

# **BMW Mexico: Special Terms and Conditions for the provision of marketing services (03/2016)**

## **1. Scope and contract components**

- 1.1 The Special Terms and Conditions ("STC") set out below shall apply to orders for the provision of marketing services placed by BMW Mexico.
- 1.2 The company within BMW Mexico which actually places the order for the marketing services shall, hereinafter, be known as "**BMW**". The other party to the contract shall hereinafter be known as the "**Contractor**".
- 1.3 These STC shall apply in a supplementary manner to the latest version of the General Contract Terms ("GTC") for purchases of Goods and Services by BMW Mexico (Indirect Purchasing). The GTC shall apply unless these STC contain something specific or contrary to them.
- 1.4 In the event of a conflict between the GTC and these STC, these STC shall take precedence over the GTC.

## **2. Additional duties**

In addition to the duties set out in Section 3 of the GTC, the Contractor is bounded to carry out the following actions at no additional remuneration:

- 2.1 The Contractor undertakes to familiarise itself with the BMW Group design principles (BMW Corporate Identity Programme) with the BMW specialist department for corporate identity & design and to make those principles the basis for all work.
- 2.2 The following supplement applies to Section 3.3 of the GTC: If the Contractor intends to engage sub-contractors for services to prepare print media (such as typesetting, reproduction, printing, etc.) it must first confirm with the relevant purchasing department whether these sub-contractors have already concluded relevant Framework Agreement for carrying out such work. If requested to do so by BMW, the Contractor shall then engage a BMW Framework Agreement partner for said work.
- 2.3 The Contractor undertakes to use GWA (Gesamtverband Kommunikationsagenturen) or CMC (Commercial Movie Calculator, [www.cmc-home.eu](http://www.cmc-home.eu)) if it is engaged for film projects. The Contractor shall ensure that it obtains the required licences.
- 2.4 All documents, advertising material and other products which the Contractor receives in relation to this contract or are created by it for BMW shall remain or become the property of BMW at the time of its creation (in accordance with article 2284 of the Federal Civil Code and its corollaries in each of the civil codes for the states of the United Mexican States).

The Contractor shall be responsible for handling said property of BMW with care and shall protect it against access by third parties and, if applicable, shall inform BMW thereof without any delay.

At BMW's request, the Contractor shall keep documents and data carriers relating to the joint contract relationship at its premises free of charge. The Contractor must keep other items safe at BMW's request only if BMW undertakes to pay any storage costs. Unless agreed otherwise, these items shall be returned at the latest two years after the conclusion of the Project or the Contractor may, by agreement with and at the expense of BMW, destroy said items.

- 2.5 The Contractor shall be liable for its work and its results and that their intended use do not contravene applicable laws and regulations, including but not limited to competition law and the laws regarding advertising; it shall ensure that this is the case (if necessary by means of legal advice) and shall point out any risks in good time. Any costs incurred by this shall be deemed to have been settled by the agreed remuneration.

The Contractor shall indemnify BMW from any compensation claims by third parties in this respect.

- 2.6 The Contractor shall not be liable for factual statements about products of BMW, which were dictated by BMW.
- 2.7 The Contractor must obtain any official permits or consents from third parties required for the fulfilment of the contract at its own expense and must provide BMW with proof thereof. The Contractor shall indemnify BMW from any compensation claims, contractual or statutory claims made by third parties.

## **3. Taxes and charges for engaging artists**

- 3.1 The social security charges for artists shall be paid by BMW in conformity with the applicable legislation in Mexico.
- 3.2 The other statutory charges and taxes arising in connection with the commissioning of artists shall be paid by BMW, even if they are actually charged at a later date, as long as they were agreed in the order. Otherwise the Contractor shall pay the other statutory charges and taxes.
- 3.3 The Contractor shall be responsible for proper processing in compliance with all applicable statutory regulations. In particular,
  - The applicable income tax pursuant to the Income Tax Law of Mexico and further applicable tax provisions to be calculated by the



Contractor on the artist's fee, the basis for the calculation and the amount of tax incurred for each artists shall be reported to BMW without delay and paid by BMW to the relevant tax authority, if there is no notice of exemption from that office for the artist commissioned (cf. leaflet "Information Withholding Tax") ("BMW Merkblatt Abzugssteuer"),

#### 4. Remuneration

Section 9 of the GTC shall be supplemented as follows:

- 4.1 If the separate charging of travelling expenses has been expressly agreed, these shall be reimbursed pursuant to the "BMW travelling expenses information sheet for BMW AG contractors" („BMW Merkblatt Reisekosten für Fremdarbeitskräfte“) and in compliance with the fiscal regulations as long as BMW agreed to the trip in writing in advance. Hospitality expenses shall not be reimbursed by BMW. The information sheet has been published on the BMW Partner Portal of the BMW Group at <https://b2b.bmw.com> → Public Area → Links → Plants → San Luis Potosi Plant → Purchasing Conditions.
- 4.2 All benefits obtained from third parties for the provision of services for this contract, such as discounts, bonuses, commissions, reductions, etc. must be transferred to BMW by the Contractor. The Contractor shall also oblige its own employees (including freelancers) to comply with this obligation and shall be liable for positive knowledge or negligent lack of knowledge of the acceptance of benefits by its employees.
- 4.3 BMW may - at any time up until four years after the final payment - demand that the Contractor render account of the execution of a mandate and present the original receipts. This provision shall endure beyond termination of this Agreement.

#### 5. Intellectual property and utility rights

Section 13 of the GTC shall apply with the following amendments:

Section 13.3 of the GTC shall be replaced by the following Section 5.1:

- 5.1 The Contractor hereby transfers all rights of use of copyrights and exploitation rights, commercial intellectual property rights and legal positions similar to them to the contractual services, ideas, drafts and other results created under this contract to BMW without any further conditions and at no additional remuneration at the time of their creation.

The Contractor shall ensure and bear liability for ensuring that all rights of use of copyright and exploitation rights, commercial intellectual property rights and legal positions similar to them of third parties to the contractual services, ideas, drafts and other results created under this contract shall be transferred to BMW without any further conditions and at no additional remuneration at the time of their creation.

BMW shall be exclusively entitled to these rights with no geographical, temporal or content restrictions and they shall comprise the utility, performance, exhibition, broadcast / transmission, distribution, reproduction, editing, amendment and transfer rights (to third parties) and the right to save the results in any form.

The Contractor shall indemnify BMW from any compensation claims by third parties in this respect.

The following supplement applies to Section 13 of the GTC:

- 5.2 The Contractor shall ensure that the persons who are entitled to be named as the copyright author of the goods / services created under this contract shall waive these naming rights for the usage in any specific case. The Contractor shall indemnify BMW from any claims by third parties in this respect.