

# BMW Group



## General Terms and Conditions for Indirect Purchasing

**This is an English Translation of the German GTC and for convenience only.  
Only the German Version of these GTC is legally binding.**

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## 1. Scope of Application and definitions

- 1.1 These General Terms and Conditions ("**GTC**") shall apply to the procurement of Indirect Items by the BMW Group.
- 1.2 "**BMW AG**" refers to Bayerische Motoren Werke Aktiengesellschaft, Munich.
- 1.3 "**BMW Group**" refers to BMW AG, its affiliates in the sense of §§ 15 et seq. of the German Stock Corporation Act and companies in which BMW AG has a direct or indirect holding of at least 50% of the shares or voting rights.
- 1.4 The company within the BMW Group which actually places the order for the Indirect Items shall, hereinafter, be known as "**BMW**". The other party to the contract shall hereinafter be known as the "**Contractor**".
- 1.5 "**Indirect Items**" refers to goods (including software) and services which are not production materials and motor vehicle parts.

## 2. Integral parts of the contract and contract conclusion

- 2.1 The actual contract for the procurement of Indirect Items shall be concluded by a written purchase order ("**BMW Purchase Order**") or a call order from BMW and the corresponding acceptance by the Contractor. A call order is a declaration on the part of BMW made to the Contractor which specifies the quantity, the place, the date and, if applicable, the time of the delivery of the Indirect items to be supplied. The same shall apply as and where appropriate to order amendments and supplements.
- 2.2 In addition to these GTC and depending on the Indirect Items concerned, Special Terms and Conditions ("**STC**") may also be included.
- 2.3 In the event of a conflict between the components of the contract, the following order shall apply:
  - a) BMW Purchase Order,
  - b) Order placement/Negotiation protocol /Single contract (if applicable),
  - c) Specification in the final quotation from the Contractor (excluding the Contractor's contract terms and terms of delivery) and BMW tender documents including all annexes,
  - d) Frame Agreement between BMW and the Contractor (if applicable),
  - e) STC (if applicable),
  - f) These GTC.

If the specification in item c) of the ranking order above in the Contractor's final quotation differs from the BMW tender documents, including all annexes, these differences shall only become integral parts of the contract if the Contractor has highlighted and pointed out the differences in a separate document annexed to its quotation.

- 2.4 The Contractor's or a third party's different or additional contract, license or delivery terms shall not become an integral part of the contract, even if they are not expressly rejected. If the Contractor confirms the order from BMW in deviation from the BMW Purchase Order or the call order, these differences shall only apply if and in as far as BMW expressly agrees to them in writing.
- 2.5 The Contractor shall comply with applicable guidelines or directives of the BMW Group, that are referenced as part of the tender documents or the BMW Purchase Order. The Contractor has to inform itself about these guidelines or directives before placing his quotation and thereafter continuously via the means provided by BMW Group (esp. B2B-Portal).
- 2.6 The GTC for a principal order shall also apply as and where appropriate to any order supplements or amendments, even if this has not been specifically agreed.
- 2.7 If the Contractor creates, amends or provides software as part of its contractual performance, the "BMW terms for the use of open source software" (hereinafter known as "**OSS terms**") shall apply and shall be an integral part of the contract. The OSS terms can be opened using the following path: BMW Partner Portal of the BMW Group <https://b2b.bmwgroup.net> /> Departments /> Purchasing / direct material /> downloads or quotation /> BMW Terms and Conditions for the Implementation of Open Source Software; the OSS terms will also be supplied by BMW at the request of the Contractor.

### 3. Execution of the contract

- 3.1 The Contractor shall bear system responsibility for the Indirect Items ordered, in other words it shall be responsible to BMW for the provision of the goods/works or services (hereinafter as **"Service Provision"**) in all process stages and for all components of the contract regardless of whether it uses subcontractors directly or indirectly as part of its execution of the contract.
- 3.2 The Contractor shall ensure compliance with all the relevant legal regulations in force during the execution of the contract and with regard to the Service Provision regardless of whether it uses subcontractors directly or indirectly as part of its Service Provision.
- The Contractor shall indemnify the BMW Group from any claims asserted by third parties based on the Contractor or a subcontractor engaged directly or indirectly by it failing to comply with or breaching a relevant legal regulation (in particular current minimum wage laws).
- 3.3 The Contractor may only directly or indirectly engage subcontractors to provide the service with the prior written consent of BMW. Sections 3.1 and 3.2 shall not be affected by this.
- 3.4 Any material to be provided by BMW shall be ordered by the Contractor in good time and in the correct quantity to ensure that the service can be correctly provided by the Contractor.
- 3.5 The Contractor must appoint a project manager:
- a) The project manager shall plan, coordinate and monitor all the project's needs on the basis of the relevant guidelines (for example equipment guidelines, accident prevention regulations, etc.) and shall act as contact for the BMW project manager.
  - b) The Contractor's project manager shall notify the BMW project manager of the status of the Service Provision at any time on request. To do this, he must provide an up to date schedule with the start and finish dates, level of completion and the status of each function.
  - c) The project manager may only be replaced for a material reason and after giving prior written notification to BMW. For its part, BMW may demand the replacement of the Contractor's project manager.
- 3.6 The Contractor must ensure that its employees and its other used third parties comply with the BMW visitor guidelines and the BMW site rules. Instructions issued by BMW factory security officers must be obeyed in this respect. Serious breaches of the visitor guidelines or the site rules (for example the ban on photography) shall entitle BMW to ban individuals engaged by the Contractor from the site.
- 3.7 The Contractor shall take all the action required to provide the service without additional payment even if they are not expressly set out in the BMW Purchase Order. This shall particularly apply to the following action:
- a) The Contractor must mark the items and, if relevant, tools and special equipment as specified by BMW.
  - b) The Contractor shall document all completed inspections and their results and shall ensure that it is easily possible to assign said results to specific goods/services. The Contractor shall keep this documentation for a period of at least 10 years after the completion of the Service Provision and shall supply it to BMW on request and offer it to BMW before said documentation is destroyed.
  - c) The documents required for completing the work must be ordered or procured by the Contractor in good time. The Contractor must check these documents, including in relation to local conditions, to ensure that they are complete, correct and for any irregularities as well as for the completion of preparations by third parties. The Contractor must notify BMW of reservations of any kind in writing and without delay giving its reasons and must reach agreement with the BMW project manager on how to proceed with the work.
  - d) The documents and production equipment supplied to the Contractor or produced using information supplied by BMW may only be copied or sold, used as security, pledged or otherwise passed on or used for third parties with the written consent of BMW. The same shall apply to the goods manufactured using these documents and / or production equipment.
  - e) Documents and production equipment supplied to the Contractor shall be provided on a loan basis and shall remain BMW's exclusive property. They must be returned to BMW at BMW's request or at the latest after the completion of the Service Provision.
- 3.8 BMW shall be entitled to refuse both to cooperate with the Service Provision and to accept the service and pay for it if this would breach a relevant legal regulation or a breach against a relevant legal regulation has been committed contrary to section 3.2.
- 3.9 The Contractor is not entitled to render partial performances.

- 3.10 If the Contractor creates, amends or provides software as part of its contractual performance, it must supply the created or amended programs to BMW after completing a program test, in testable and machine-readable form on a suitable data carrier together with the source code and the documentation. During the Service Provision the Contractor undertakes to enable BMW to examine the source code and the documentation.

#### **4. Amendments and supplements**

- 4.1 BMW may demand amendments and supplements to the order at any time and, if the contract constitutes the provision of work or goods, may at least up to the acceptance procedure, using reasonable discretion and taking into consideration the interests of the Contractor. This shall particularly apply to service amendments and additional services which are required for technical reasons, as a result of official requirements or to meet the deadlines or cost targets. The Contractor undertakes to check such instructions without delay to ensure they are technically feasible and for their effects on quality, deadlines and costs and to notify BMW of the results in writing. The Contractor also undertakes to suggest amendments to BMW which it regards as necessary or expedient to ensure the successful fulfilment of the contract and to implement said amendments after receiving written consent from BMW.
- 4.2 If an amendment results in an increase or reduction in costs and/or a deadline extension, the Contractor undertakes to point this out at the same time as providing its amendment suggestion or immediately receiving the amendment request from BMW and to submit an appropriate supplementary quotation. The amendment shall be made on the basis of a written agreement which contains details of the payment of the additional costs or the reimbursement of the lower costs and the timetable for the works.
- 4.3 If an amendment results in a change to the principles of remuneration for the contract services or part of the works to be completed by the Contractor, the remuneration must be adjusted in this respect by means of an agreement, taking into account the increased or reduced costs.
- 4.4 If an amendment means that the Contractor must provide additional services which are not included in the contract, the Contractor shall be entitled to claim additional remuneration only as far as this is agreed prior to the execution of the additional services. The additional remuneration shall be calculated using the same principles used to cost the prices for the contract services and the separate costs for the requested additional services.

#### **5. Acceptance procedure**

- 5.1 If the services to be provided consist of the provision of work, a formal acceptance procedure shall be required. BMW shall conduct the acceptance procedure once the notification of completion has been received from the Contractor and all the documents related to the Service Provision have been supplied. If the testing of the services provided by the Contractor requires a commissioning or start-up process, the acceptance shall not be carried out until after the successful conclusion of the tests.
- 5.2 A formal acceptance log shall be prepared for the acceptance procedure. The formal acceptance procedure shall not be complete, however, until such time as the Contractor has rectified any defects found. The rectification of defects must be completed without delay, at the latest within a deadline set by BMW.
- 5.3 Any fiction that the acceptance procedure has been completed is hereby excluded. The handover of the completed work and/or services ready for use shall not constitute an acceptance procedure. Payments by BMW shall not indicate that BMW has accepted the work and/or services.
- 5.4 The Contractor may not request partial acceptances.

#### **6. Termination**

- 6.1 If the contract constitutes the provision of work, BMW may terminate the contract or separately delimited parts of it at any time.
- 6.2 If the Contractor is responsible for the grounds of the termination, BMW must pay for the completed and evidenced services completed as per the contract as long as BMW can use the results of said services. Compensation claims by BMW shall not be affected by this.
- 6.3 If the Contractor is not responsible for the grounds of the termination, BMW shall compensate the Contractor with the costs it has incurred directly from the order up to the termination of the contract for which evidence can be produced, including the costs resulting from undertakings which the Contractor is unable to break. The Contractor shall not be entitled to any fulfilment or compensation claims as a result of the termination which go beyond this. The intellectual property and/or utility rights to the results of the work completed up to

the termination as described in section 13 ("Commercial intellectual property rights and copyrights") shall be transferred to BMW.

- 6.4 The right to extraordinary termination for a material reason shall not be affected. A material reason shall in particular be assumed in the following cases:
- a) The Contractor or a subcontractor directly or indirectly engaged by it fails to comply with or breaches a relevant legal regulation and BMW can therefore not be reasonably expected to continue with the collaboration taking into account all the circumstances and the interests of both parties
  - b) The Contractor has offered, promised or given benefits to another company representative (in particular a BMW employee) or an official which could be designed to have an undue influence on this person in relation to the negotiation, decision or execution of the contract.
- 6.5 If the Contractor becomes insolvent, it defaults on payments or an application is made to open insolvency proceedings or court winding-up proceedings against the assets of the Contractor or one of its owners, BMW may cancel the contract notwithstanding other rights for the unfulfilled part of it.

## **7. Deadlines and delay**

- 7.1 If deadlines are specified by calendar weeks or months, the first working day shall be agreed as binding. The deadlines specified in the BMW Purchase Order (including individual deadlines) shall be binding and if the Contractor is in delay, said deadlines must be met by means of free overtime, including outside normal working hours where possible. If these deadlines are missed through the fault of the Contractor, the statutory consequences of delay shall apply.
- 7.2 If the contract includes a contract penalty, BMW may also claim compensation which goes beyond this. The right to demand payment of an agreed contract penalty shall not be waived by the fact that the contract penalty is not expressly reserved when the service undergoes the acceptance procedure.
- 7.3 The above provisions shall also apply in the event that the Contractor completes part of or the complete services in time, but they are not ready for the acceptance procedure.
- 7.4 In the event that delays occur for which the Contractor is not responsible, the Contractor shall be entitled to a reasonable extension of the contract deadlines. In the event of delays which are the responsibility of BMW, the Contractor shall be entitled to claim the reimbursement of any costs it incurs as a result (excluding loss of profit).
- 7.5 The Contractor must notify BMW without delay and in writing on any threat to a deadline even if it assumes that BMW is already aware of the circumstances and reasons.
- 7.6 Forces majeures, labour disputes, official action or other unavoidable events shall exempt BMW from its duty to accept the services for the duration of said problem.

## **8. Power of representation**

- 8.1 The Contractor may not represent BMW in legal transactions unless BMW has authorised it in writing to do so. However, it shall be entitled to take action required to complete the ordered works or services as set out in the contract and to ensure that the project can be conducted correctly and which shall not have any negative effects of a qualitative, deadline or financial nature for BMW. This shall also apply to declarations which are materially necessary for the coordination and monitoring of the execution of the contract. In particular, the Contractor shall be commissioned and authorised to represent BMW against third parties involved in the project for dealing with defects, setting deadlines and for placing calls order for and issuing reminders for services.
- 8.2 Third parties engaged by BMW with planning and/or monitoring duties shall not be authorised to represent BMW in legal transactions. These third parties shall in particular not be entitled to extend completion deadlines or legally accept invoice monies, wage claims, subcontractor hourly payments, dimension tolerances or the like.
- 8.3 BMW shall be entitled but not obliged to accept goods in the absence of the Contractor for it; however, BMW cannot accept any liability for the goods being complete or correct even if a written receipt is provided. The Contractor shall be responsible for all safekeeping risks.

## 9. Remuneration, invoicing and payment

- 9.1 All prices shall be net fixed prices exclusive of any statutory payable value-added tax and, unless otherwise agreed, shall include all additional costs (such as transport and installation costs, travelling expenses, supplements, lump sums, etc.). The prices shall apply without change until the completion of all the services to be provided under the contract.
- 9.2 The payment of the agreed remuneration to the Contractor covers all services agreed, including all rights to be assigned or to be granted.
- 9.3 Payment for goods supplied or services provided under the contract shall be made on the basis of the payment terms agreed in the BMW Purchase Order.
- a) In the event that an invoice is submitted in the form of a credit note as described in section 9.8, the start of the payment period shall be the receipt of the goods at the place of use or the acceptance procedure for the service.
  - b) In the event when the invoice does not take the form of a credit note, the start of the payment period shall be receipt of the goods at the place of use or the acceptance procedure for the service as well as the receipt of a correct, auditable invoice which meets the requirements of BMW set out in section 9.7.
  - c) To calculate the due date for payment, a service which is completed before the agreed deadline shall not be deemed to have been completed until the agreed deadline.
- 9.4 If BMW demands the provision of a guarantee, the Contractor must provide this with no time limits and as specified on the respective BMW form, which can be opened in the BMW Partner Portal of the BMW Group at <https://b2b.bmwgroup.net> /> Departments /> Purchasing indirect material /> Purchasing Conditions or shall be supplied on request. The guarantee shall be provided by a German major bank or insurance company at BMW's discretion. Depending on the content of the guarantee, the guarantor must be liable for all claims by BMW resulting from an advance payment by BMW, non-contractual order completion, invoicing or warranty, as well as potential additional costs such as interests and costs of any kind that accrue from the secured principal claim or its assertion. The guarantee must be declared with a waiver of the defence of contestability, setting off and failure to pursue remedies and also with the exclusion of any possible deposit. The defence of contestability and setting off does not have to be waived if the Contractor's right to contest or claim is not disputed by BMW, is due for a decision or has been established by a court of law. The defence of contestability does furthermore not have to be waived if the Contractor is entitled to contest according to § 123 of the German Civil Code ("**BGB**").
- 9.5 Payment may be made by bank transfer of cheque at BMW's discretion. All payments shall be made subject to a later review and possible claim of reimbursements plus interest claims. The Contractor may therefore, for example, not claim any lapse of enrichment (§ 818 BGB).
- 9.6 BMW shall be entitled to set off its own accounts receivable both against accounts receivable by the Contractor and against accounts receivable that the Contractor has transferred to third parties. BMW shall also be entitled to set off its own accounts receivable against accounts receivable by the Contractor which the latter has against one or more of the following companies:
- Bayerische Motoren Werke Aktiengesellschaft;
  - BMW Hams Hall Motoren GmbH;
  - BMW Motoren GmbH;
  - BMW (UK) Manufacturing Ltd.;
  - Rolls-Royce Motor Cars Ltd.;
  - Swindon Pressings Ltd.;
  - BMW Manufacturing Co., LLC.;
  - BMW (South Africa) (Pty) Ltd.
- BMW shall also be entitled to set off accounts receivable by the Contractor to accounts receivable by one of the above companies from the Contractor.
- 9.7 The Contractor must submit an invoice to BMW which complies with the commercial and fiscal requirements of the country involved, and the BMW Purchase Order number must be quoted on it.
- a) The original invoice must be addressed to the department at BMW which is responsible for creditor settlement.

- b) In the event that German value-added tax is applicable, the invoice must, in particular, contain the following information:
- Complete name and address of the Contractor and recipient of the services
  - Contractor's tax or VAT registration number
  - Serial, unique invoice number
  - Date of issue or invoice date
  - Date of the delivery of goods or provision of services
  - Standard commercial designation of the goods / services
  - Quantity details
  - Net total, itemised by tax rates
  - Tax rate, tax amount (itemised by tax rates)
  - Information about tax exemptions
  - Any reduction in the remuneration agreed in advance, unless it is not already taken into account in the remuneration; any lower value-added tax amount must be shown separately.
- c) At the request of BMW, all invoicing documents must be supplied in electronic form (**e-invoicing**). The possible bank transfer variants will be specified by BMW.
- d) BMW may reject an invoice which does not contain the information required in section 9.7 and notify the Contractor; costs incurred by BMW as a result shall be charged to the Contractor. The payment period shall not start until the date on which a new, auditable, correct invoice which satisfies the requirements in section 9.7 is received by BMW.
- 9.8 BMW may demand that the account is dealt with using a credit note procedure. The credit note notification shall be issued on the basis of the received goods or service confirmations by BMW and sent to the Contractor. In this case the Contractor does not have to issue an invoice with the information set out in section 9.7.
- At the request of BMW, the account documents shall also be sent in electronic form in this case ("**e-invoicing**"). The possible bank transfer variants will be specified by BMW.
- 9.9 The Contractor shall not be entitled to assign accounts receivable without the prior written consent of BMW.

## 10. Taxes

- 10.1 Taxes shall comprise all current or future taxes, charges, levies, costs and other fees of any kind as well as additional payments such as interest, fines for delays, default supplements and fines, fines for late payment and penalty payments which must be or have been paid as a result of obligations under public law.
- 10.2 BMW and the Contractor shall each be responsible for fulfilling their fiscal obligations and liabilities. If one of the parties fails to meet its fiscal obligations or liabilities and this results in loss, damage or any other disadvantage for the other party, the first party shall fully indemnify the other party from said loss, damage or other disadvantage.
- 10.3 If withholding tax falls due on the amounts to be paid by BMW to the Contractor, the withholding tax shall be withheld by BMW pursuant to the applicable law and regulations and paid to the relevant German tax authority for the Contractor's account.

Upon request of the Contractor and in compliance with applicable German tax law and regulations, BMW shall provide the Contractor with a valid tax certificate evidencing payment of withholding taxes on behalf of the Contractor.

If an applicable double taxation agreement or another regulation provides for a reduction or exemption from withholding tax deduction, BMW shall only withhold the reduced amount or apply the exemption if the Contractor has provided BMW with a valid tax exemption certificate ("Freistellungsbescheinigung") at least 10 banking days before the payment date. Otherwise BMW shall deduct and withhold the withholding taxes from the amounts due, which must be paid to the relevant tax authority to comply with the current income tax and corporation tax law.

The Contractor shall meet all its certification, information and documentation obligations and other duties required for the application of reduced tax rates or exemptions under the applicable double taxation agreements or other regulations.

- 10.4 The Contractor shall pay all taxes which the Contractor incurs in Germany or elsewhere due to the purchase, consumption or production of goods or for the use of services or from business trips by its own employees, which are required for the provision of the services. These taxes shall be included as costs in the price agreed with BMW unless the Contractor has a claim to reimbursement, deduction or repayment of these taxes in Germany or elsewhere. The Contractor shall not invoice BMW with these taxes separately as far as they are not included in the price. Statutory value-added tax shall be excluded from this.

## **11. Duties, origin and export controls**

- 11.1 The Contractor shall comply with all applicable laws and regulations, particularly those relating to duties and export controls (including US and locally applicable export control law) and all the requirements which relate to the security of the supply chain.
- 11.2 At the request of BMW, the Contractor undertakes to provide all the required documents, for example certificates or declarations (for example AEO security declarations, declarations under C-TPAT or similar programmes), to support BMW during official investigations and to use similar caution in its dealings with its business partners.
- 11.3 BMW shall be entitled to reject the services from the contract which forms part of the business relationships if the Contractor breaches regulations set out in section 11.1 and this would make the execution of the contract by BMW a breach of the law. This same shall apply, notwithstanding an infringement by the Contractor, if the execution of the contract by BMW would constitute a breach of the regulations set out in section 11.1. In these cases the Contractor shall waive its right to any compensation or other claims relating to the justified exercise of its right to withhold performance on the part of BMW.
- 11.4 The Contractor must notify BMW of possible export restrictions relating to the services to be provided which are applicable in the country of production and/or shipment. The Contractor must notify BMW if the goods and production equipment are subject to an export/re-export licence under US law. If the Contractor is based in the European Union, it must notify BMW of existing license requirements for dual use goods and armaments pursuant to European export restrictions and their implementations in national law. The Contractor must also notify BMW of the relevant classification number (for example the ECCN Export Control Classification Number for US products, the "AL number" of goods included on the German exports list or in the EC Dual Use Directive, etc.) and of the possible license exceptions for goods and production equipment. All notifications must be sent direct to BMW AG, Munich, Department for Customs and Export Controls. At the Contractor's request, BMW shall provide the Contractor with a form for this purpose.
- 11.5 The Contractor must support BMW with all the required means to reduce or minimise BMW's payment obligations relating to customs duties. If the Contractor provides services which may be imported into the recipient country on preferential terms, the Contractor must attach a preferential certificate of origin with each consignment (for example movement certificates Form A, EUR 1 or EUR-MED) if the legal requirements have been satisfied for this. If certificates of origin other than preferential ones are required in the recipient country as a result of national import regulations, BMW must also be supplied with these by the Contractor.

The Contractor must contact the relevant BMW customs department to discuss any questions and instructions relating to customs duties.

BMW shall complete the customs clearance formalities unless otherwise agreed. If the Contractor completes the customs clearance formalities without the prior written consent of BMW, it shall act on its own behalf and for its own account. This shall apply even if it claims to be acting on behalf of and for the account of BMW but does not hold any power of representation.

## **12. Warranty**

- 12.1 The warranty shall be based on the applicable statutory regulations unless otherwise agreed. Regardless of this, BMW shall be entitled initially to demand free defect rectification or the delivery of perfect goods. If the Contractor is in default with this, BMW may rectify the defect itself and demand compensation for the costs incurred by this.
- 12.2 Defects in the provided services shall be reported by BMW to the Contractor as soon as they are identified during its normal business routines. The Contractor waives its right to claim that a complaint was made too late.
- 12.3 Any notice of defect by BMW shall suspend the warranty period for the defective services. After the defect has been rectified, the warranty period for the affected services shall recommence afresh.

### 13. Commercial intellectual property rights and rights of use

- 13.1 The Contractor shall ensure that
- a) the provided goods and works or services are free of third party intellectual property rights which exclude or adversely affect the use of the goods and works or services by or for the BMW Group and
  - b) it has the authority to commercially assign and grant the appropriate rights of use to BMW Group.
- 13.2 The Contractor shall indemnify and hold BMW Group harmless from all claims by third parties, including the claims of any copyright authors involved, which may be asserted against BMW Group as a result of the use of the work results provided to BMW by the Contractor. This shall not apply if the Contractor did not know and could not have known about the existing of third party rights. The Contractor shall conduct any necessary legal disputes if possible itself on its own behalf and at its own expense. This shall not affect BMW's right under the statutory regulations to demand compensation and cancel the contract.
- 13.3 Unless otherwise agreed, all rights of use under copyright law, commercial intellectual property rights and legal positions similar to intellectual property rights created during the provision of the works and services under this contract and attached to all other written, machine-readable and other work results created during the execution of the contract shall be transferred to BMW on creation without any further conditions and without any additional remuneration. BMW Group shall be exclusively entitled to these rights with no geographical, temporal or content restrictions and they may be extended, transferred, revised, adjusted, amended, reproduced or published without the Contractor's consent.
- 13.4 If, during the execution of the contract, the Contractor creates or amends software, the rights of use, commercial intellectual property rights and legal positions similar to intellectual property rights as set out in section 13.3 shall not be limited to the object code but shall also extend to the source code and the documentation for the created and amended programs.
- 13.5 The use of the provided goods and works or services shall be free of charge for BMW. BMW shall be granted the right to register patentable development results for patents.

### 14. Data protection

- 14.1 The Contractor shall ensure that everybody involved in the execution of the contract complies with the statutory regulations relating to data protection, especially when processing personal data. These persons must give an undertaking as required by data protection law to safeguard data confidentiality before they first start their work and evidence of this must be supplied to BMW on request.
- 14.2 If the Contractor processes personal data during the provision of the works or service, it undertakes to conclude an agreement for data processing in the order with BMW on the basis of the current DVIA template which can be opened in the BMW Partner Portal of the BMW Group at <https://b2b.bmwgroup.net/> /> Departments /> Purchasing indirect material /> Purchasing Conditions or shall be supplied on request and to ensure that any other necessary agreements for processing personal data are also concluded by its subcontractors. It may be necessary in individual cases that these agreements must be concluded directly between BMW and the subcontractors.

### 15. Rights to BMW Data

- 15.1 **"Data"** for the purpose of these GTC refers to characters (e.g. numbers, letters or other symbols) or patterns of characters, which are stored electronically, magnetically or in an otherwise not immediately perceptible way, or that are transferred or documented in any other form (e.g. paper).
- 15.2 **"BMW Data"** for the purpose of these GTC refers to Data that
- a) a company of BMW Group provides the Contractor with, either by itself or via a commissioned third party,
  - b) the Contractor creates upon order of BMW,
  - c) the Contractor creates without order of BMW in connection with the Service Provision, but stores on data carriers that are perceptibly owned or possessed by BMW Group at the time of their storage.
  - d) result from a processing of Data in the sense of section 15.2 a) to c) in connection with the Service Provision, or
  - e) the Contractor creates or obtains by any action according to section 15.5 b) to d).

For the purpose of these GTC, providing Data is equivalent to providing access to Data, creating Data is equivalent to collecting Data.

- 15.3 In relation to the Contractor and subject to data privacy law and other mandatory legal provisions, companies of BMW Group are entitled to use BMW Data at their own discretion and without restrictions in terms of time, place or content, especially to reproduce it, process it, provide it to third parties or exploit it.
- 15.4 The Contractor is entitled to
- a) use BMW Data pursuant to section 15.2 a) to d), as far as it is necessary for the Service Provision,
  - b) provide BMW Data pursuant to section 15.2 a) to d) to subcontractors, as far as it is necessary for the Service Provision and provided that the subcontractors were contractually bound in a way equivalent to these GTC prior to the transfer,
  - c) provide BMW Data to third parties, as far as it is necessary pursuant to judicial, administrative or mandatory rules or orders, always provided that the extend of the disclosure shall be kept as limited as possible and the Contractor shall notify BMW in writing of a required disclosure prior to such disclosure, unless such notice could not reasonably be given,
  - d) provide BMW Data to public authorities or, in case of a lawsuit with BMW to courts, as far as it is necessary for the enforcement of its rights or for the defence against claims,
  - e) provide BMW Data to its consultants that are professionally bound to discretion (e.g. lawyers, auditors and/or accountants), as far as it is necessary for the provision of the consultancy services of such consultants and as far as the Contractor ensures that such consultant does not provide BMW Data to third parties or exploits it in any other way.
- The Contractor's rights regarding Data, which the Contractor itself provides in the course of the Service Provision and which is not considered BMW Data, remain unaffected.
- 15.5 Unless authorised under section 15.4, by statutory provisions or by explicit consent of BMW, the Contractor is not allowed to
- a) provide BMW Data to third parties without order of BMW,
  - b) obtain or to reproduce BMW Data without order of BMW, especially by means of functions listed in section 16.4,
  - c) create Data without order of BMW in connection with the Service Provision, if it concerns items (e.g. machinery), that are perceptibly owned or possessed by BMW Group at the time of their creation,
  - d) create or obtain Data in connection with the Service Provision without order of BMW, which concerns BMW Vehicles, their status or environment. "**BMW Vehicles**" are vehicles that have been manufactured by or for BMW Group or that are distributed using the trademarks or logos of BMW Group.
- 15.6 If the Contractor violates an obligation under section 15.5, BMW notwithstanding other contractual and statutory rights (especially injunction, rectification and compensation) has a right to be informed of existing Data and their use.
- 15.7 Upon request of BMW the Contractor shall hand over to BMW all BMW Data completely and free of charge, or – if this is neither possible nor reasonable for the Contractor – to give BMW access to the data carriers, on which such BMW Data is stored.
- 15.8 Immediately after the end of Service Provision the Contractor shall destroy any and all BMW Data in a way that renders a reconstruction of the BMW Data impossible. Upon request of BMW, the Contractor shall immediately confirm the successful destruction in writing. Prior to any destruction, the Contractor shall inform BMW about the envisioned destruction. If BMW doesn't object to the destruction within one month after the Contractor's notification, the Contractor shall carry out the destruction. The obligations according to sentence 1 do not apply, insofar and to the extent that BMW Data are subject to a legal obligation to preserve records.
- 15.9 The Contractor is not entitled to a right of retention against BMW's claims for destruction or handing over of BMW Data.
- 15.10 This section 15 shall not restrict or suspend in any way in particular
- a) ownership or possession rights of BMW Group,
  - b) intellectual property rights of BMW Group, especially rights under copyright law, as well as assigned or granted rights of use and permissions,
  - c) legal provisions and agreements establishing non-disclosure obligations or exploitation restraints for the Contractor,

d) legal provisions and rights with regard to personal Data (data privacy laws).

15.11 The terms set out in this provision 15 shall also apply after the expiry or termination of a contract.

## 16. Information Security

16.1 BMW Data shall be treated as industrial and commercial secrets of BMW Group. The Contractor is obligated to ensure that BMW Data and own Data necessary for the Service Provision is protected by appropriate measures according to customary industry standards against unauthorised access, alteration, destruction and other misuse ("**Information Security**"). The Contractor shall in particular strictly treat and keep BMW Data separated from Data of other customers and in addition establish appropriate protective measures to prevent access of BMW Data by other customers. Insofar as the storage of BMW Data is part of the Service Provision, the Contractor takes any and all necessary precautions currently state of the art in order to be able to restore the BMW Data legally admissible and without loss at any time.

16.2 Depending on the protection requirements of the respective BMW Data or the importance of the Contractor's service for BMW Group's business operations, BMW may request a particular amount of protective measures as well as proof of an appropriate level of Information Security within the Contractor's business of a kind specified by BMW, especially by submission of appropriate certificates (e.g. ISO/IEC 27001 "Information Technology – IT security procedures – Information Security Management Systems-Requirements") or by attestation according to the VDA-model "TISAX" (Trusted Information Security Assessment Exchange).

16.3 The Contractor shall ensure that no potentially harmful software (e.g. viruses, worms or Trojans) is deployed during the Service Provision, e.g. via drivers or firmware included in the delivery. The Contractor shall inspect this by appropriate means and, at BMW's request, confirm in writing that it has found no indications of harmful software during such inspections.

16.4 The Contractor ensures that the software deployed within the scope of the Service Provision does not contain any functions that jeopardize the integrity, confidentiality or accessibility of the contractually agreed services, other hard- and/or software or Data, e.g. by way of functions

- a) for unwanted extraction or removal of Data,
- b) for unwanted alteration/manipulation of Data or the processing logic, or
- c) for unwanted induction of Data or unwanted functional expansions.

**"Unwanted"** for the purpose of these GTC shall refer to any function that was neither demanded by BMW, nor offered by the Contractor with a specific description of the function and its consequences and that was also not accepted in particular by BMW.

16.5 If the Contractor gains knowledge of an incident that involves a violation of Information Security (e.g. security gaps, Data losses, disruptive incidents, security threats, attack by harmful software, Data misuse), especially an unauthorized access to BMW Data (e.g. Data leak or cyber attack), or if there are indications for the Contractor that justify the suspicion of such an incident given a reasonable evaluation, the Contractor shall without undue delay and free of charge for BMW

- a) inform BMW thereof,
- b) take all necessary measures to clarify the facts of the matter and to limit damages and to support BMW therewith,
- c) if the violation of Information Security causes a disruption of the Service Provision, a reduction of business efficiency, or a loss of Data, support BMW with the recovery of the Data and
- d) upon BMW's request, provide a security report for a prescribed observation period. Essential contents of such a report are especially the results of security inspections, identified Information Security risks, as well as identified Information Security incidents and their treatment.

16.6 If the Contractor is obliged to provide proof of a particular level of Information Security according to clause 16.2, the Contractor shall

- a) advise BMW of a central contact person for Information Security,
- b) permit BMW upon request to convince itself of the compliance with Information Security and the agreed guidelines (cf. clause 2.5) on Data protection and security ("**Audits**"). The Contractor shall tolerate such Audits by BMW and provide contributions such as information, as far as it is necessary for the Audit. BMW may also convince itself of the compliance with the agreed technical and organisational measures within the business premises of the Contractor including the IT systems after timely announcement dur-

ing customary business hours and, as far as possible and reasonable, without disturbance of the business procedures. BMW is authorised to let an external qualified partner that is contractually bound to confidentiality towards third parties conduct such Audits. BMW's statutory rights of control and information are neither limited nor excluded by this provision.

- 16.7 The Contractor shall ensure that all and any of its subcontractors are contractually bound in an appropriate manner to comply with the terms of this section 16 ("Information Security").

## 17. Confidentiality, publicity

- 17.1 The Contractor and BMW undertake to treat all information which is directly or indirectly disclosed by the other party or an affiliated company of this party as part of their business relationship as confidential and use such information only in connection with the Service Provision. Contractor and BMW in particular undertake neither to pass this information on to any third party nor to make available this information in any other way to any third party. They furthermore undertake to apply all reasonable measures in order to avoid any access of third parties to this information. The Contractor and BMW vouch each for the compliance of their Affiliated Companies with these obligations if information is exchanged with them in connection with the project. The employees of the parties shall not be deemed to be third parties for the purposes of this Section 17, insofar as equivalent confidentiality obligations are imposed on them (for example in an employment contract).

- 17.2 If and insofar as it is necessary in the context of the Service Provision („need-to-know principle“) Contractor or BMW may transfer information to

- a) its affiliates in the sense of § 15 of the German Stock Corporation Act and companies in which it has a direct or indirect holding of at least 50% of the shares or voting rights ("**Affiliated Companies**").
- b) third parties contractually bound to the transferring party in connection with the Service Provision, unless such transfer was individually excluded for specific information,

provided that the receiving party is not a Competitor of the other party and insofar as this is legally permissible. The parties are responsible towards each other that the receiving party has been bound by equivalent confidentiality obligations prior to the transfer of information and complies with those obligations. A company shall be defined as "**Competitor**" of a party, if it (i) offers goods or services, which are from a customer's perspective substitutable (comparable to characteristics, price, usage) with those goods or services offered by that party; or if it is (ii) readily able to become a supplier of such goods or services within a short period of time.

- 17.3 The confidentiality obligations under this Section 17 shall not apply to the extent that information
- a) is publicly available or becomes publicly available without a violation of these obligations, or
  - b) was lawfully received from any third party, or
  - c) is already known by the receiving party, or
  - d) must be disclosed pursuant to judicial, administrative or mandatory rules or orders, always provided that the extend of the disclosure shall be kept as limited as possible and the receiving party shall notify the other party of a required disclosure prior to such disclosure, unless such notice could not reasonably be given, or
  - e) was independently developed by the receiving party without usage or reference to the information of the other party.

The party that relies on one or more of the aforementioned exemptions has to prove the alleged underlying facts.

- 17.4 Unless agreed otherwise, the confidentiality obligations of the parties shall remain binding for 3 more years beyond the end of the Service Provision.

- 17.5 Statutory confidentiality provisions remain unaffected.

- 17.6 The Contractor may only publicise its business relationship with the BMW Group with prior written consent of BMW. The current version of the marketing guideline "Guideline for partner or supplier communication" shall be applicable and must be followed by the Contractor. This is published on the BMW Partner Portal of the BMW Group at <https://b2b.bmwgroup.net /> Departments /> Purchasing indirect material /> Purchasing Conditions>.

## 18. Insurance

- 18.1 The Contractor undertakes to adequately insure the liability risks relating to the Service Provision by means of suitable insurance policies at its own expense and with an adequate insured sum and to supply evidence of said insurance policies to BMW on request. A minimum general insured sum of EUR 5.0 million shall apply to this insurance duty. The Contractor's liability shall not be limited by taking out insurance policies.
- 18.2 If it becomes clear that the Service Provision will directly entail liability risks in the USA or Canada, which may result in compensation claims there, the minimum insured sum shall be EUR 10.0 million.
- 18.3 The review or any failure to request evidence of the insurance policies by BMW shall not be regarded as a waiver of any of the duties set out in this section 18 ("Insurance").

## 19. Environment

- 19.1 During the Service Provision, Contractor shall use the necessary resources (in particular materials, energy and water) efficiently and shall reduce the environmental impact (in particular with respect to waste, wastewater, air pollution and noise) to a minimum. This also applies to the effort and expense of transportation and logistics.
- 19.2 Contractor shall – provided that the Service Provision may or will have any environmental impact – establish and maintain a certified environmental management system in accordance with the requirements of "ISO 14001" or an acknowledged and certified environmental management system derived from "ISO 14001" no later than two years following BMW Purchase Order placement and provide evidence to BMW by submission of a corresponding certificate.
- 19.3 Provided that the supply of goods is stipulated in the contract, the additional sections 19.3 a) to c) shall apply.
- a) The Contractor shall immediately upon request provide BMW with any and all information required for the quantitative assessment of Contractor's resource efficiency relating to the total annual scope of orders placed by and supplied to BMW (e.g. total energy consumption; CO<sub>2</sub> emissions; total water consumption; process waste water; metric tons of waste; VOC emissions). In addition, Contractor shall provide on BMW's request data for a life cycle assessment relating to Goods or parts thereof (including data with regard to the material input) according to the data collection format for life cycle assessment of the German Association of the Automotive Industry (VDA).
- b) Polymer materials contained in Goods shall comply with the BMW requirements for Goods derived from the respective statutory targets or standards for hydrocarbon emissions of vehicles throughout the entire life cycle of the Goods. The production processes for Goods shall be adapted to comply with such BMW requirements.
- c) Contractor shall comply with the requirements stated in BMW Group Standard GS 93008 (1 to 4) "Substances of concern" throughout the entire life cycle of the Goods. Contractor is responsible for registration and, where necessary, authorisation or notification of chemical substances contained in Goods in accordance with the statutory requirements that apply to the market concerned (e.g. according to Regulation (EC) No. 1907/2006 (REACH), EU). In the event of a chemical substance being imported into the area of application of a relevant law, Contractor assumes responsibility for all obligations such as named above and all associated expenditure. Furthermore, the Contractor will immediately upon request provide BMW with any and all information about goods and substances contained therein, even if such goods have already been delivered, as well as declarations and confirmations, required by BMW in order to fully and timely fulfil its statutory information duties (e.g. under Art. 33 of REACH).
- In the event that Goods are chemical substances, preparations or materials, Contractor shall provide BMW with "Safety Data Sheets" for these Goods.
- 19.4 The Contractor shall ensure that all and any of its subcontractors are contractually bound to comply with the terms of this section 19 ("Environment").

## 20. Social Responsibility

- 20.1 For BMW it is of paramount importance that corporate activities take account of the social responsibility to employees and society as a whole. This applies both to BMW itself and to its suppliers. BMW and Contractor acknowledge their compliance with the principles and rights set by the International Labour Organisation (ILO) in its "Declaration on fundamental principles and rights at work" (Geneva 06/98), the Directives of the UN Initiative Global Compact (Davos, 01/99) and the UN Guiding Principles on Business and Human Rights (2011). The following principles are of particular importance:

- Preservation of human rights,
- Elimination of forced, compulsory, and child labour,
- Positive and negative freedom of association,
- Elimination of discrimination on the basis of gender, origin, religion or belief, membership of a trade union or the like, handicap, age, sexual identity, nationality, marital status, political affiliation, veteran status, or other characteristics protected by local law
- Compliance with occupational health and safety standards,
- Protection from individual arbitrary personnel measures,
- Maintenance of employability by basic and advanced training,
- Maintenance of adequate social working conditions,
- Provision of conditions that enable employees to enjoy a reasonable standard of living,
- Remuneration, which permits employees to secure their livelihoods including their social and cultural participation (living wage),
- Implementation of equal opportunities and family-friendly policies,
- The protection of indigenous rights,
- Ban on bribery and blackmail,
- Compliance with current laws and regulations.

In view thereof, Contractor shall take adequate measures in order to prevent corruption offences within its company.

- 20.2 It shall be Contractor's responsibility to cause all and any of its subcontractors to act according to the regulations of this section 20 (Social Responsibility).

## **21. Miscellaneous**

- 21.1 Amendments, supplements and notices of termination must be made in writing. In the event of amendments and supplements, it shall be sufficient that they are supplied in writing by letter, fax, email or electronic data interchange (EDI) to comply with this requirement for written form. Notices of termination, on the other hand, must be made in writing by letter or fax. The requirement for written form may only be waived by means of a written agreement.
- 21.2 If a provision or part of a provision in these GTC or the applicable STC is or becomes invalid or unenforceable, this shall not affect the validity of the remainder of the contract. BMW and the Contractor undertake to do their utmost in good faith to replace the invalid or unenforceable provision by a valid, enforceable provision which has the same commercial result as long as this does not result in a major change to the content of these GTC or the applicable STC.
- 21.3 These GTC are being executed in German. In the event of any discrepancy or inconsistency between this English translation and the German version of these GTC, the German language version shall prevail.

## **22. Applicable law, place of jurisdiction and jurisdiction**

- 22.1 The legal relations between the parties shall be subject to German law as used between German businessmen. The UN Convention on Contracts for the International Sale of Goods dated 11.04.1980 shall not apply.
- 22.2 The place of fulfilment and exclusive place of jurisdiction for all disputes arising from or in conjunction with the execution of the contract shall be Munich unless the law specifies a different place of jurisdiction or place of fulfilment.