



BMW GROUP PURCHASING CONDITIONS FOR GOODS AND/OR SERVICES WITHIN THE UNITED KINGDOM AND IRELAND

(Version 05/13)

These terms and conditions and Schedules attached and any other documents incorporated in the purchase order is the agreement (“**Agreement**”) between Affiliates of Bayerische Motoren Werke Aktiengesellschaft (Affiliates having the meaning as defined in Section 1159 Companies Act 2006) or their foreign branches which are registered in the United Kingdom and Ireland (hereinafter collectively referred to as “**BMW**”), and the supplier (hereinafter referred to as the “**Supplier**”) in respect of the purchase of goods or services (hereinafter referred to as “**Goods**” or “**Services**” as appropriate) within the United Kingdom and Ireland unless agreed otherwise in writing.

1. PURCHASE ORDER

- 1.1 BMW shall issue a purchase order (“**Purchase Order**”) to the Supplier. Any performance by the Supplier of whatever nature in relation to the matters detailed in the Purchase Order will constitute acceptance of such Purchase Order and commencement of the Agreement.
- 1.2 In the event that the Supplier does not perform any act in relation to a Purchase Order, which would constitute acceptance of such Purchase Order within fifteen (15) working days after the Supplier’s receipt of the Purchase Order, BMW shall be entitled, but not obliged, to revoke such Purchase Order without incurring any liability to the Supplier.

2. AMENDMENTS

- 2.1 BMW shall have the right at any time to amend or vary a Purchase Order in any respect including, but not limited to, specifications, drawings, designs, construction, date and place of delivery, packaging, quality, quantity and means of shipment. The Supplier shall evaluate the consequences of such change within 3 working days of receipt of such amendment to the Purchase Order including, but not limited to, any increase or reduction in the cost to the Supplier or any delay of delivery, and shall inform BMW within 24 hours of the conclusion of such evaluation whether the Supplier accepts or rejects the amendments proposed by BMW. If the amendment is rejected by the Supplier but both parties subsequently agree a mutually acceptable change to the Purchase Order, BMW will re-issue an amended Purchase Order. If the parties cannot agree, BMW reserves the right to cancel the Purchase Order. For the avoidance of doubt the Supplier shall not action any amendment or variation until it has been approved by BMW by the issuance of an amended Purchase Order.
- 2.2 If the changes in Clause 2.1 require additional or reduced Goods and/or Services from the Supplier that are not provided for in the Agreement, the parties shall agree as to whether there should be a revision to the payments due to the Supplier. Any revised payment shall be based on the price for Goods and/or Services. The revision shall be documented by the issue of a supplementary or revised Purchase Order in accordance with Clause 2.1 above.

3. SUPPLIER’S PERFORMANCE

- 3.1 Delivery dates and quantities shall apply as set out in the Purchase Order or as otherwise stipulated by BMW. The Supplier acknowledges that delivery times and quantities are of the essence and BMW may reject and/or return at the Supplier’s expense any Goods and/or Services or part thereof received before or after the delivery date or in excess of the quantity specified in the Purchase Order.
- 3.2 The Supplier agrees to take all actions necessary and appropriate to ensure that Goods and/or Services are received by BMW as required under the Agreement. The Supplier will inform BMW promptly of any occurrence, which will or may result in any delay of delivery at any time or which will or may result in the Supplier’s inability to supply the quantities specified in the Purchase Order. The Supplier shall also advise BMW in writing of corrective measures which the Supplier is taking to minimize the effect of such occurrence.
- 3.3 Except for excusable delay (hereinafter, “**Excusable Delay**”) as set forth in Clause 29 below in the event that the Supplier fails for any reason whatsoever to effect delivery consistent with the delivery dates specified in the Purchase Order, BMW shall be entitled to recover from the Supplier all

actual, consequential and incidental losses and damages including, but not limited to, losses and damages relating to and arising out of incremental cost of labour, transportation, production changes and storage.

- 3.4 Each of the parties shall appoint in writing a project manager, where required, who is responsible for planning, coordinating and/or monitoring the Supplier’s performance. Upon BMW’s request the Supplier’s project manager shall inform BMW’s project manager as to the status of performance.
- 3.5 The Supplier shall verify all the information provided to it by BMW and shall ensure that it has a thorough understanding of what it is providing in terms of Goods and/or Services and carries out all necessary due diligence required to enable it to fully perform the provision of Goods and/or Services, and bears full responsibility for such actions.
- 3.6 The Supplier acknowledges that third parties engaged by BMW on planning and/or monitoring tasks are not authorised to represent BMW. In particular they shall not be authorised to extend delivery dates or to approve invoices, day rates or quantity surveys.

4. DELIVERY / PASSING OF RISK

- 4.1 Risk in the Goods and/or Services shall remain with the Supplier until BMW’s express acceptance of the Goods and/or Services, unless otherwise stated in the Purchase Order.
- 4.2 Without prejudice to BMW’s rights to reject and/or return the Goods and/or Services pursuant to this Agreement, title in the Goods shall pass to BMW upon payment or the execution of any transfer of title documentation.
- 4.3 In case of any defects concerning the delivered Goods and/or Services, BMW will inform the Supplier as soon as reasonably practicable after discovery of such defects in the proper course of business.
- 4.4 Part deliveries are not permitted unless expressly agreed otherwise.

5. ACCEPTANCE

- 5.1 If the Supplier is obliged to supply customised Goods and/or Services, a formal inspection and written acceptance from BMW is required. If inspection of the Supplier’s performance requires commencement of operations or initial use for test purposes, the acceptance procedure shall take place upon successful completion of such test and written confirmation of the same by BMW.
- 5.2 If the results of the inspections or testing as detailed in Clause 5.1 above cause BMW to be of the opinion that the Goods do not conform or are unlikely to conform with the Purchase Order or to any specifications and/or patterns supplied or advice by BMW to the Supplier, BMW shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition BMW shall have the right to require and witness further testing and inspection. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier’s obligations under this Agreement
- 5.3 Where appropriate and required by BMW the acceptance procedure shall be carried out as a joint inspection on site and the proceedings and results



of the acceptance procedure are to be recorded in an acceptance report, which shall be signed by both parties.

5.4 Payments made by BMW shall not constitute acceptance.

6. QUALITY / DOCUMENTATION

6.1 The Supplier shall provide BMW with all documents, information and data that are deemed necessary to satisfy national and international official requirements.

6.2 If BMW demands initial or test samples, the Supplier may only commence production of the Goods once written approval has been issued by BMW.

6.3 BMW shall provide the Supplier with all documents, information and data that are deemed necessary for the performance of the Agreement. Documents or means of production provided to the Supplier (e.g. dies, templates, matrices, data, models, gauges, die-plates, patterns, samples, tools, drawings and other information) ("**Production Aids**") are lent to the Supplier and must be returned upon BMW's request or at the latest after completion or termination of the Purchase Order.

6.4 The Production Aids made available to the Supplier or manufactured on the basis of information gained from BMW may neither be duplicated nor sold, transferred by way of security, pledged nor otherwise passed on or used for third parties in any way without the express written consent of BMW. This also applies to the items manufactured with the help of these Production Aids.

6.5 The Supplier must document all tests which are carried out during performance of the Purchase Order and their results. Such documentation must be kept for five years from the date of acceptance and made available to BMW if requested.

7. PAYMENT / SET-OFF

7.1 Unless agreed otherwise payment shall be effected only after performance and/or delivery in accordance with the terms of the Agreement and receipt of an auditable and verifiable invoice by BMW, which shall include the BMW Purchase Order Number, Supplier Number and VAT number ("**Auditable Invoice**"). For the calculation of payment due dates, deliveries carried out prior to the agreed delivery dates shall be deemed to have been received on the agreed delivery dates.

7.2 If deposit payments are agreed upon, these shall only be made in return for a bank guarantee as shall be approved by BMW from time to time.

7.3 BMW shall be entitled to withhold payment of any charges in whole or in part where, in its reasonable opinion there is a dispute regarding the performance of the Goods and/or Services or the content of the relevant invoice.

7.4 BMW shall pay each invoice properly due, issued and submitted to BMW in accordance with the Purchase Order. If a fixed price is agreed, the Supplier shall only invoice the Goods and/or Services upon either acceptance by BMW of agreed upon milestones or confirmation by BMW that the Goods and/or Services have been successfully completed according to the agreed upon acceptance criteria. For the avoidance of doubt invoices which are not submitted to BMW within six (6) months of the receipt of Goods and/or Services shall not be considered due and payable.

7.5 The parties to this Agreement may charge simple interest at the rate of 4% per annum above the Bank of England base rate from time to time on any overdue sums, including, but not limited to, invoices for duly provided and invoiced Goods and/or Services not paid by BMW and overcharges by the Supplier. Interest will be charged from the due date for such payment until the actual date of payment. For the avoidance of doubt, no interest will be payable on the late payment of invoices not submitted in accordance with this Clause 7.

7.5 Payment shall be made by way of bank transfer.

7.6 Whenever under the Agreement any sum of money shall be recoverable from or payable by the Supplier, the same may be deducted from any sum

then due or which at any time thereafter may become due to the Supplier under this Agreement or any other agreement with BMW or any of its affiliated companies. Exercise by BMW of its rights under this Clause shall be without prejudice to any other rights or remedies available to BMW under this Agreement, or otherwise howsoever, at law or in equity. The Supplier shall have no such rights as set out above against BMW nor shall the Supplier exercise or claim to exercise a right of retention under this or any other agreement with BMW or its affiliated companies.

8. COMPLIMENTARY GOODS AND/OR SERVICES AND OBLIGATIONS

8.1 The Supplier shall, where required by BMW, without requiring any additional remuneration, take all necessary measures to reach the contractual objective, even if such measures are not expressly indicated in the Agreement, including:

8.1.1 procurement of all necessary equipment, non-productive material and facilities,

8.1.2 cleaning of the construction site and restoration of the original condition of the assembly site,

8.1.3 disposal of waste accumulated during performance,

8.1.4 adequate illumination of the working site,

8.1.5 protection of working sites against accidents, damage, theft or similar.

8.2 The Supplier shall provide BMW, where required, with sufficient quantities of spare parts for machinery and equipment for a period of ten years after BMW's acceptance.

8.3 If and when requested, the Supplier must carry out a calculation comparison with BMW, the form of which shall be agreed between the parties.

9. WARRANTY

9.1 The Supplier hereby undertakes and warrants to BMW to supply the Goods and/or Services in an efficient and professional manner and that the Goods are the best available quality, material and workmanship free from material defects and are fit for purpose in conformity with the agreed specifications and/ or patterns as detailed in the Purchase Order or as defined by BMW in writing for a period of two years beginning from the date of acceptance unless stated otherwise in the Purchase Order.

9.2 The Supplier hereby undertakes and warrants to BMW to comply with the requirements of any statute, European Community Directive or directive/bye-law/order of any government department, local authority or other public or competent authority either in force at the commencement of the Agreement or coming into force during the Agreement ("**Relevant Law**") and with BMW's rules and policies notified to the Supplier from time to time and BMW's rights under this Clause are in addition to the statutory conditions implied in favour of BMW by the Sale of Goods Act 1979 and any amendments thereto.

9.3 A notice of defects by BMW shall suspend the warranty period for the defective part. Once the defect has been remedied, the warranty period re-commences.

9.4 The Supplier shall rectify at its own cost any warrantable defects as may be capable of remedy within one (1) week from notification of such defects by BMW.

9.5 Without prejudice to any other right or remedy which BMW may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of this Agreement, BMW shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by BMW:

9.5.1 to rescind the Purchase Order;



- 9.5.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;
- 9.5.3 at BMW's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of this Agreement are fulfilled;
- 9.5.4 to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;
- 9.5.5 to carry out at the Supplier's expense any work necessary to make the Goods comply with the Agreement; and
- 9.5.6 to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of this Agreement.

10. COMPLIANCE

- 10.1 The Supplier warrants, represents and undertakes that:
 - 10.1.1 it has the right to supply the Goods and/or Services in accordance with this Agreement;
 - 10.1.2 it holds and shall retain throughout this Agreement all necessary consents required to fulfil its obligations under this Agreement, including without limitation all licences, permits or similar permissions required to fulfil such obligations in each jurisdiction where the Goods and/or Services are to be provided, and shall comply with the terms of all such consents;
 - 10.1.3 it and its agents and Personnel (as defined in Clause 13) shall comply with all laws, rules and regulations and ordinances applicable to the provision of the Goods and/or Services and/or the performance of the Supplier's obligations under this Agreement and any and all applicable BMW policies provided to the Supplier from time to time.
 - 10.1.4 the Goods and/or Services and the Deliverables do not and will not infringe the Intellectual Property Rights (as defined in Clause 15) of any third party.
- 10.2 The Supplier warrants and represents that it shall comply with its obligations under the Equality Act 2010 (the "**Act**") and shall procure that the Personnel, the Supplier's agents, representatives and/or sub/contractors shall comply with their respective obligations under the Act, including without limitation, the obligations under Section 26 of the Act not to harass and/or subject others to less favourable treatment.
- 10.3 The Supplier shall indemnify and hold BMW harmless against any costs, claims, demands, liabilities, expenses, (including legal costs), damages or losses incurred or suffered by BMW and/or any of its Affiliates arising out of or in connection with any failure by the Supplier to comply with Clause 10.2 above.

11. ACTING FAIRLY

- 11.1 When carrying out any Goods and/or Services, the Supplier shall act in good faith and in a professional, fair and courteous manner towards BMW's customers or any other third party and shall not act in any way, which may bring BMW's name or reputation into disrepute.
- 11.2 The Supplier shall report any allegation made by any BMW customer or any other third party of any conduct which does not comply with Clause 11.1, or of any non-compliance with Clause 10.1, in writing to BMW no later than two (2) Business Days after such an allegation has been made.

12. ANTI-BRIBERY AND ANTI-CORRUPTION

- 12.1 The Supplier shall have in place and maintain its own anti-bribery and anti-corruption policies to prevent bribery and corruption throughout its business and shall observe its policies in particular within the business relationship with BMW the Supplier shall provide to BMW its relevant policies upon BMW's request. The Supplier shall promptly notify BMW in writing of any substantial amendment of its relevant policies.

- 12.2 The Supplier shall have in place and maintain throughout the term of the Agreement adequate procedures (for example commitment of top-level management, risk assessment, anti-bribery and anti-corruption guidelines, communication and training, due diligence procedures, monitoring and review measures) to ensure compliance with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, its own relevant policies and to monitor and enforce them wherever and whenever appropriate.

Such adequate procedures shall be proportionate to the bribery and corruption risk the Supplier is exposed to and to the nature, scale and complexity of its business activities.

- 12.3 The Supplier shall use its best endeavours to ensure that its Personnel and associated persons who carry out services for or on its behalf under or in connection with the Agreement, including but not limited to its employees, agents, joint venture partners, suppliers, subsidiaries and sub/contractors, do also comply with the provisions of this Clause 12.
- 12.4 The Supplier shall document its compliance with the provisions set out in this Clause 12 and shall provide such documentation to BMW upon request.
- 12.5 The Supplier shall notify BMW as soon as it becomes aware of any offer, promise or request for any undue financial or other advantage of any kind made or received in connection with the negotiations or performance of the Agreement.
- 12.6 Without limitation to the above clauses, the Supplier or any of its Personnel or associated persons acting for it under the Agreement, shall not induce or reward BMW to perform improperly under the Agreement, bribe or offer, promise, give or request, agree, accept or receive a bribe or any undue financial or other advantage of any kind or allow any such to be offered, promised, given, requested, agreed, accepted or received on its or BMW's behalf in connection with the negotiations and performance of the Agreement.
- 12.7 Notwithstanding the terms of the Agreement, BMW shall have the right to terminate the Agreement if the Supplier breaches the terms of this Clause 12 after having failed to remedy the same (if capable of remedy) within thirty (30) days of notice specifying the breach and requirement to be remedied and, due to this failure, BMW cannot be reasonably expected to continue the contractual relationship.
- 12.8 The Supplier shall be liable to BMW for damages, losses, liabilities and expenses (including but not limited to legal costs) actually incurred or suffered by, or awarded against BMW and occasioned by or arising of any breach of this Clause 12 by the Supplier, its Personnel or its associated persons acting under or in connection with the Agreement.

13. PERSONNEL

In this Clause the definitions below apply:

"**Employees**" means the individuals who are directly or indirectly employed by the Supplier to perform the Services;

"**Key Personnel**" means those Personnel together with any additional Key Personnel and any replacements for such Key Personnel approved by BMW from time to time in accordance with this Agreement;

"**Personnel**" means the Employees and other individuals who are directly or indirectly engaged by the Supplier to perform the Services, (including but not limited to the Key Personnel, if any);

- 13.1 The Supplier warrants that the Personnel shall have such qualifications, licences and competence as are appropriate to perform the Services. The Supplier shall provide to BMW upon request such information about the Personnel as BMW may reasonably require regarding the qualifications and competence of the Personnel.
- 13.2 The Supplier shall assign the Key Personnel (if any) to the Services from the commencement of this Agreement until the Services are completed and may only replace the Key Personnel where replacement is necessary due to disciplinary measures, leave, sickness, resignation or other termination of employment or where BMW has given its prior written consent to such replacement.



- 13.3 BMW shall be entitled to request the Supplier upon reasonable notice to replace, remove or add to any of the Personnel. In addition, the Supplier shall, immediately upon BMW's request, remove from the performance of the Services any Personnel, agents, representatives and/or subcontractors of the Supplier, who BMW has reasonable grounds to believe has harassed and/or subjected others to less favourable treatment contrary to Section 26 of the Act. Upon receiving such request, the Supplier shall promptly replace the individual concerned with another suitably qualified individual.
- 13.4 The Supplier shall ensure that the Personnel are properly and presentably dressed at all times whilst on BMW's premises. The Supplier shall procure that the Personnel shall, while at any BMW premises, comply with all reasonable security and safety requirements of BMW pertaining to each such premises including site regulations, policies and health and safety requirements.
- 13.5 The Personnel shall at all times remain under the direction and supervision of the Supplier, and none of the Personnel shall be deemed to be an employee of BMW.
- 13.6 The Supplier shall be responsible for all payments to the Personnel, (which in respect of any and all Employees shall include, without limitation, their salaries, including any other bonus, commission, profit-related pay, pension, pension related benefits, other remuneration and/or benefits, and any associated income tax liabilities, National Insurance and similar contributions arising in respect of the foregoing) as well as for employer's and public liability insurance and any other associated costs.
- 13.7 The Supplier agrees to indemnify and hold BMW harmless against:
- 13.7.1 any action or claims brought against BMW in connection with the termination of the employment of any Personnel and against any costs, damages, fines, judgments, expenses and liability whatsoever (including reasonable professional fees) suffered or incurred, directly or indirectly, in relation to any such action or claim; and
- 13.7.2 all actions, costs, claims, expenses and liability whatsoever (including reasonable professional fees) arising, directly or indirectly, in connection with the employment of any of the Personnel.

14. TUPE

In this Clause the definitions below apply:

"Employment Particulars" means for each of the Employees, their employment start date, date of birth, gross annual salary, bonus, commission, profit related pay, pension and pension related benefits, and any other employment related benefits;

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006, the Acquired Rights Directive (2001/23/EC), any applicable legislation implementing the same, and any similar or related legislation;

- 14.1 The Supplier:
- 14.1.1 warrants that the Employees, whether individually or collectively, shall not:
- 14.1.1.1 constitute an organised grouping for the purposes of TUPE;
- 14.1.1.2 have as their principal purpose the carrying out of the Services.
- 14.1.2 shall indemnify BMW (without prejudice to any other right of BMW), and at BMW's request, any subsequent supplier to BMW providing similar services, against all liability arising as a result of the operation of TUPE.
- 14.2 Within seven (7) days following written request by BMW at any time, the Supplier shall, at its own expense, provide in writing to BMW and/or to such third parties as BMW may direct, all information concerning the Employees, including, without limitation:
- 14.2.1 the Employment Particulars for each Employee;

- 14.2.2 their terms and conditions of employment; and
- 14.2.3 any actual threatened or potential litigation related to such employment;
- as BMW reasonably considers necessary to ensure compliance with TUPE.
- 14.3 The Supplier:
- 14.3.1 warrants that all information provided pursuant to its obligations under Clause 14 shall be accurate and complete;
- 14.3.2 shall indemnify and hold BMW harmless against any liability as a result of it providing to BMW (or to such third parties as BMW may direct) information pursuant to its obligations under Clause 14 which is inaccurate or incomplete;
- 14.3.3 shall, in the event that the Employees are deemed to transfer to BMW and/or a subsequent supplier of BMW pursuant to TUPE, indemnify and hold BMW and/or any such subsequent supplier harmless in respect of any increase in the cost of providing such services as a result of any failure on the part of the Supplier to fully comply with its obligations under Clause 14 and without prejudice to the foregoing shall pay to BMW upon demand an amount equivalent to the additional costs incurred in providing over a five (5) year period the actual gross annual salary, bonus, commission, profit related pay, pension and pension related benefits, and any other employment related benefits to the Employees.
- 14.4 For the avoidance of doubt, BMW shall have no liability to the Supplier as a result of the outgoing supplier (who had provided the Services to BMW or similar services, immediately prior to the commencement of this Agreement and who would be the "transferor" for the purposes of TUPE) providing information of the type described in Clause 14.2 which is inaccurate or incomplete.
- 14.5 This Clause 14 shall survive the expiry or termination of this Agreement, and its existence, or BMW's exercise of any rights under it, shall not constitute or imply any admission by BMW that TUPE is applicable or not.

15. INTELLECTUAL PROPERTY RIGHTS

In this Clause the definition below applies:

"Intellectual Property Rights" means any and all patents, patent applications, know how, trademark, trademark applications, trade names, registered designs (whether registered or unregistered), copyright, database rights or other similar intellectual property rights whether in existence at the date hereof or created in the future;

"Deliverables" means the deliverables set out in the Purchase Order (if any).

- 15.1 The Supplier hereby assigns to BMW by way of present assignment of future rights with full title guarantee the whole legal and beneficial interest in all Intellectual Property Rights created by or on behalf of the Supplier in the course of providing the Services (the "Developed IP"). The Supplier shall execute (or procure the execution of) all documents and do (or procure the doing of) all things necessary to ensure that the Developed IP vests in BMW.
- 15.2 BMW hereby grants to the Supplier for the duration of this Agreement a royalty-free, non-transferable, non-exclusive licence (without the right to sub-license) to use the Developed IP solely for the purpose of and to the extent necessary for the provision of the Services.
- 15.3 The Supplier hereby grants to BMW and its Affiliates (and shall procure the grant to BMW and its Affiliates of):
- 15.3.1 a perpetual, irrevocable, royalty-free, non-exclusive licence (with the right to sub-license) to use the Intellectual Property Rights (other than the Developed IP) in or to the Deliverables for the purpose of copying, using or modifying the Deliverables; and
- 15.3.2 a royalty-free, non-exclusive licence, for the term of this Agreement, to use any other Intellectual Property Rights to the extent necessary for the



receipt and benefit of the Services and as necessary to effect a smooth transition to any replacement supplier of services replacing the Services.

15.4 Where any replacement supplier requires a further licence (of the type referred to in Clause 15.3.2 above) after any such period the Supplier shall grant (or procure the grant of) a licence to each such person on reasonable commercial terms to be agreed.

15.5 The Supplier shall fully indemnify, hold harmless and keep BMW and its Affiliates indemnified from and against any and all costs, claims, damages, losses, expenses (including reasonable legal fees and expenses) and charges, suffered or incurred by BMW and/or any of its Affiliates arising from or by reason of any third party claim that the use of the Deliverables and/or the provision or receipt of the Services infringes the Intellectual Property Rights of a third party.

16. CONFIDENTIALITY

In this Clause and hereafter the definition below applies:

“Confidential Information” means all information, data or materials received from the other (including, without limitation, drawings, sketches, photographs, vehicle prototypes, models, computer software, ideas, design, know-how, formulae, processes, copyrights, inventions, techniques, new product details, business plans and such other matters as may reasonably be regarded by either party as confidential and any copies thereof in any media whatsoever) shall be kept strictly confidential at all times;

16.1 BMW and the Supplier each commit themselves to treat as business secrets and to keep confidential all commercial and technical information, which comes to its knowledge during the course of the business relationship unless such information is or becomes public knowledge without the fault of the party receiving such information.

16.2 Drawings, models, patterns, samples and similar items or documents shall not be disclosed or otherwise made available to third parties without the prior written consent of the party which owns them. Reproduction of such items is only permitted, if agreed in writing with the party which owns them and is operationally required and in all cases is subject to the compliance with the applicable laws of copyright.

16.3 The Supplier shall include obligations equivalent to Clauses 16.1 and 16.2 in all agreements with subcontractors and will ensure that all its employees are contractually obliged to comply with the same.

16.4 The terms of this Clause 16 shall survive the expiration or termination of the Agreement.

17. TERMINATION

17.1 Either party may (without prejudice to any other right or remedy) at any time by written notice to the other terminate this Agreement with immediate effect if the other party:

17.1.1 commits a material breach of any obligation under this Agreement and in the case of a breach which is capable of remedy fails to remedy it within thirty (30) days of receipt of a written notice of the breach, specifying the breach and requiring its remedy; or

17.1.2 shall have a receiver, an administrator or administrative receiver appointed to it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect, or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business or a bankruptcy order or petition is presented or made;

EXCEPT that any failure to make any payment under this Agreement shall not constitute a material breach for the purposes of Clause 17.1.1 above except in the case of persistent failure to pay.

17.2 BMW may (without prejudice to any other right or remedy) by written notice to the Supplier terminate this Agreement with immediate effect if:

17.2.1 the ownership or control of the Supplier is materially changed and BMW believes the change is to BMW's detriment; or

17.2.2 any of the Supplier's staff is guilty of any fraud, dishonesty or serious misconduct; or

17.2.3 the Supplier breaches the terms of any other agreement the Supplier has with BMW or any of BMW's Affiliates.

17.3 BMW may at any time and without stating any reason therefore, terminate this Agreement immediately.

18. CONSEQUENCES OF TERMINATION

18.1 Upon termination of this Agreement by BMW under Clauses 17.2.1, 17.3 and/or Clause 29 the following shall apply:

18.1.1 BMW's sole liability will be to pay the Supplier the proportion of the charges applicable to the Goods and/or Services carried out prior to termination and any outstanding unavoidable commitments necessarily and solely incurred in properly performing this Agreement prior to termination that are not reflected in such charges;

18.1.2 BMW shall not pay for any such commitments that the Supplier is able to mitigate and shall not pay any charges for Goods and/or Services which at the date of termination, BMW is entitled to reject or has already rejected. BMW shall only pay commitments that BMW has validated to its satisfaction;

18.1.3 BMW's total liability under Clause 18.1.1 above shall not in any circumstances exceed the charges that would have been payable by BMW to complete the Services or provide the Goods if the Agreement had not been terminated.

18.2 Upon termination of this Agreement by BMW under Clauses 17.1, 17.2.2 or 17.2.3 BMW shall without prejudice to any other rights of BMW, have the right to recover from the Supplier any additional cost of having the Goods and/or Services provided or completed by another Supplier of similar standard.

18.3 Upon termination of this Agreement for whatever reason the Supplier shall:

18.3.1 offer such assistance and co-operation as is needed to ensure the smooth handover of the Goods and/or Services to BMW or its appointed agent or replacement Supplier;

18.3.2 undertake at no additional cost to BMW, to preserve all documents and systems and shall continue to diligently perform all duties and responsibilities, hereunder, provide access, assistance, information and consultation to BMW and any successor to the Supplier (in each case) as may be necessary for the transition of the Goods and/or Services to BMW or any third party, deliver to BMW all property owned by BMW and all of the Confidential Information, documents and copies thereof in the possession, power, custody or control of the Supplier and shall do all such acts and things and execute all such deeds and documents as BMW's legal counsel may require the Supplier to execute in order to transfer or assign to BMW such property and such Confidential Information and documents, and not thereafter utilise or exploit the Confidential Information and documents in any way whatsoever, and undertakes and warrants that it shall not thereafter use or exploit the Confidential Information and documents in any way whatsoever; and;

18.3.3 remove all reference to BMW and/or its Affiliates from the Supplier's company and/or promotional materials, including its websites, and shall not refer to its relationship with BMW or its Affiliates in any way or form whatsoever.

18.4 Any termination of this Agreement, howsoever occasioned, shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.



19. INDEMNITY

- 19.1 The Supplier will indemnify and hold BMW, its agents, servants, officers, directors and employees, BMW's distributors, dealers and all entities which sell Goods and/or Services or products into which the Goods and/or Services are incorporated, and their respective customers, harmless against liability, costs, damages, losses, claims and expenses (including legal expenses) occasioned by or arising out of any claim for death, personal injury or property damage, which results from (a) any defect or alleged defect in the Goods and/or Services; (b) the Supplier's breach of any term of the Agreement; or (c) the fault or negligence of the Supplier.
- 19.2 In connection with the Goods and/or Services or otherwise, if the Supplier's Employees, agents, subcontractors or other representatives (hereinafter "**Supplier's Agents**") are on or are present at any premises of BMW, the Supplier shall be and is responsible for the acts and omissions of the Supplier's Agents when they are on or are present at BMW's premises and agrees to indemnify and hold BMW harmless against liability for damage to property or injury or death to persons arising out of acts or omissions of the Supplier's Agents whether pursuant to the Agreement or otherwise. The indemnity in this Clause shall not apply insofar as the claim is caused by the negligence or fraud of BMW.
- 19.3 In the event of a claim by a third party against BMW (hereinafter, "**Third Party Claim**"), which may be the subject of indemnification provided for in this Clause 19 BMW shall provide written notification thereof to the Supplier. The Supplier shall provide BMW with such reasonable assistance in the response and prosecution of any defence as BMW may request.
- 19.4 The parties hereby agree that any provision which the parties have made in this Agreement for liquidated damages shall not prevent BMW seeking or obtaining additional damages for its actual loss in the circumstances.
- 19.5 The provisions of this Clause 19 shall survive the termination or expiry of the Agreement.

20. INSURANCE

- 20.1 Without prejudice to its liabilities to BMW under this Agreement, the Supplier shall have in force and maintain at its own cost insurance policies with insurers of repute as will give the Supplier (or its subcontractors) cover for the risks and amounts set out in Clause 20.2.
- 20.2 The insurance policies referred to in Clause 20.1 shall cover the following risks and amounts:
- 20.2.1 employer's liability insurance in accordance with its statutory obligations and covering all Personnel;
- 20.2.2 general public and product liability insurance with a bodily injury and property damage limit of not less than £5 million (British pounds sterling) per occurrence;
- 20.2.3 wherever the Services are of a professional nature, professional indemnity insurance of not less than £5 million (British pounds sterling) per occurrence or series of occurrences arising from the same event. Such insurance shall be maintained both for the duration of this Agreement and for a period of five (5) years following completion or other termination of this Agreement.
- 20.3 The Supplier shall within fifteen (15) days of any request by BMW provide BMW with all such documentation as is necessary to prove the Supplier's continuing compliance with its obligations to insure under this Clause. If the Supplier cannot provide evidence of such insurance to BMW on request, BMW may arrange such insurance and recover the cost from the Supplier.
- 20.4 The Supplier shall promptly give BMW written notice in the event of cancellation or any material change in any of the policies referred to in Clause 20.2.
- 20.5 This Clause 20 shall not be deemed to limit in any way the Supplier's liability under this Agreement.

21. DATA PROTECTION

- 21.1 The Supplier's attention is hereby drawn to the Data Protection Act 1998 ("DPA") and to Directive 95/46/EC of the European Parliament and any regulations implementing the same (all referred to together as the "**Data Protection Requirements**"). For the purposes of this Clause 21 the terms "personal data", "data subject", "notification", "data controller" and "processing" shall have the meanings set out in the Data Protection Requirements.
- 21.2 The Supplier warrants, represents and undertakes that:
- 21.2.1 it will maintain throughout this Agreement such data protection notifications as are required to lawfully perform its obligations under this Agreement; and
- 21.2.2 in performing its obligations under this Agreement it will comply with all applicable Data Protection Requirements.
- 21.3 The Supplier shall, if requested by BMW, supply to BMW copies of all such notifications and any other reasonably requested documentation relating to compliance with the Data Protection Requirements.
- 21.4 The Supplier shall in relation to its processing of personal data under or in connection with this Agreement:
- 21.4.1 process personal data only in accordance with the instructions of BMW as data controller;
- 21.4.2 process personal data in accordance with the rights of data subjects under the Data Protection Requirements and not do or omit to do or permit anything to be done which might cause BMW in any way to be in breach of the Data Protection Requirements;
- 21.4.3 not transfer any BMW personal data to any third parties, or outside the countries of the European Economic Area, without and only to the extent of any express written consent of BMW, which may be refused at BMW's sole discretion;
- 21.4.4 ensure that all its employees and sub-contractors have received an adequate level of training in data protection;
- 21.4.5 comply in particular with any other obligations set out in the Seventh Principle of Schedule I of the Data Protection Act 1998 (which provides that appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of or damage to personal data in respect of all processing of personal data carried out on behalf of BMW);
- 21.4.6 upon request from BMW inform BMW of the measures it has taken to comply with Clause 21.4.5 and take such other measures as BMW may require to ensure that it does so comply;
- 21.4.7 co-operate as requested by BMW and enable BMW to comply with any exercise of rights by a data subject under the Data Protection Requirements in respect of personal data processed by the Supplier under this Agreement and/or comply with any assessment, enquiry, notice or investigation by the UK Information Commissioner's Office which shall include the provision to BMW of all BMW personal data requested by BMW within the timescale specified by BMW in each case; and
- 21.4.8 cease processing the BMW personal data immediately upon the termination or expiry of this Agreement or, if sooner, of the contractual activity to which it relates and as soon as possible thereafter return the BMW personal data and all copies of it including all information derived from it in any form and on any media and confirm in writing that this Clause 21.4.8 has been complied with in full.
- 21.5 In relation to any personal data collected from BMW's customers or on behalf of BMW in the course of providing the Services, Supplier shall ensure that that:
- 21.5.1 The personal data which it collects is collected and processed fairly as provided in the DPA;



- 21.5.2 it has in place and shall maintain while in possession or control of such personal data, appropriate technical and organisational security measures against unauthorised or unlawful processing of personal data and against accidental loss, destruction or damage to such personal data;
- 21.5.3 full details of such measures have been provided to BMW and approved by BMW in writing;
- 21.5.4 it shall permit and assist BMW, on request to enter any premises where such personal data is held to audit such security measures; and
- 21.5.5 such personal data is only processed for the purposes set out in this Agreement.
- 21.6 The Supplier shall only process personal data collected for the purposes of this Agreement within the European Economic Area (EEA), unless BMW has agreed in writing to its processing outside the EEA, has agreed to the location of such processing, and any agreement necessary to meet the Data Protection Requirements (for example, the EU model clauses) been entered into, and BMW have audited and approved the technical and organisational security measures of the facility where the personal data shall be processed.
- 21.7 The Supplier shall be wholly responsible for ensuring compliance with this Clause by any subcontractor Affiliate or agent.
- 21.7.1 The Supplier shall ensure that it collects personal data in accordance with BMW's instructions. Such collection must make clear to each data subject from which personal data is collected, that it is collected by the Supplier as agent for BMW, that it may be processed by BMW, its Affiliates, and by third parties providing computer and other services to BMW or its Affiliates; that such processing may include processing outside the EEA including in countries which are not deemed by the European Union to provide adequate protection for such personal data but in accordance with EEA requirements for protection of such personal data. Where the personal data to be collected includes data which is sensitive personal data under the DPA the Supplier shall obtain the data subject's consent to such processing.
- 21.7.2 Where such personal data shall be used to make decisions in relation to the data subject by automatic means the data subject must be informed of their right to have the decision reviewed by a human agent.
- 21.8 The Supplier shall promptly notify BMW of receipt of any subject access request under the DPA in relation to personal data collected under the terms of this Agreement.
- 21.9 On completion or termination of the Services the Supplier shall comply with BMW's instructions in relation to the personal data. If BMW requires the personal data to be deleted from any electronic file the Supplier shall either delete such data completely or if not practical shall ensure, in accordance with UK Information Commissioner (ICO) guidelines, that it is no longer capable of access and retrieval and is no longer subject to subject access requests. If BMW requests that personal data is returned to BMW or a third party, the Supplier shall ensure that such transfer shall be made securely.
- 21.10 If requested by BMW the Supplier agrees to enter into a separate data processing agreement in addition to the terms set out in this Agreement.

22. VARIATION

No amendment or modification of this Agreement shall be effective unless the same shall be in writing and signed by both parties. No notice to or demand on the Supplier in any event, case or occurrence, shall of itself entitle the Supplier to any other or further notice or demand in any similar or other circumstances.

23. SEVERABILITY

If any provision hereof or any part of any provision is or is held by any competent court or authority to be invalid or unenforceable, such provision or part of any provision will be deemed severed and omitted, the remaining portions hereof continuing in full force and effect. If required, BMW and the Supplier shall replace such invalid or unenforceable provision with a valid

and enforceable provision having similar economic consequences, provided that the content of the Agreement is not materially altered.

24. WAIVER

No waiver by either party shall be effective unless it is made in writing. No failure or delay on the part of either party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

25. RIGHT TO AUDIT

The Supplier agrees to permit BMW or its representatives to inspect all documents, instruments, books and records relating to the Agreement or the Goods and/or Services which are the subject of this Agreement during regular business hours upon forty eight (48) hours notice. The Supplier agrees to maintain all such records for at least ten (10) years after the last delivery of the Goods and/or Services to BMW, unless otherwise agreed or unless a longer period is otherwise required by law.

26. SUPPLIER STATUS

- 26.1 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise any party to act as an agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way, including but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any other right or power.
- 26.2 The Supplier acknowledges that third parties engaged by BMW for planning and/or monitoring tasks are not authorised to represent BMW. In particular they shall not be authorised to extend delivery dates or to approve invoices, day work costs or quantity surveys.
- 26.3 Nothing in this Agreement shall constitute an exclusive arrangement between the parties for the provision of the Goods and/or Services.

27. THIRD PARTY RIGHTS

Save for Affiliates of BMW or as otherwise expressly provided in this Agreement, nothing in this Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

28. NOTICES

Any proposal, acceptance, agreement, authority, permission or notice ("**Notice**") referred to in the Agreement shall be in writing and signed. The notice or demand served by first class post shall be deemed duly served forty-eight hours after posting and a notice or demand sent as an attachment to an email or facsimile transmission shall be deemed to have been served at the time of transmission. In proving service of the same it will be sufficient to prove in the case of a letter, that such letter was properly stamped or franked first class, addressed and placed in the post, and in the case of an email or facsimile transmission, that such email or facsimile was duly transmitted and a hard copy sent by first class post.

29. FORCE MAJEURE

- 29.1 Either party may suspend performance of the Agreement during the occurrence of an Excusable Delay, which shall mean any delay not occasioned by the fault or negligence of the delayed party and which results from (without limitation) Acts of God (other than one arising from or related to directly or indirectly from volcanic ash) or public enemy, restrictions, prohibitions, priorities or allocations imposed by governmental authority, embargoes, fires, floods, typhoons, earthquakes, epidemics, unusual severe weather and delays of similar natural or governmental causes, or any other circumstances beyond such party's reasonable control. Nothing contained in this Clause 29 shall limit either party's rights under the Agreement. Further, BMW shall be entitled to obtain the Goods



and/or Services covered by the Agreement from other sources for the duration of the Supplier's inability to perform due to Excusable Delay and to reduce without any obligation to the Supplier, the quantity of the Goods and/or Services specified in the Purchase Order.

29.2 In the event that the Supplier discovers any fact which may, or could with the passage of time, result in Excusable Delay, the Supplier will immediately advise BMW of such fact and use its best endeavours to take all measures and precautions to reduce the effect of the Excusable Delay. In addition, at any time, at BMW's request, the Supplier will furnish to BMW such information as BMW may request concerning matters which could result in delays and assurances or contingency plans with respect to those matters. The Supplier will notify BMW immediately of any actual or potential labour dispute delaying or threatening to delay timely performance of the Agreement and will include all relevant information.

30. ENVIRONMENT

30.1 While performing the Services under this Agreement, the Supplier 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.

30.2 The Supplier shall within 28 days of demand furnish BMW with any and all information required for the quantitative assessment of the Supplier's resource efficiency relating to the total annual scope of Purchase Orders placed by and supplied to BMW (eg, total energy consumption; CO2 emissions; total water consumption; process waste water; metric tons of waste; VOC emissions). In addition, the Supplier shall provide on BMW's request data for a lifecycle 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 (Verband der Automobilindustrie – VDA).

30.3 The Supplier shall comply with the requirements stated in BMW Group Standard 93008-1 to 4 "Substances of concern throughout the entire life cycle of the Goods. The Supplier 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 (eg, EC Regulation EC/1907/2006; hereinafter: REACH). In the event of a chemical substance being imported, the Supplier assumes responsibility for all obligations such as named above and all associated expenditure. Furthermore, the Supplier will promptly upon request furnish BMW with any and all information about goods and substances contained therein, even if such goods have already been delivered, and such declarations and confirmations required by BMW to fully and timely fulfil its statutory information duties (eg, under Art.33 of REACH).

30.4 The Supplier shall ensure that all and any of its sub-contractors are contractually bound to comply with the terms of this Clause 30.

31. SOCIAL RESPONSIBILITY

31.1 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 its suppliers. BMW's and the Supplier's aim shall be to comply with the Directives of the UN Initiative Global Compact (Davos, 01/99) and the principles and rights set out and approved by the International Labour Organisation (ILO) in its "Declaration on fundamental principles and rights at work" (Geneva 06/08). The following principles are of particular importance: preservation of human dignity and human rights, ban on child and forced labour;

- implementation of equal opportunities and family-friendly policies;
- no discrimination on the basis of religion, origin, nationality, age, handicap, marital status, sexual orientation, political affiliation, membership of a trade union or the like and gender and veteran status;
- the protection of indigenous rights;
- ban on bribery and blackmail;
- maintenance of adequate social working conditions;

- protection from individual arbitrary personnel measures;
- provision of conditions that enable employees to enjoy a reasonable standard of living;
- positive and negative freedom of association;
- maintenance of employability by basic and advanced training;
- provision of information to personnel on the objectives, economic situation and current topics that affect the Supplier and the personnel; responsible action by all personnel in relation to the environment;
- Compliance with industrial health and safety standards;
- Compliance with current laws and regulations.

The Supplier's aim shall be that all and any of its sub-contractors are contractually bound to comply with the terms of this Clause 31.

32. TRADEMARKS

In this Clause and hereafter the definition below applies:

"Trademark" means any of the trademarks owned by or licensed to BMW and/or BMW's ultimate parent company Bayerische Motoren Werke Aktiengesellschaft, Munich and/or any other of their Affiliates.

- 32.1 Nothing contained in this Agreement shall be construed as conferring on the Supplier any right to use in advertising, publication or otherwise, any Trademark or derivative hereof.
- 32.2 Except as expressly set out herein, no usage or assignment of or license under any Intellectual Property Right is granted, conferred, assigned, or transferred by one party to the other.
- 32.3 Neither BMW nor the Supplier shall use the other's name for any commercial purpose without the other's prior written consent. Neither party shall give any press release or press interview on any matter pertaining to the other party without first obtaining the written consent of the other party.

33. ENTIRE AGREEMENT

This Agreement embodies and sets out the entire agreement and understanding of the parties and supersedes all prior oral or written representations, undertakings, agreements, understandings or arrangements relating to the subject matter of this Agreement, except that nothing in this Agreement shall limit or exclude any liability for fraud or negligent misrepresentation. Any additional or different terms and conditions are hereby expressly excluded and shall not form part of the Agreement.

34. COSTS

Each of the parties hereto shall be responsible for its respective legal and other costs incurred in relation to the preparation of this Agreement.

35. ASSIGNMENT AND SUB-CONTRACTING

35.1 This Agreement is personal to the Supplier. The Supplier shall not assign, novate, transfer, charge or otherwise deal with any or all of its rights and/or obligations under or pursuant to this Agreement, or sub-contract the performance of any of its obligations under or pursuant to this agreement without the prior written consent of BMW. Where the Supplier appoints sub-contractors or agents it shall continue to be fully liable and accountable to BMW and be liable for all acts, omissions and negligence of its sub-contractors and agents.



- 35.2 The Supplier shall make full disclosure to BMW of any conflict of interest it may have in relation to its selection of any proposed sub-contractor and in all cases, the Supplier shall check with BMW as to the status of BMW's own supplier list, and use BMW preferred suppliers when required by BMW.

36. GOVERNING LAW / PLACE OF VENUE AND JURISDICTION

- 36.1 This Agreement shall be governed by the laws of England and Wales, and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.
- 36.2 In the event of any dispute between BMW and the Supplier arising from or in connection, or related to this agreement or its performance, construction or interpretation, the parties shall endeavour to resolve it by agreement.
- 36.3 In the event that a dispute arises between the parties with regard to the Services, the Supplier shall not be entitled to withhold its Services pending the resolution of such dispute and shall continue to perform its obligations in accordance with the terms of this Agreement.
- 36.4 The parties hereby submit any dispute arising from in connection with, or related to this Agreement or its enforceability to the exclusive jurisdiction of the Courts of England and Wales.