and referring to general terms and conditions of customer or third party, this shall not constitute consent to the application of such general terms and conditions. These shall not form part of the contractual framework, neither by acceptance of the order nor by any other implied act. Our GTCs shall be deemed accepted at the latest when our services have been received.

We point out that certain services / modules shall be subject to special terms which may supplement or modify the underlying GTCs.

1. Definitions

GTCs

These General Terms and Conditions.

Bilfinger

Bilfinger Digital Next GmbH, Langer Anger 3-5, 69115 Heidelberg, Germany.

Consulting Services

Shall mean consulting, expert opinions, reports and any other work results in any form (hereinafter referred to as "Incorporated Work Results") made available in whole or in part by or for Bilfinger and/or its subcontractors as part of the services.

Customer

The company defined in the order.

Module Description

The module description applying to the respective service / module.

Parties

Bilfinger and the Customer.

Agreement

The contract, signed by both Parties in their own hand through persons representing them, in which the scope of the order is agreed.

2. Offer, scope of performance

2.1 Our offers are non-binding. Purchase orders, conclusions of contracts and other agreements shall become binding only by our written confirmation. The written order confirmation alone shall be decisive for the scope of the services.

2.2 All agreements on our services which do not satisfy written form shall require our confirmation by personal signature or confirmation to be given by e-mail in order to be valid. Unilateral legal declarations relating to the

contractual relationship, in particular termination notices, shall not be valid unless they satisfy written form together with our personal signature. The written declaration may also be transmitted by e-mail.

2.3 We shall perform the contractually assumed duties as services in the sense of a service agreement.

2.4 If the Customer wishes amendments deviating from the scope of services, these may be agreed only jointly giving due regard to any additional costs and postponement of deadlines.

2.5 The Customer shall assume the entire responsibility for the disclosures it makes to us as well as for documents such as drawings, software, data, models, samples or the like which it provides to us.

2.6 Bilfinger shall be entitled to avail itself of the assistance by vicarious agents (*Erfüllungsgehilfe*) in providing the services agreed under the Agreement. Bilfinger shall impose on all vicarious agents a confidentiality undertaking to the same extent as Bilfinger undertakes towards the Customer to maintain confidentiality.

2.7 The hardware and software needed by the Customer on site shall not be part of Bilfinger's performance obligation. Such investments shall be borne by the Customer.

2.8 In connection with the services, Bilfinger may discuss ideas with the Customer orally or submit draft consulting services to the Customer. To the extent the content of such drafts or oral statements are to be finalised or confirmed in writing to the Customer, such confirmed consulting service shall supersede all previous drafts or oral statements. Accordingly, Bilfinger shall not assume any responsibility if the Customer or others should decide to rely on drafts or oral statements or to use them as a basis of their acts or omissions.

2.9 It is agreed that all times and dates clarified in the Agreement for provision of any parts of services, including provision of consulting services, shall represent merely estimates for planning purposes. Bilfinger shall inform the Customer without undue delay if Bilfinger expects or identifies significant delays materially impacting the compliance with any time schedules for the provision of the services.

3. Remuneration and payment

3.1 The amount of remuneration shall be defined in the Agreement.

3.2 Invoicing shall take place on a monthly basis. The payment term shall be 14 days net.

3.3 Bilfinger shall be entitled, after the expiry of 12 months, to make a reasonable adjustment in the prices giving due regard where appropriate to the occurrence of any cost increase, for example for producing and making available the services / modules, in particular any required costs for support, maintenance and further developing the technical and human resources infrastructure used for providing the services or for the

required costs to license works of third parties. In the event of a change in prices, the Customer shall have the right to terminate the Agreement in writing at the time when the price change takes effect without giving any termination notice.

4. **Rights in results and consulting services**

4.1 To the extent title (including intangible title) of Bilfinger is used or developed by Bilfinger in connection with the Agreement, Bilfinger shall retain such title – including the working documents – in the same. Upon payment in full of the fee due in connection with the services and the Agreement, the Customer shall receive a non-exclusive and non-transferable right of use to use the consulting services, that has been created by Bilfinger or its subcontractors for transmission to the Customer as a result of the services. This right of use applies only for the purposes as specified in the Agreement or the consulting services and subject to compliance with the remaining provisions of the Agreement.

4.2 Bilfinger shall remain the owner of the rights in the consulting services (including owner of the copyright, IP rights and other intellectual property) and shall retain the right to use ideas, know-how, methods, techniques, processes and expertise, and/or modifications thereof, in business transactions.

4.3 The Customer shall ensure that in this regard no prohibitions or claims to cease-and-desist are asserted and/or initiated against Bilfinger. Copyright and other IP rights in material and data made available by the customer for provision of the services shall be retained by the Customer.

4.4 The Customer shall moreover be entitled to use the consulting services transmitted to it, but not for any purpose other than to receive the services and only pursuant to any agreements specified by Bilfinger and entered into with the Customer relating to the rights of use in Bilfinger Technologies. In the relationship between the Customer and Bilfinger, Bilfinger shall remain the owner and shall reserve the right to Bilfinger Technologies which are used or developed in connection with the Agreement.

4.5 "Bilfinger Technologies" shall cover all works, materials, information, software, interfaces, templates, methods, ideas, concepts, know-how, techniques, tools, processes, technologies, including web-based technologies and algorithms and other intellectual property developed before or independent of the provision of the services by Bilfinger or its subcontractors as a means for providing the services, including any modifications and improvements made to thereto and any derivations based thereon.

4.6 The Customer acknowledges that in conjunction with the provision of services Bilfinger and its subcontractors may develop and acquire experience, skills, knowledge and ideas which are retained in the memory of their employees. Notwithstanding any provisions to the contrary in the Agreement, the Customer declares its

consent to Bilfinger being authorised to use and disclose such experience, skills, knowledge and ideas.

4.7 Where the Agreement provides for acceptance of work results, the Customer shall accept any Incorporated Work Result which satisfies the requirements specified in the Agreement in all essential aspects. Acceptance of the Incorporated Work Result shall be deemed given unless the Customer has informed Bilfinger within fifteen (15) days from receipt that an Incorporated Work Result does not satisfy the agreed requirements or if the Customer uses the Incorporated Work Result for the first time, whichever is earlier. If the Incorporated Work Result does not satisfy the requirements specified in the Agreement in this regard in all essential aspects, the Customer may demand that Bilfinger shall remedy such failure to comply within a sufficient period of time. If the issue is not remedied on the first attempt, the Customer shall set Bilfinger a second reasonable time limit.

5. **Data protection and confidentiality**

5.1 The Customer and Bilfinger mutually undertake to comply with data protection and data security in accordance with the state of the art and the applicable legal provisions in force.

5.2 The Parties undertake to maintain strict secrecy about all confidential matters of which they become aware in connection with the Agreement, in particular business or trade secrets of the respective other Party, and shall neither disclose the same to third parties nor exploit the same in any other way. Within the meaning of this provision, third parties shall not be advisors, attorneys and similar persons who are entrusted with safeguarding the interests of the respective Party. Entities affiliated with Bilfinger within the meaning of section 15 of the German Stock Corporation Act (*Aktiengesetz* – AktG) shall not be deemed third parties within the meaning of this provision.

6. **Non-solicitation**

During the term of validity of the Agreement and for a period of six months after it has ended, the Customer undertakes not to employ, whether directly or indirectly, employees of Bilfinger or of its vicarious agents.

7. **Limitation of liability, force majeure**

7.1 Bilfinger shall pay damages and make compensation for wasted expenses, regardless of the legal grounds (e.g. under obligations created by legal transactions and obligations similar to legal transactions, material defects and defects in title, breach of duty and tort) only to the extent provided for in this clause 7.

7.2 Liability for intent, gross negligence and in the case of assumption of a warranty shall be unlimited.

7.3 In the event of breach of a cardinal obligation (obligation (a) which fulfilment enables the proper performance of the Agreement, (b) on which observance the user normally relies and may rely, (c) and the breach of which puts the achievement of the contractual purpose in

- jeopardy) committed by simple negligence, Bilfinger shall be liable in the amount of the typical damage foreseeable on entering into the Agreement, however, not exceeding the amount of the contract value.
- 7.4 Bilfinger shall be entitled to raise the defence of contributory negligence.
- 7.5 In the event of injury to life, limb and health and claims under the German Product Liability Act (*Produkthaftungsgesetz* – ProdHaftG), the statutory provisions shall apply without limitations.
- 7.6 In all other cases, Bilfinger shall not be liable.
- 7.7 Unforeseeable and unavoidable events which are beyond Bilfinger's control and for which Bilfinger is not responsible, such as *force majeure*, war, industrial action, natural disasters, pandemic or epidemics (such as COVID-19), etc.) shall release Bilfinger from its duty to effect timely delivery or performance during the period of such events. Agreed time limits shall be extended by the duration of the impairment; the Customer shall be notified of the occurrence of the impairment in an appropriate manner. The Customer shall not have any claim to substitute performance. If the end of the impairment is not foreseeable or lasts longer than two months, Bilfinger shall be entitled to terminate the Agreement for good cause. Liability of Bilfinger to pay damages, irrespective of the legal grounds, shall be excluded.
- 7.8 Each Party shall at all times use updated antivirus programs and take appropriate measures to protect their own IT systems and data. However, the Parties agree that IT systems cannot be completely secured and that it is possible for third parties to gain access to IT systems and data. The Parties themselves shall each bear responsibility for the risks arising from this. The Customer shall have the obligation to make regular data back-ups based on the current state of technology.
8. **Miscellaneous provisions**
- 8.1 We are entitled to advertise the cooperation and to present the same in all media for reference, marketing and distribution purposes.
- 8.2 No oral side agreements have been made. Any changes and amendments to these Terms and Conditions must be made in writing in order to be valid.
- 8.3 Bilfinger shall notify the Customer in text form of any amendments to the Agreement no later than four weeks before the proposed effective date of such amendments. The Customer's consent shall be deemed to have been given if it has not submitted its refusal thereof in text form before the proposed effective date of the amendments.
- 8.4 The Customer acknowledges that the re-sale of any products imported from the USA is subject to the export control provisions of the United States of America imposing limitations on the export and re-import of hardware, software, technical data carriers and direct products of technical data carriers including services relating to the use of such products. The Customer agrees that it shall neither directly nor indirectly export or re-export any products, information or documentation relating thereto imported from the USA to any countries and/or to any end customers without first having obtained the consent for this from the duly competent authority.
- 8.5 The place of performance for all services of Bilfinger shall be Heidelberg unless a deviating place of performance is agreed with the Customer. The place of performance for all payments is Heidelberg.
- 8.6 Should any provision of this Agreement be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions of this Agreement. The same shall apply if the Agreement should be found to have a gap. In lieu of the invalid provision or in order to fill the gap, a likely provision shall be deemed to have been agreed which – to the extent permitted by law – achieves the purpose that the Parties pursued by the invalid provision or – in the case of a gap – by the Agreement as a whole.
- 8.7 The Agreement shall be governed by and construed in accordance with German substantive law. German international private law and the United Nations Convention on Contracts for the International Sale of Goods (C.I.S.G.) are excluded.
- 8.8 The courts of competent jurisdiction for Heidelberg shall have exclusive jurisdiction over all disputes arising in connection with the Agreement or relating to its validity.

Last updated: June 2020