

General Terms and Conditions for Indirect Purchasing BMW Financial Services Central and Southeastern Europe

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Definitions

In these General Terms and Conditions for Indirect Purchasing (“**GTC**”) the terms defined below have the following meaning:

Affiliated Company	With regard to a party, means a company which is directly or indirectly controlled by such party, controls such party, is under common management with such party, or is under joint control with such party, whereby joint control will be assumed if at least 50 percent of the shares or voting rights are held.
BMW	The BMW Group company that actually procures goods or services on the basis of these GTC.
BMW AG	Bayerische Motoren Werke Aktiengesellschaft, München.
BMW Group	BMW AG and its Affiliated Companies.
BMW Vehicles	Vehicles that have been manufactured by or for BMW Group or that are distributed using the trademarks or logos of BMW Group.
BMW Financial Services Central and Southeastern Europe	The companies: BMW Austria Bank GmbH; BMW Austria Leasing GmbH; BMW Austria Bank GMBH, Athens Branch; BMW Financial Services Polska sp. z o.o.
Competitor	A company is a competitor of a party if (i) such company offers goods or services, which from the view of a typical customer, are interchangeable with the goods or services of such party (i.e., in particular comparable in terms of characteristics, price and purpose); or (ii) based upon concrete indications, it appears likely that within a short time such goods and services will be offered by such company.
Contractor	The contractual partner of BMW for the commissioning on the basis of these GTC.
Data	Characters (e.g., numbers, letters or other symbols) or patterns of characters which are stored or transmitted electronically, magnetically or in an otherwise not immediately perceptible way or are documented in any other form (e.g., on paper).
In writing or written	Also includes in text form, e.g., via fax, e-mail or electronic data interchange (EDI), unless written form (<i>Schriftform</i>) is explicitly required.
ISO	International Organization for Standardization.
VDA	Verband der Automobilindustrie (German Association of the Automotive Industry), Berlin, Germany.

1. Scope and supplier data

- 1.1 These GTC shall apply to the procurement of goods and works or services (including software).
- 1.2 The Contractor shall provide current supplier master data on the BMW Partner Portal of BMW Group at <https://b2b.bmw.com> ("**B2B-Portal**") > login > applications > supplier data maintenance ("**Supplier Data Base**") and designate a responsible master administrator. Where the Contractor is obliged under these GTC to submit certificates, declarations or other verifications, the Contractor shall submit each of these without undue delay and with the current validity date to the Supplier Data Base.

For the avoidance of doubt, the review of, or failure to request such certificate, declaration or other verification, by BMW shall not constitute a waiver by BMW of any of the Contractor's obligations under these GTC, nor shall such be construed as BMW's consent to the Contractor's behavior.

- 1.3 The Contractor shall notify BMW completely and without undue delay of its contractual data or its changes as e.g. name changes, changes in legal form as well as changes which are material to the business relationship between BMW and the Contractor and which pertain to the Contractor's participation, shareholder- or ownership structure; the Contractor shall inform BMW of the aforementioned changes under email address lieferantenstammdaten@bmw.de as well as the responsible BMW purchase specialist department(s).

A material change for the business relationship exists upon transfer of all or essentially all assets of the Contractor, a merger or split of the Contractor with or to another legal entity, the conclusion of a control or profit transfer agreement by the Contractor as the controlled company, and the acquisition of at least 50 percent of the voting rights to the Contractor's company by one or more purchasers acting jointly in one or more transactions. For listed Contractors the foregoing already applies to an acquisition of at least 30 percent of the voting rights.

2. Integral parts of the contract and contract conclusion

- 2.1 The specific contract for the contracted scope shall be concluded by a written purchase order by BMW and the corresponding acceptance by the Contractor. For the avoidance of doubt, any action taken by the Contractor in order to fulfill a purchase order also constitutes the acceptance of such purchase order.

The Contractor undertakes to render contractual performance at the conditions specified in the framework agreement, if BMW issues a call-off purchase order. A call-off purchase order refers to the framework agreement.

All purchase orders are hereinafter referred as "**BMW Purchase Order**".

- 2.2 In addition to these GTC and depending on the actual contractual scope, Special Terms and Conditions ("**STC**") may additionally apply.
- 2.3 In the event of a conflict between the integral parts of the contract, the following order shall apply:
- Framework agreement between BMW and the Contractor
 - BMW Purchase Order,
 - Order placement/Negotiation protocol/individual contract (if any),
 - 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 thereto and referenced documents,
 - STC (if any) and
 - these GTC.

If the specification of the ranking order above in the Contractor's final quotation differs from the BMW tender documents, including all annexes and references, these differences shall only be an integral part of the contract if these deviations are expressly confirmed in the negotiation protocol or in the BMW Purchase Order.

- 2.4 The calculation on which the final offer of the Contractor is based, is only used for the validation of its fixed price offer and does not become an integral part of the contract.
- 2.5 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 these are not expressly rejected. If the Contractor confirms the order from BMW in deviation from the BMW Purchase Order, these differences shall only apply if and in as far as BMW expressly agrees to them in writing.
- 2.6 The Contractor shall comply with applicable guidelines and directives of BMW Group that are referenced in the tender documents or the BMW Purchase Order. The Contractor has to inform itself about these guidelines and directives before placing his quotation and thereafter continuously, via the channels provided by BMW Group.
- 2.7 The general terms and conditions for a principal order shall also apply as and where appropriate to any order additions or changes, even if this has not been specifically agreed.

- 2.8 If the Contractor creates, amends or provides software as part of its contractual performance, the "BMW terms for the Implementation of Open Source Software" ("**OSS Terms**") shall apply and shall be an integral part of the contract.

3. Contractual performance

- 3.1 The Contractor shall bear system responsibility for the contracted scope, i.e. the Contractor is responsible to BMW for the provision of the goods, works or services according to the contract in all process stages and for all parts of the contract regardless of whether it uses subcontractors directly or indirectly for the execution of the contract.

- 3.2 The Contractor shall ensure compliance with all the relevant legal regulations with regard to the performance to be rendered, regardless of whether it uses subcontractors directly or indirectly for the execution of the contract.

The Contractor shall indemnify the BMW Group from any claims asserted by third parties based on the Contractor or a subcontractor engaged by it directly or indirectly failing to comply with or breaching any relevant legal regulation (in particular: applicable minimum wage laws).

- 3.3 BMW shall be entitled to refuse both to cooperate with the contractual performance and to accept the contractual performance and pay for it if this would breach a relevant legal regulation or a breach has already been committed.

- 3.4 If the Contractor or one of its Affiliated Companies has unlawfully engaged in any agreement or other conduct with respect to the provision of the contracted goods, works or services which constitutes an unlawful restraint of competition according to applicable antitrust rules, then the Contractor shall pay to BMW 8 percent of the net invoice amount of the provided goods, works or services affected by such violation of antitrust law as damages. This obligation shall survive termination or fulfillment of the contract. Any other or further contractual or statutory claims of BMW shall remain unaffected; in particular, BMW may claim higher damage.

- 3.5 The Contractor may only directly or indirectly engage subcontractors for the contractual performance with the prior written consent of BMW.

- 3.6 Any material to be provided by BMW shall be ordered by the Contractor in good time and in the correct quantity to ensure the contractual performance by the Contractor to be according to the contract.

- 3.7 The Contractor must appoint a project manager:

- a) The project manager shall plan, coordinate and monitor all the project's needs in compliance with the relevant guidelines (e.g., operating equipment guidelines, accident prevention policies, etc.) and shall act as the responsible contact for the BMW.
- b) The Contractor's project manager shall notify BMW of the status of the contractual performance at any time upon request. To do this, he must provide an up to date time 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 material reason, and only after giving prior written notification to BMW. For its part, BMW may demand the replacement of the Contractor's project manager for compelling reason.

- 3.8 The Contractor must ensure that its employees and other third parties it engaged 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 (e.g., the ban on photography) as well as a violation of the alcohol and drugs ban shall entitle BMW to ban individuals engaged by the Contractor from the BMW site. Other rights of BMW remain unaffected.

- 3.9 Employees of the Contractor and other third parties engaged by the Contractor are prohibited from entering a BMW property under the influence of alcohol as well as bringing, distributing or consuming alcohol on a BMW property. Bringing and distributing alcohol by order of BMW are excluded from this.

This also applies to all other types of drugs. The Contractor must ensure compliance with this alcohol and drugs ban.

- 3.10 If and to the extent the Contractor's employees have access authorisation for a BMW property and the access is no longer required for the contractual performance (in particular due to the termination of the employee's work assignment), the Contractor must report this to the ID Card Office of the relevant BMW location without undue delay and return the BMW partner ID card of the employee concerned to the BMW ID Card Office or to BMW Plant Security. The same applies to employees of a subcontractor engaged by the Contractor.

- 3.11 If and to the extent the Contractor uses areas on a BMW property assigned to the Contractor for the contractual performance, BMW shall be entitled to audit these areas with regard to occupational safety, environmental protection and fire protection.

- 3.12 The Contractor shall take all the action required to render the contractual performance without any additional compensation, even if such action is not expressly set out in the contract documents. This shall particularly

apply to the following actions:

- a) The Contractor must mark the delivery items and, if relevant, tools and special equipment provided or owned by BMW, 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 the specific goods, works or services ordered. The Contractor shall pre-serve this documentation for a period of at least 10 years after the completion of the contractual performance and shall supply it to BMW upon 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 undue delay giving its reasons for its reservations and must reach agreement on how to proceed with the work.
- d) The documents and items 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 items
- e) All documents and items 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 immediately after they are no longer required for the agreed purpose, at the latest after the end of the contract.

3.13 Unless otherwise expressly agreed the Contractor is not entitled to render partial performance.

3.14 If the Contractor creates or amends 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 contractual performance, the Contractor undertakes to enable BMW to examine the source code and the documentation.

4. Changes and additions

4.1 BMW may demand changes and additions to the order as well as changes to the contractual performance at any time (changes in contractual performance as well). The Contractor undertakes to check such instructions without undue 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 necessary and/or expedient changes to BMW and to implement said changes after receiving written consent of BMW.

4.2 The Contractor undertakes to notify BMW immediately upon receipt of the change request from BMW if a change results in a deadline extension and to refer to a change in the performance due date submit an appropriate supplementary quotation if a change results in an increase or reduction in costs. The change shall be made on the basis of a written agreement stipulating the payment of the additional costs or the reimbursement of the reduced costs and the timetable for the works.

4.3 The Contractor shall be entitled to claim additional remuneration or additional expenses due to the necessary change in the contractual performance, if with BMW agrees in writing.

5. Acceptance

5.1 For the provision of work or goods (*Werkleistung* or *Werklieferung*), a formal acceptance is required. BMW shall conduct the acceptance once the notification of completion from the Contractor has been received and all the documents related to the contractual performance have been supplied. If the review of the contractual performance rendered by the Contractor requires a commissioning or start-up process for testing purposes, the acceptance shall not be carried out until after the successful completion of the tests.

5.2 The acceptance shall be recorded in a formal acceptance protocol. However, there shall be no formal acceptance, until such time as the Contractor has rectified any defects found. The rectification of defects must be completed without undue delay, at the latest within a deadline set by BMW. Acceptance may not be refused by reason of trivial defects.

5.3 Any fiction of acceptance is hereby excluded. The ready for use handover of the contractual performance rendered shall not constitute an acceptance. Payments by BMW shall not indicate that BMW has accepted the contractual performance.

5.4 Unless otherwise expressly agreed, the Contractor has no right to partial acceptances.

6. Delivery periods and delay

6.1 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 additional work free of charge, including outside normal working hours, to the extent permitted. Otherwise, the statutory rules of delay shall apply.

- 6.2 If the contract includes a contract penalty, BMW may also claim compensation which goes beyond this. The right to demand payment can be also claimed when the contractual performance is being accepted.
- 6.3 The above provisions shall also apply in the event that the Contractor renders the contractual performance, either partially or as a whole, in time, but it is not ready for acceptance.
- 6.4 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).
- 6.5 The Contractor must notify BMW without undue delay and in writing with giving a new the timeline and reason on any threat to, change and delay of a deadline even if BMW could already be aware thereof.
- 6.6 Forces majeures, labour disputes, official action or other unavoidable events shall exempt BMW and the Contractor from the duty to accept the contractual performance or to render contractual performance, respectively, to the extent and for the duration it is affected by the disruption.

7. Power of representation

- 7.1 Neither the Contractor nor any third party entrusted with plan and control tasks is allowed to act on behalf of BMW without a special authorization in writing. However, it shall be entitled to take action required to complete the contractual performance as set out in the contract and to ensure that the project can be conducted correctly, which action 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. 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 call-off orders and issuing warning notices for contractual performance.
- 7.2 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 amounts, wage claims, subcontractor hourly payments, dimension tolerances or the like.
- 7.3 BMW shall be entitled but not obliged to accept goods in the absence of the Contractor on its behalf; however, BMW cannot accept any liability for the goods being complete or correct even if a written acknowledgment of receipt is provided. The Contractor shall be responsible for all safekeeping risks.

8. Remuneration, invoicing and payment

- 8.1 All prices shall be net fixed prices 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 fulfillment of all the obligations under the contract.
- 8.2 The payment of the agreed remuneration to the Contractor covers all obligations as agreed in the contract, including all rights to be assigned or to be granted.
- 8.3 Payment shall be made within the payment period agreed in the BMW Purchase Order:
 - a) In the event that an invoice is submitted in the form of a credit note, the start of the payment period shall be the receipt of the goods at the place of use or the acceptance including a confirmation of performance
 - b) In the event that 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 including a confirmation of performance as well as the receipt of a correct, auditable invoice which meets the requirements of BMW.
 - c) To calculate the due date for payment, a contractual performance which is completed before the agreed deadline shall not be deemed to have been completed until the agreed deadline.
- 8.4 If BMW demands the provision of a guarantee, the Contractor must provide an abstract bank guarantee of an local credit institution with the best credit-worthiness at BMW's discretion. The amount secured or guaranteed by the bank guarantee must cover 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. In this bank guarantee, the guaranteeing bank unconditionally undertakes to disburse BMW in full or in part the amount secured at any time at the first request and without reference to the legal grounds. The bank guarantee must be indefinite or at least have a term of at least 24 months beyond the date of termination of the contractual relationship. With regard to the bank guarantee and related disputes, the application of Austrian law and the local jurisdiction of the competent court of the city of Salzburg shall be agreed in each case.
- 8.5 All payments shall be made subject to a later review and possible claim of reimbursements or penalties plus

interest claims. The Contractor is obligated to provide current accurate bank information, and upon request, to confirm such. Transfer fees will be split (transfer charge code "Share"), unless otherwise agreed.

- 8.6 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:
- BMW AG;
 - BMW Fahrzeugtechnik GmbH;
 - BMW Hams Hall Motoren GmbH;
 - BMW M GbmH;
 - BMW Motoren GmbH;
 - BMW (UK) Manufacturing Ltd.;
 - Rolls-Royce Motor Cars Ltd.;
 - Swindon Pressings Ltd.;
 - BMW Manufacturing Co., LLC.;
 - BMW Consolidation Services Co., LLC.;
 - BMW (South Africa) (Pty) Ltd., and
 - BMW SLP S.A. de C.V. (Mexico).

BMW shall also be entitled to set off accounts receivable by the Contractor against accounts receivable by one of the above companies from the Contractor with its ceded accounts.

- 8.7 The Contractor must submit an invoice to BMW which complies with the commercial and fiscal requirements of the country involved, and includes a mandatory reference to the BMW Purchase Order. The original invoice must be addressed to the department at BMW which is responsible for creditor settlement.

- 8.8 In the event that Austrian value-added tax law is applicable, the invoice must, in particular, contain the following information:

1. Complete name and address of the Contractor and recipient of the services
2. The Contractor's tax or VAT registration number
3. Serial and unique invoice number
4. Date of issue or invoice date
5. Date of the delivery of goods or provision of works or services
6. Standard commercial designation of the goods, works or services
7. Net total, itemised by tax rates
8. Tax rate, tax amount (itemised by tax rates)
9. Information about tax exemptions
10. Any reduction in the remuneration agreed in advance, unless it has already been taken into account in the remuneration; any lower value-added tax amount must be shown separately.

- 8.9 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.

- 8.10 BMW may reject an invoice which does not contain the information required. The payment period shall not start until the date on which a new, auditable, correct invoice which satisfies the requirements of this clause is received by BMW.

- 8.11 BMW may demand that the account is dealt with using a credit note procedure. The credit note shall be issued on the basis of the receipt of the goods or the confirmation of performance by BMW and sent to the Contractor.

At the request of BMW, the account documents shall also be sent in electronic form in this case (e-invoicing).

- 8.12 The Contractor shall not be entitled to assign accounts receivable or have them collected by third parties (e.g. leasing companies, banks) or to transfer any of its rights and obligations individually or in total to a third party, without the prior written consent of BMW.

9. Taxes

- 9.1 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.

- 9.2 BMW and the Contractor shall each be responsible for fulfilling their fiscal obligations and liabilities. If a party 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.

- 9.3 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 Austrian tax authority for the Contractor's account.

Upon request of the Contractor and in compliance with applicable Austrian 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.

- 9.4 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 contractual performance. 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.

10. Customs, origin and export controls

- 10.1 The Contractor shall comply with all applicable laws and regulations, particularly those relating to customs and export controls (including US and locally applicable export control law) and all the requirements which relate to the security of the supply chain.
- 10.2 At the request of BMW, the Contractor undertakes to provide all the required documents, for example certificates or declarations (e.g., AEO security declarations, declarations under C-TPAT or similar programmes) and to support BMW during official investigations.
- 10.3 BMW shall be entitled to reject the contractual performance if the Contractor breaches regulations and this would make the execution of the contract by BMW a breach of the law.
- 10.4 The Contractor shall inform BMW
- a) of any export control applicable to the contractual performance (e.g., classifications in accordance with the Dual-Use Regulation or comparable regulations);
 - b) if and insofar the goods and technologies are subject to an export/re-export licence under US law, and
 - c) of the relevant classification number applicable (e.g., the ECCN Export Control Classification Number for US products, the "AL number" of goods and technologies listed on the German Exports Control list or in the EC Dual Use Directive, etc.), as well as
 - d) of any possible exemptions for the goods and technologies.

The Contractor shall send the aforementioned notes and information to the BMW department of customs and export control. At the Contractor's request, BMW will provide the Contractor with the required declarations / notifications.

- 10.5 The Contractor shall provide BMW with all such support as may be necessary to enable BMW to reduce or minimise its liability to customs duties. Upon BMW's request, the Contractor commits to implement, particularly in the EU, customs procedures with commercial impact pursuant to Art. 210 of Regulation (EU) No. 952/2013 (Customs Code of the European Union) or submit declarations (affidavits) pursuant to customs rules of third countries in close coordination with BMW. Should the Contractor elect to participate in a US foreign trade zone, MX IMMEX or comparable program (hereinafter "Programs"), then the Contractor undertakes towards BMW that it will comply with all applicable legal norms and regulations in connection with such Programs, as well as timely and in correct form, and with complete and correct content, provide BMW with all information required for its compliance with its obligations.
- 10.6 If the Contractor provides goods, works or services which may be imported into the recipient country on preferential terms, the Contractor must attach a preferential certificate of origin with each consignment (e.g., movement certificates Form A, EUR 1, EUR-MED or NAFTA Form, etc.) 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.
- 10.7 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 in the country of import and the Contractor shall complete the customs clearance formalities in the country of export, unless otherwise agreed. If the Contractor completes the customs clearance formalities in the country of import 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.

11. Warranty

- 11.1 The warranty shall be based on the applicable statutory regulations unless otherwise agreed. Regardless of this, BMW shall be entitled initially to demand defect rectification free of charge or the delivery of goods free of defects. If the Contractor is in default with this, BMW may rectify the defect itself and demand compensation for the costs incurred.
- 11.2 Defects in the contractual performance rendered 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.
- 11.3 Any notice of defect by BMW shall suspend the warranty period for the defective contractual performance. After the defect has been rectified, the warranty period for the affected contractual performance shall recommence.

12. Intellectual property rights and copyrights/work results

- 12.1 The Contractor shall ensure that
- the provided goods and works or services are free of third party intellectual property rights which adversely affect the use of the goods and works or services by BMW and/or BMW Group and
 - it has the authority to assign or grant the appropriate rights of use to BMW Group.
- 12.2 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, in accordance with the contract, of the contractual performance rendered by the Contractor. This shall not apply if the Contractor did not know and could not have known about the existence 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.
- 12.3 Unless otherwise agreed, all tangible and intangible results ("**Work Results**") created during the execution of the contract shall be transferred to BMW AG without any further conditions and without any additional remuneration. In case such transfer is legally not possible, the Contractor will grant BMW AG a right of use to the Work Results that is exclusive, unlimited in terms of time and content, assignable, sublicensable, worldwide, irrevocable and free of charge.
- 12.4 Unless otherwise agreed and to the extent required by BMW Group to be able to use the contractual performance rendered (including a Work Result) commercially, the Contractor hereby grants BMW AG a right of use to the property rights or similar legal positions required for this purpose, which right of use is non-exclusive, unlimited in terms of in time and content, assignable, sublicensable to third parties for the purpose of supplying products or providing services to companies of BMW Group as well as to companies of BMW Group, worldwide, irrevocable and free of charge.
- 12.5 If, during the execution of the contract, the Contractor creates or amends software, the rights of use 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. Data protection

- 13.1 The Contractor shall ensure that all persons involved in the execution of the contract comply with the statutory regulations relating to data protection, especially when processing personal Data. These persons must undertake an obligation to safeguard data confidentiality as required by data protection law before they first start their work and evidence of this must be supplied to BMW upon request.
- 13.2 If the Contractor processes personal Data during the contractual performance, it undertakes to conclude an agreement for data processing on order ("DVIA") with BMW on the basis of the current DVIA template which shall be supplied to him by BMW, and to ensure that any other necessary agreements for the processing of 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.

14. Rights to BMW Data

- 14.1 "**BMW Data**" for the purpose of these GTC refers to Data that
- a company of BMW Group provides to the Contractor, either by itself or via a commissioned third party,
 - the Contractor creates upon order of BMW,
 - the Contractor creates without order of BMW in connection with the contractual performance, but stores on data carriers that are perceptibly owned or possessed by BMW Group at the time of storage,
 - result from a processing of Data in the sense of this Clause in connection with the contractual

- e) performance, or
- e) the Contractor creates or obtains by any action according to this Clauses.

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

14.2 In relation to the Contractor and subject to data protection law or 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, process, provide to third parties or to exploit BMWData.

14.3 The Contractor is entitled to

- a) use BMW Data pursuant to this Clause, as far as this is necessary for the contractual performance,
- b) provide BMW Data to third parties, as far as this is necessary pursuant to judicial, administrative or mandatory rules or orders, always provided that the extent of the disclosure shall be kept as limited as possible and the Contractor shall notify BMW in writing of an intended disclosure prior to such disclosure, unless such notice could not reasonably be given,
- c) provide BMW Data to public authorities or, in case of a lawsuit with BMW to courts, as far as this is necessary for the enforcement of its rights or for the defence against claims,
- d) provide BMW Data to its consultants that are professionally bound to discretion (e.g. lawyers, auditors and/or tax advisors), as far as this 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 contractual performance and which is not considered BMW Data, remain unaffected.

14.4 Unless authorised under these GTC 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,
- c) create Data without order of BMW in connection with the contractual performance, 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.

If the Contractor violates an obligation under Clause 15.4, BMW notwithstanding other contractual and statutory rights (especially injunction, rectification and compensation) has a right to be informed of existing Data and their use.

14.5 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.

14.6 The Contractor may retain copies of BMW Data insofar and for so long that this BMW Data is subject to a legal or otherwise mandatory obligation to preserve records (e.g., for product liability reasons) or must be preserved in order to fulfil further contractual obligations (including warranty obligations) to BMW.

14.7 This Clause ("Rights to BMW Data") shall not restrict or suspend in any way in particular

- a) property or possession rights,
- b) intellectual property rights, especially rights under copyright law, as well as assigned or granted rights of use or 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 protection law), and
- e) rights on Work Results.

14.8 The terms set out in these GTC shall also apply after the expiry or termination of a contract.

15. Information Security

15.1 The software and hardware deployed and delivered within the scope of the contractual performance may not contain any functions which the Contractor could have detected in accordance with the state of the art and that jeopardize the integrity, confidentiality or accessibility of the contractually agreed performance, 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 or manipulation of Data or the processing logic, or
- c) for unwanted induction of Data or unwanted functional expansions.

"Unwanted" in this sense is a function that

- BMW did not demand,

- the Contactor did not offer with a specific description of the function and its consequences, and
 - that BMW also did not accept in writing in the individual case.
- 15.2 The Contractor is obligated to ensure that BMW Data and own Data necessary for the contractual performance is protected by appropriate measures according to the state of the art against unauthorised access, alteration, destruction and other misuse (“**Information Security**”). The Information Security requirements shall also serve to keep BMW's business information confidential from the Supplier's other customers and business partners. The Contractor therefore undertakes to put in place suitable technical and organizational precautions in line with the requirements of the competent supervisory authorities in order to keep the services provided to and the information obtained from BMW separate from those of other customers. The Contractor must also ensure that services can be provided for different customers independently of each other and any instructions from the different customers can be followed independently of each other. Insofar as the storage of BMW Data is part of the contractual performance, the Contractor takes any and all necessary precautions currently state of the art in order to be able to restore the BMW Data at any time in a manner which is legally admissible and free of loss.
- 15.3 Depending on the type and protection requirements of the respective BMW Data or the importance of the Contractor's contractual performance for BMW Group's business operations, BMW may request an appropriate 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 process – Information Security Management Sys- tems - Requirements”) or by attestation according to the VDA-model “TISAX” (Trusted Information Security Assessment Exchange). The parties may agree an appropriate deadline for the first-time certification of a site according to “TISAX”.
- 15.4 The Contractor shall ensure that no potentially harmful software (e.g., viruses, worms or trojans) is deployed during the contractual performance, e.g. via drivers or firmware included in the delivery. The Contractor shall inspect this in accordance with the state of the art and, upon BMW's request, confirm in writing that it has found no indications of harmful software during such inspections.
- 15.5 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 in the form of an unauthorized access by third parties 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, then the Contractor shall, without undue delay and free of charge for BMW
- a) inform BMW thereof, and
 - b) take all necessary measures to clarify the facts of the matter and to limit damages and to support BMW therewith, and
 - c) if the violation of Information Security causes a disruption or delay of the contractual performance, 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 in particular the results of security inspections, identified Information Security risks, as well as identified Information Security incidents and their treatment.
- 15.6 If the Contractor is obliged to provide proof of a particular level of Information Security the Contractor shall
- a) provide BMW with the contact data of a qualified person responsible for Information Security via its B2B portal (Supplier Data Base) and inform BMW about any changes without undue delay and/or
 - b) permit BMW upon request to convince itself of the compliance with Information Security and the agreed guidelines on data protection and security (“**Audits**”) and shall contribute, for example by providing information. 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 during normal business hours and. BMW shall respect any confidentiality obligations which may exist between the Contractor and third parties. BMW is authorised to let an external qualified partner that is contractually bound to confidentiality towards third parties conduct such Audits, unless such company is a Competitor of the Contractor. BMW's statutory rights of control and information are not limited by this provision.
- 15.7 The Contractor must ensure that protection measures to physically secure access to buildings where BMW's confidential or sensitive information is stored, processed or transmitted by the Contractor are in place. The Contractor must inform BMW of locations where the Contractor operates and notify if the location has changed. BMW shall be granted access to the Contractor location upon BMW's request.

The Contractor also undertakes to assist with measures regarding the recertification of User IDs and access authorizations carried out by BMW. For this purpose, the Contractor shall draw up a list of the existing user IDs and their access authorizations in a format agreed with BMW. The recertification may be requested several times a year or on an ad-hoc basis. The Contractor shall maintain a documented IT user management/or process that is monitored on a regular basis.

Access to the Contractor's IT infrastructure may only be granted on the basis of operational requirements, so

that users only have those access rights to information, which are required to perform their work (need-to-know-principle) and so that users are only granted the access rights that they need to perform the work assigned to them (need-to-use-principle).

Personalized and technical user IDs shall be monitored by the Contractor in order to ensure the identity of the user or the application.

- 15.8 Insofar the Contractor interacts with BMW's customers the Contractor must ensure that protection measures for the transmission and storage of electronic and physical information are in place for all communication channels such as mail, telephone etc. used for interaction between the employees of the Contractor and BMW's customer.

The Contractor shall establish procedures to verify the identity of a customer prior to exchange of any sensitive or confidential data.

- 15.9 Without BMW's prior written consent, the Contractor must not use public internet services (e.g. online storage services or public cloud services) to communicate and process business information.

- 15.10 The Contractor shall constantly monitor the outsourced activities and identify and eliminate any risks and incidents. Without prejudice to any other contractually agreed reporting obligations within the deadlines, the Contractor shall inform BMW of any critical Information Security risks and incidents.

The Contractor hereby undertakes to carry out security reviews to assess the suitability and effectiveness of its Information Security management and its compliance with the Information Security requirements specified in this GTC.

- 15.11 The Contractor hereby undertakes to address security-related subjects on Information Security on a regular basis during Service Delivery Meetings. The annual KPI validation includes Information Security.

- 15.12 The Contractor shall ensure that adequate Business Continuity Management measures are in place. These must be tested and updated regularly.

- 15.13 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 Clause.

16. Confidentiality, publicity

- 16.1 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 contract. The Contractor and BMW in particular each undertake to neither 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 shall each ensure the compliance of their Affiliated Companies with these obligations if information is exchanged with them in connection with the project.

- 16.2 If and insofar as it is necessary in the context of the contractual performance („**Need-to-know principle**“), the Contractor or BMW may transfer information to
- its Affiliated Companies, and
 - third parties contractually bound to the transferring party, unless such transfer was individually excluded for specific information,

- 16.3 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 confidentiality obligations equivalent to these GTC prior to the transfer of information and complies with those obligations. The confidentiality obligations under this Clause shall not apply if and to the extent that information

- is or becomes publicly available without a violation of these obligations, or
- was lawfully received from any third party, or
- was already known by the receiving party, or
- 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 in writing of an intended disclosure prior to such disclosure, unless such notice could not reasonably be given, or
- was independently developed by the receiving party without usage or reference to the information of the other party, or
- is disclosed further to a right of use.

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

- 16.4 Unless agreed otherwise, the confidentiality obligations of the parties shall remain binding beyond the end of the contractual performance with no time limits.

- 16.5 Statutory confidentiality provisions as well as ensuring Austrian statutory provisions remain unaffected.

- 16.6 The Contractor undertakes to comply with Banking Secrecy according to § 38 BWG, by outsourcing to comply with the outsourcing requirements pursuant to annex to § 25 BWG and to grant rights to information, presentation and inspection according to § 60 BWG to competent authorities (e.g. the Austrian Financial Market Authority or the Österreichische Nationalbank).
- 16.7 The Contractor (here also as processor) will notify BMW immediately about any developments which could significantly affect its ability to comply with statutory legal provisions and regulations. Possible measures which have to be undertaken by the Contractor, which are necessary to comply with statutory legal provisions, do not entitle the Contractor to raise fees charged to BMW, unless explicitly agreed otherwise.
- 16.8 The Contractor may only publicise its business relationship with BMW Group with prior written consent of BMW.

17. Insurance

- 17.1 The Contractor undertakes to adequately insure the liability risks relating to the contractual performance 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 upon 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.
- 17.2 If it becomes clear that the contractual performance 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.
- 17.3 The review or any failure to request evidence of the insurance policies referred to above by BMW shall not be regarded as a waiver of any of the duties set out in this Clause.

18. Environment

- 18.1 During the contractual performance, the Contractor shall use the necessary resources (in particular materials, energy and water) effectively and efficiently and shall reduce the environmental impact (in particular with respect to waste, wastewater, air pollution and noise) to a minimum..
- 18.2 The Contractor shall – provided that the contractual performance 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.
- 18.3 Provided that the supply of goods is stipulated in the contract, the following provisions shall apply.
- a) The Contractor shall upon request and without undue delay provide BMW with any and all information required for the quantitative assessment of the Contractor's resource efficiency relating to the total annual scope of orders placed by and supplied to BMW (e.g., total energy consumption; CO2 emissions; total water consumption; process waste water; metric tons of waste; VOC emissions). In addition, the Contractor shall provide upon BMW's request Data for a life cycle assessment relating to goods or parts thereof (including Data with regard to the materials input) according to the data collection format for life cycle assessment of the VDA.
 - b) Polymer materials contained in goods shall comply with the BMW requirements for goods derived from the applicable 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) The Contractor shall comply with the requirements stated in BMW Group Standard GS 93008 (1, 2 and 4) "Substances of concern" throughout the entire life cycle of the goods. The 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 applicability of a relevant law, the Contractor assumes responsibility for all obligations named above and all associated expenditure. Furthermore, the Contractor will upon request and without undue delay 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, the Contractor shall provide BMW with "Safety Data Sheets" for these goods.
- 18.4 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 Clause.

19. Social Responsibility

- 19.1 For BMW it is of paramount importance that corporate activities take account of the social responsibility to employees and to society as a whole. This applies both to BMW itself and to its suppliers.

BMW and the Contractor acknowledge their compliance with the adopted 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, race, 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 laws,
- Compliance with occupational safety and health requirements,
- Protection from individual arbitrary personnel measures,
- Maintenance of employability by training and continuing education,
- 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,
- Implementation of equal opportunities and family-friendly policies,
- The protection of indigenous rights,
- Ban on bribery and extortion,
- Safeguarding of animal welfare and animal protection, in particular the 3R principle (Replacement, Reduction, Refinement) in animal testing.
- Compliance with current laws and regulations.

- 19.2 Insofar the contractual performance can or will have significant effects on the health and safety of its employees, and no later than two years after the triggering of the BMW Purchase Order, the Contractor shall implement, operate and prove to BMW by presentation of a corresponding certificate, a certified occupational health and safety management system in accordance with OHSAS 18001 or ISO 45001 or a recognised and certified occupational health and safety management system derived therefrom.
- 19.3 Upon written request, the Contractor shall share information on non-financial performance indicators such as environmental, employee and social concerns, attention to human rights and combating corruption and bribery as well as the underlying strategies and processes according to recognised standards, e.g. in the form of a sustainability report in accordance with GRI or DNK compliance declaration. If due to statutory requirement the Contractor is obliged to inform on its non-financial performance indicators, then the forwarding of such corresponding report will suffice.
- 19.4 The Contractor warrants that the information provided by him with regard to its non-financial performance indicators is accurate, complete and - with regard to any date referred to in the documents or information - current and fairly represents its actual non-financial conditions.
- 19.5 It shall be the Contractor's responsibility to cause all and any of its subcontractors to act according to the regulations of this Clause.

20. Termination

- 20.1 BMW may terminate the entire contract or separately delimited parts of it at any time.
- 20.2 If the Contractor is responsible for the grounds of the termination, BMW must only pay for contractual performance in accordance with the contract, which is completed and evidenced, and the results of which can be used by BMW. Compensation claims by BMW shall not be affected by this.
- 20.3 If the Contractor is not responsible for the grounds of the termination, BMW shall compensate the Contractor with the costs the Contractor has incurred directly from the order up to the termination of the contract for which evidence can be produced. Beyond this, the Contractor shall not be entitled to any other fulfilment or compensation claims as a result of the termination.
- 20.4 The right to extraordinary termination for cause shall remain unaffected. Cause shall in particular be assumed in the following cases:
- a) The Contractor or a subcontractor directly or indirectly fails to comply with a relevant legal regulation and BMW can therefore not be reasonably expected to continue the collaboration or
 - b) The Contractor has offered, promised or given benefits to another company representative (in particular a BMW employee) or an official, which benefits could be designed to have an undue influence on this person in relation to the negotiation, decision or execution of the contract.
- 20.5 If the Contractor becomes insolvent, defaults on its payments or if 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 for the unfulfilled part of it, notwithstanding other rights.
- 20.6 In the event of termination of the contract, the Contractor undertakes to support BMW in transferring the outsourced activity to a third party (new Contractor) with due care and professionalism. The Contractor must provide services, access, assistance and documents to BMW and any subsequent Contractor until the end

of the transition phase.

Further, unless otherwise expressly authorized by BMW the Contractor shall return to BMW all physical and non-physical property that belongs to BMW including BMW's confidential information, all BMW data and all other documents and materials as well as copies thereof or delete them in compliance with the data protection law with the prior consent of BMW in such a way that renders a reconstruction of the BMW Data impossible. The deletion log shall be presented upon request.

21. Miscellaneous

- 21.1 Changes, additions and notices of termination must be made in written form (*Schriftform*). In the event of changes and additions, it shall be sufficient that they are supplied in writing 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 a part of a provision of these GTC or of 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 must undertake, in good faith within reason, 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 of the applicable STC.

22. Governing law, place of jurisdiction and jurisdiction

- 22.1 The legal relations between the parties shall be governed by Austrian law as used between Austrian businessmen. The UN Convention on Contracts for the International Sale of Goods (CISG) 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 Salzburg unless the law specifies a different place of jurisdiction or place of fulfilment. This agreement on jurisdiction shall not apply to claims pursuant to contractual or statutory claims for antitrust damages.