



## Bilfinger Inc.

### Purchase Order Terms and Conditions

- Parties:** Bilfinger Inc. (the purchaser of goods or services) will be referred to as "Contractor" and the supplier of goods or services under this Purchase Order / Contract will be referred to as "Vendor". "Owner", as referenced herein, will be the entity for which Contractor is performing the services.
- Acceptance:** The Purchase Order / Contract and these Purchase Order Terms and Conditions (collectively referred to as the "Agreement") are expressly limited to the terms and conditions stated by Contractor herein. No purchase orders, confirming orders, or other documentation, written or oral, by Vendor modifies, alters or changes the express written terms of this Agreement. If any additional or different terms are proposed by Vendor while accepting this Agreement, including strikeouts of language in this form, such additional or different terms will be considered as a proposal by Vendor for modification of this Agreement and will be effective only if expressly accepted in writing by Contractor. The return of a signed Agreement by the Vendor, the shipping of any of the goods, or the performance of any of the services, constitutes acceptance by Vendor under this Agreement.
- Vendor Declaration:** Vendor shall comply with the Bilfinger Vendor Declaration. If a copy of the document is desired, please call or e-mail your request to (701) 222-00076 or [procurement@westconindustries.com](mailto:procurement@westconindustries.com). The Bilfinger Vendor Declaration sets the minimum standards that must be applied. However, to the extent, the Bilfinger Vendor Declaration conflicts with local law, local law shall apply.
1. 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 goods or services.
  2. Vendor hereby represents and warrants that neither payments nor any other advantages or favors 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 Contractor, 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.
  3. Vendor acknowledges and agrees that any breach of the Business Conduct Clauses set forth herein will be deemed a material breach of contract entitling Contractor to terminate the Agreement at any time and with immediate effect, without any obligation to pay any outstanding fees or make any other payment. Contractor shall not be obliged to compensate any loss suffered by the Vendor as the result of a termination under this clause.
  4. Vendor shall keep full records in relation to the performance of the Agreement. The content of these records shall include, but not be limited to, full and accurate description of performance of Vendor and its suppliers or 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 this Agreement.
  5. All payments to Vendor by Contractor will be made only after receipt of an invoice referring to the Agreement and setting out details of the services provided and/or products delivered, by payment 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.
- Bilfinger may change the Vendor Declaration if there is a change of legal, regulatory or institutional requirements, case law or ethical business standards relevant to the content of the Vendor Declaration.
- Bilfinger will inform Vendor of any changes or amendments to the Vendor Declaration. Vendor shall comply with the latest version including the changes if and to the extent it has been informed thereof.
- Assignments or Subcontracts:** Vendor shall not assign or subcontract this Agreement in whole or in part without Contractor's prior written consent. The term "subcontractor" includes all materialmen, suppliers and sub-subcontractors who have entered into a contract, expressed or implied, with Vendor to perform a portion of the services or supply the goods under this Agreement.
- Set-Off:** Contractor may credit any amount which Vendor owes to Contractor under this Agreement or any other Agreement, or based upon any other claim or right, against any amounts which Contractor owes to Vendor under this Agreement.
- Time of Delivery for Performance:** Time is of the Essence. Contractor reserves the right to cancel this Agreement or any part of it and reject delivery of goods or performance of services if (1) Vendor has not delivered the goods or started or completed performance of the services by the time specified in this Agreement (or within a reasonable time if not otherwise specified), or (2) if Vendor's delivery of goods or performance of services is not in accordance with the Agreement specifications. Vendor shall be liable to Contractor for all loss and damage sustained by Contractor as a result of Vendor's delay or failure, with the exception of delays beyond Vendor's reasonable control. Contractor will not be required to notify Vendor of Vendor's default or otherwise put Vendor in default.
- Entire Agreement, Change Notice:** No change to any of the terms and conditions of this Agreement will be effective unless both Vendor and Contractor have agreed to the change by signing a Formal Change Order. **Regardless of any previous oral or written communication, the written terms of this Agreement constitute the entire agreement between Vendor and Contractor.**
- Compliance:** Vendor represents and warrants that all goods which Vendor shall deliver and/or services which Vendor shall perform under this Agreement shall be accomplished in compliance with all applicable standards, codes, and specifications; federal, state, and local laws; and rules and regulations.
- Vendor's Indemnity to Contractor:** Vendor agrees to defend and indemnify and hold Contractor and Owner harmless for any costs, damages (including damage to property or the environment), injuries (including injury to, illness or death of persons), liabilities, claims, settlements, demands, lawsuits, penalties, interest, taxes or liens which Contractor may incur, be found liable for or are required to pay (collectively called "Claims") which arise out of or are related to Vendor or Vendor's subcontractor's furnishing goods or providing services to Contractor under this Agreement. **THIS PROVISION WILL REQUIRE VENDOR TO INDEMNIFY AND DEFEND CONTRACTOR AND OWNER FOR CLAIMS CAUSED BY CONTRACTOR OR CONTRACTOR EMPLOYEES' NEGLIGENCE WHEN SUCH CLAIMS ARISE OUT OF THE JOINT OR CONCURRENT NEGLIGENCE OF (1) VENDOR AND VENDOR'S EMPLOYEES (INCLUDING VENDOR'S SUBCONTRACTORS AND THEIR EMPLOYEES) AND (2) CONTRACTOR AND CONTRACTOR EMPLOYEES. HOWEVER, VENDOR WILL NOT BE REQUIRED TO INDEMNIFY CONTRACTOR (1) IF THE CLAIM IS THE RESULT OF CONTRACTOR OR CONTRACTOR EMPLOYEES' SOLE NEGLIGENCE, (2) FOR THE PORTION OF ANY CLAIM WHICH IS CAUSED BY A THIRD PARTY OTHER THAN VENDOR'S EMPLOYEES OR VENDOR'S SUBCONTRACTORS OR THEIR EMPLOYEES.** This indemnity is separate from Vendor's insurance, and Vendor shall be responsible even if Vendor's insurance carrier denies coverage.



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**Patents, Trade  
Secrets, Copyrights  
and Confidential  
Information:**

Vendor agrees to indemnify, hold harmless and defend Contractor and any of Contractor patents, subsidiaries, or affiliates in any suit, claim or demand alleging infringement of any patent, copyright, and for misappropriation of any confidential information or trade secrets in the United States, in the country of source, and in the country of destination, based upon the performance of the services, or the sale or use of goods supplied under this Agreement. Vendor agrees to keep confidential and not to disclose to others or to use in any way to Contractor's detriment confidential business or technical information that Contractor may have discussed in conjunction with the negotiation or performance of this Agreement, or that Vendor may be exposed to as a result of entering Contractor's or Owners property to deliver goods to perform services under this Agreement. Notwithstanding restrictive legends to the contrary, no confidentiality obligations will be imposed on Contractor by acceptance of materials supplied by Vendor.

Title to all plans and specifications and technical data, including but not limited to, drawings, flow diagrams, layout details and specifications, computer programs and their contents furnished to Vendor and/or Vendor's subcontractors by Contractor or developed by Vendor and/or Vendor's subcontractors at Contractor's request or direction or as a result of this Agreement will belong to and become Contractor property. All Agreements with subcontractors shall contain this requirement. Vendor shall assign and hereby does assign to Contractor all copyrights, trademarks and patents created by Vendor during performance of their services. Vendor shall execute any assignments, applications or other instruments that are necessary to carry out such assignment.

Notwithstanding the foregoing paragraph, Vendor agrees that all copyrightable works that Vendor creates and have created at Contractor's request and direction or as a result of this Agreement (including, but not limited to, documents, computer programs, software, literary works, pictorial works, graphic works, sculptural works, audiovisual works, sound recordings and architectural works) shall be and are "works made for hire" under federal copyright law. Vendor shall assign to Contractor any rights Vendor may have or obtain in all copyrightable works that Vendor creates or have created by Contractor's request or direction or as a result of this Agreement. Vendor shall not use any person to create such works for Contractor who does not agree in advance, in writing (i) that the works are to be works made for hire under federal copyright law or (ii) to assign to Contractor all rights the person may have or obtain in the works. Vendor shall provide Contractor with copies of all such "work for hire" and assignment agreements before any person participates in the creation of any copyrightable work for Contractor.

**Audit:**

Vendor agrees to maintain all records relating to the quality, price and cost of and payment for the goods sold or the services performed under this Agreement and allow Contractor to inspect, copy and audit those records during normal business hours for a period of up to five (5) years or statutory requirements, whichever is greater, following Vendor's delivery of the goods or performance of the services.

**Taxes:**

Vendor or Vendor's subcontractors shall be responsible for sales and use taxes, including federal, state and local sales and use tax, on the purchase of all supplies, tools, parts, rentals, machinery, equipment or services which Vendor uses or consumes in the manufacture of goods sold or services performed. [If required, this Agreement is a separated contract for purpose of Texas sales and use tax and Vendor agrees that all invoices which Vendor sends to Contractor shall reflect separate charges for labor, equipment, and materials. Contractor will be responsible for accruing Texas sales and use tax on separately stated charged for materials or equipment which are incorporated into Contractor facility and labor, unless such items are exempt from such taxes.] Vendor agrees to be solely responsible for the payment of all contributions and taxes resulting from the employment of persons performing services under this Agreement.

**Governing Law:**

THIS AGREEMENT WILL BE INTERPRETED IN ACCORDANCE WITH THE LAWS OF TEXAS, WITHOUT REGARD TO ITS CHOICE OF LAW, RULES OR ANY OTHER LAW THAT WOULD REQUIRE THE LAWS OF ANY OTHER JURISDICTION OR COUNTRY TO APPLY. HOWEVER, PRIOR TO AND AFTER FILING ANY LAWSUIT, VENDOR AND CONTRACTOR AGREE TO MAKE A GOOD FAITH EFFORT TO RESOLVE DISPUTES THROUGH SETTLEMENT OR THROUGH USE OF A NEUTRAL THIRD-PARTY MEDIATOR. VENDOR AND CONTRACTOR AGREE THAT ANY LITIGATION INVOLVING THIS AGREEMENT WILL BE BROUGHT IN FEDERAL OR STATE COURTS LOCATED IN HARRIS COUNTY, TEXAS AND VENDOR AND CONTRACTOR WAIVE THE RIGHT TO FILE OR DEFEND ANY ACTION ELSEWHERE.

**Conflicts of Interest:**

Vendor agrees that neither Vendor nor any of Vendor's employees, subcontractors and their employees, directors or agents will give to or receive from Contractor or Contractor's employees or agents, any gifts or entertainment of significant value or any commission, fee or rebate in connection with this Agreement. In addition, neither Vendor nor any of Vendor's directors or employees will enter into any business arrangement with any of Contractor employees or agents who are not acting as Contractor's representative, without giving Contractor prior written notification.

**Insurance:**

Vendor shall maintain in effect the following types and amounts of insurance with insurance companies satisfactory to Contractor: (1) Workers Compensation with Employer's Liability with limits of not less than \$500,000 for each accident, (2) Commercial General Liability insurance, including contractual liability insuring the indemnity agreement set forth in this Agreement and products-completed operations coverage with limits of not less than \$1,000,000 for property damage, bodily injury, sickness or death, in any one occurrence, and (3) Automobile Liability insurance with limits of not less than \$500,000 applicable to property damage, bodily injury, sickness or death in any one occurrence. Each insurance policy maintained by Vendor for services performed under this Agreement must be endorsed to (1) name Contractor, Contractor subsidiaries and owners as additional insured except with respect to Workers Compensation and, (2) provide that Vendor's underwriters and insurance companies will not have any right of subrogation against Contractor, Contractor subsidiaries, owners, underwriters, and insurance companies. Vendor shall provide Certificate of Insurance evidencing the above coverage prior to the commencement of services. Vendor shall notify Contractor in writing at least thirty (30) days prior to the cancellation of or any material change in the above insurance coverage. The insurance shall not affect or limit Vendor's liability to Contractor in this Agreement or under law.

**Waiver of Liens:**

Vendor shall not file and agrees to waive any right Vendor may have to file a mechanic's or materialman's lien against Contractor or any of Contractor facilities (or Contractor Owner's facilities) for any labor or material which Vendor has furnished as part of the performance of Vendor's obligations or services under this Agreement. In the event any such lien is filed by Vendor or one of Vendor's subcontractors who has furnished labor or material, Vendor shall at Vendor's own expense take steps to promptly remove the lien by bond or otherwise. Vendor further agrees to indemnify and hold Contractor harmless for any loss or damage with Contractor may suffer or incur as a result of Vendor's failure to comply with this provision



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- Delivery:** Title and risk of loss will pass from Vendor to Contractor in accordance with Uniform Commercial Code shipping terms set forth in this Agreement (ex. FOB, CIF, etc.). Vendor warrants that Vendor has good and clear title to the goods delivered. If the risk of loss passes to Contractor at the shipping point and if Vendor fails to ship in the manner or route directed by Contractor, Vendor agrees to reimburse Contractor for any loss, delay or damage which Contractor suffers.
- Quality:** Vendor warrants that the goods which Vendor delivers shall be new and of good and merchantable quality and conform to the description stated in this Agreement; and that such goods will be fit for the intended use which Contractor has described to Vendor. Vendor agrees to promptly repair or replace any defective goods that Contractor has notified Vendor about within one (1) year following delivery. If Vendor fails to promptly repair or replace the defective goods, Vendor agrees that Contractor will be entitled to repair or replace them. In such case, Vendor agrees to reimburse Contractor for Contractor's cost to repair or replace the defective goods. Contractor will be entitled to inspect all goods before, upon or within a reasonable time after delivery. No substitution of any goods shall be made without Contractor's written approval. Contractor reserves the right to reject goods which have been reworked.
- Price Warranty:** Vendor warrants that the prices for the goods sold to Contractor under this Agreement are not less favorable than those currently extended to any other customer for the same or like goods in equal or less quantities. In the event Vendor reduces Vendor's price for such goods during the term of this Agreement, Vendor agrees to reduce the prices of the goods accordingly. Unless agreed to in writing by Contractor and Vendor, prices shown on this Agreement are firm and shall not be subject to escalation of any kind.
- Safety:** Vendor shall perform the services in a safe and prudent manner in accordance with Contractor plant manual. Vendor agrees to comply with such plant rules while performing services at or making deliveries at Contractor facility. Vendor will be solely responsible for notifying and training Vendor's employees, subcontractors, and all agents with respect to Contractor plant rules and all applicable laws and regulations. Vendor's employees, agents and subcontractors (and their employees) shall wear all personal protective equipment required by applicable law, Contractor area work permits, or plant rules.
- If Contractor notifies Vendor of non-compliance with the terms of this provision, Vendor shall immediately make all reasonable efforts to correct the non-complying condition. If Vendor fails to do so, Contractor has the right to require Vendor to stop performance of all or any part of the services Vendor shall not be entitled to an extension of time to complete performance of the services or to any compensation for additional costs incurred, damages suffered or for the work time lost during the suspension.
- Statutory Permits:** Vendor agrees to obtain and maintain all required federal, state and local permits and licenses required for performance of the services at Vendor's sole cost and expense.
- Performance:** Vendor acknowledges that they have inspected or have been given the opportunity to inspect the premises upon which Vendor shall perform the services in order to become familiar with all site conditions. Vendor agrees to (1) perform all services in a good, workmanlike, efficient and safe manner, (2) supply all necessary labor, materials, tools and equipment, (3) conform to all required governmental and accepted industry standards of engineering, construction and safety, (4) comply with Contractor plant rules and (5) perform the services in accordance with the specifications and drawings which Contractor has provide to Vendor, or which Vendor has furnished and Contractor has approved. Vendor agrees that it will be fully responsible to Contractor for the errors, acts, and omissions of Vendor's employees or it subcontractors (and their employees) assisting Vendor in performing the services, as if such errors, acts, and omissions were committed by Vendor. Vendor agrees that all supervisory and craft personnel shall have the skills, licenses, and training necessary for performance of the services as required by governmental regulation, industry standards and Contractor plant rules.
- Independent Contractor:** Vendor shall be an independent contractor in all respects with regard to the performance of the services. Vendor, Vendor's employees or subcontractors performing the services will not be considered for any purpose to be Contractor employees, agents or representatives. Contractor is interested in the results of the services and will not direct or control the manner or method in which Vendor performs the services.
- Hazardous Material:** Vendor acknowledges Vendor's understanding that the performance of the services may involve, or may expose performing such services to materials, substances, pollutants or contaminants which could be hazardous to human health and/or the environment ("Hazardous Materials"). Vendor acknowledges that Vendor has considerable experience working in and around refineries, chemical, and other industrial facilities and that Vendor is generally aware of the types of materials and substances used or contained in such facilitates, including Hazardous Materials, and the risk which they pose to human health or the environment. Contractor have made or will make available to Vendor for review Material Safety Data Sheets ("MSDS") for those substances and materials which Vendor's personnel may be exposed to while performing services in Contractor's or owner's facility. Vendor agrees that Vendor shall ensure that Vendor's employees and Vendor's subcontractors familiarize themselves with the information contained in such MSDS.
- Lien Waivers:** Vendor shall provide partial release of lien waiver as requested by Contractor. Final lien waiver required with final invoice.