



# General terms and conditions of purchase (GTC of purchase) of the companies of the Bouygues Energies & Services InTec Version October 2018

## 1 General

All orders placed by the companies of the Bouygues Energies & Services InTec (the respective company hereinafter "BYES") shall exclusively be governed by these terms and conditions of purchase. General terms and conditions and other contractual conditions of the supplier shall only apply to the extent that BYES has expressly consented thereto in writing.

The supplier has to provide the deliveries and services to be provided pursuant to the order (hereinafter also referred to as the subject of contract) in a professional and careful manner. These also include all the deliveries and services that were not explicitly requested by BYES but which are necessary or usually required for the specified function of the subject of contract.

All agreements and declarations of the contracting parties shall be valid only if they are made in writing.

Should any provision of these GTC of purchase prove to be invalid in whole or in part, the contracting parties shall replace said provision by a new agreement which approximates as closely as possible to its legal and economic intent.

## 2 Order and order confirmation

BYES shall send the order to the supplier. The contract enters into force with the acceptance of the order by the supplier. The supplier signifies acceptance by immediately returning an order confirmation. Deviations and additions by the supplier that are contained in the order confirmation only apply if BYES has explicitly agreed to these in writing. If confirmation is not forthcoming, and if the supplier does not decline the order in whole or in part within five days of the order date, the order is deemed to be accepted unreservedly and without change. With the acceptance of the order, the supplier declares that he has all the necessary information and documents to perform the contract.

## 3 Prices and payment terms

The prices stated in the order are firm prices. They include all costs, fees and other expenditure necessary for the performance of the contract. Payments shall be made with a 2% cash discount if made within 30 days or else net within 45 days from the delivery of the subject of contract and respective invoicing. In the event of defective delivery and/or performance, payment is not due until 30 days after the orderly correction of the defect and/or substitute delivery or performance. BYES does not accept any cash on delivery consignments or bills of exchange (drafts).

## 4 Delivery date and consequences of delay

The delivery dates stated in the order are binding. The supplier is obligated to counter impending or discernible delays immediately and to inform BYES about these without delay. In the event of failure to respect the delivery date, the supplier shall be in default without further notice. In the event of such delay, BYES is entitled either to insist on performance or to waive subsequent performance or delivery, after an appropriate period of grace has not been used, and to withdraw from the contract without being obligated to pay compensation. The right of BYES to claim compensation is reserved in every case. The acceptance of a delayed delivery is not deemed to be a waiver of claims for compensation.

## 5 Transport, insurance and packaging

A delivery note must accompany every consignment. Partial and residual consignments must always be identified as such. The supplier bears full responsibility for proper packaging and orderly transport. Any special instructions for packaging and transport pursuant to the order are to be adhered to by the supplier. All costs, fees and other expenses incurred for packaging and transport are for the supplier's account. The subject of contract is to be insured by the supplier accordingly.

## 6 Place of performance, benefit and risk and transfer of ownership

The place of performance for delivery is the place of handover stated in the order. The place of performance for payment is at the domicile of the purchaser.

In the case of deliveries which include installation obligation, the benefit and risk are transferred on acceptance, and in the case of deliveries without installation obligation, on arrival at the place of performance indicated by BYES. Ownership is transferred on arrival to the place of performance, but not later than at the time when payment is made.

## 7 Warranty and remedying defects

The supplier grants BYES full warranty regarding defect of title and defect of quality. The supplier is liable for impeccable quality and suitability of the subject of contract both for usual purposes and for the designated purposes notified to the supplier, as well as for assured properties.

The warranty period shall be (i) two years from the moment of delivery of the subject of contract at the place of fulfilment and/or (ii) with goods that are intended for installation five years after the acceptance of the installation (in which these have been fitted). Provided the manufacturer agrees to an extended warranty period or in case an extended warranty period has been agreed upon between BYES and the supplier, this shall take precedence. In the event of subsequent improvement or replacement delivery or performance, the warranty period commences anew.

BYES is entitled to make complaints at any time within the warranty period. The fact that payment has been made by BYES does not signify a waiver of the right to lodge complaints.

In warranty cases, BYES is entitled, at its own discretion, to request subsequent improvement, a reduction in price, replacement or rescission. The supplier shall pay all costs associated with the correction of the defect (including transport and travel expenses). In urgent cases and if the supplier does not carry out the correction of the defect or not in an appropriate manner, BYES is also entitled to correct the defects itself or have them corrected at the supplier's cost and/or procure replacement. In each case, this is explicitly subject to further claims for compensation.

The statute of limitation for the supplier warranty expires six months after the end of the agreed warranty period.

## 8 Liability

The statutory provisions regarding liability shall apply, including those provisions relating to product liability and the protection of intellectual property rights.

If the subject of contract should be defective, the supplier must also pay in full in particular the costs for determining the defects, including any costs for the removal and installation of the subject of contract in a system at the first request to do so from BYES.

## 9 Plans, (technical) documents and intellectual property

Materials made available by BYES for the order, such as samples, tools, software, plans, drawings, calculations etc. are binding. The supplier shall immediately verify the information given by BYES and report defects and ambiguities without delay. All rights in the order documents are retained by BYES. There is also no intention of granting the supplier or third parties any licences in these rights.

## 10 Safety and country regulations

The supplier guarantees that the subject of contract is compliant with the latest state of the art and all the applicable safety provisions and technical standards (incl. the applicable provisions of the country of destination if the same is known). The supplier shall issue the necessary standard certificates and information on origin on request.

The supplier is liable to BYES for all prejudice suffered by BYES as a result of failure to comply with these regulations and standards.

## 11 Labour protection and labour law

If delivery includes the deployment of personnel, the supplier undertakes to comply with all statutory provisions applicable to the deployment and recruitment of personnel, specifically with regard to employment contracts, prohibition of undeclared work, work and residence permits, safety, equal opportunities and social charges.

## 12 Secrecy

The supplier undertakes to make use of the order material and other know-how, data and information of any kind or form of which he acquires knowledge in connection with the order solely for the contractual purpose and to treat it in confidence. Any other use shall require the prior written consent of BYES.

## 13 Assignment and subcontractors

The supplier shall not assign claims vis-à-vis BYES to third parties without the prior written consent of BYES. The full or partial transfer of deliveries and/or services to third parties also requires the prior written consent of BYES. The supplier is liable for the actions and omissions of subcontractors as if he himself would fulfil the contract.

## 14 Advertising

Any reference to the business relationship with BYES for advertising purposes shall require the prior written consent of BYES.

## 15 Amendments and withdrawal from the contract

BYES is entitled to request changes and additions to the order at any time. Resulting changes in deadlines and costs shall be notified by the supplier to BYES without delay. The conditions of contract of the original order are likewise applicable. Any changes to the delivery and/or services made by the supplier must be approved in writing by BYES in advance.

BYES may withdraw from the contract at any time, either in whole or in part. The supplier shall be entitled to compensation for services already provided and for preparatory services which cannot be cancelled or used for other purposes. The supplier must keep the costs incurred as low as possible. No further claims of the supplier shall be entertained.

## 16 Place of jurisdiction and applicable law

**The sole place of jurisdiction is the registered office of the customer.** However, BYES is also entitled to take legal action against the supplier at the place where he has his registered office.

The legal relationship shall be exclusively governed by material Swiss law. The provisions of "the Vienna purchasing law" (CISG) and the conflict of law rules of the Swiss Federal Act on International Private Law are expressly excluded.