

BMW Group International Terms and Conditions for the Purchase of Production Materials and Automotive Components (IPC)

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Definitions:

Affiliated Company

with regard to a party, 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 control will be assumed if at least 50 percent of the shares or voting rights are held.

BMW

Bayerische Motoren Werke Aktiengesellschaft, Munich, Germany.

BMW Group

BMW and its Affiliated Companies.

BMW Group Standards (GS)

general rules and requirements of BMW Group.

Buyer

the party which either submits a Purchase Order, in whose name a Purchase Order is placed, or which closes a Supply Contract as "Buyer".

Competitor

a company is a competitor of a party if (a) such company offers Goods or services which from the view of the typical customer, are interchangeable with the Goods or services of such party (i.e. including comparable in terms of characteristics, price, and purpose), or (b) based upon concrete indications, it appears likely that within a short time such Goods or services will be offered by such company.

Delivery Schedule

an instruction issued by Buyer to Seller specifying on the basis of the Supply Contract the quantity of Goods to be delivered, delivery location, the date, and where relevant, the time of delivery of Goods.

EDI

Electronic Data Interchange, i.e. the transmission of data between the parties via electronic communication links or via other machine-readable data media.

Goods

any production materials, automotive components, software, and other assets used for Buyer's serial production or as spare parts, specified in the Purchase Order, as well as Tooling and related services.

Incoterms

the commercial trade terms published by the International Chamber of Commerce and named "Incoterms 2010".

Intellectual Property Rights

all patents, utility models, design rights, trademarks, product designations, copyrights, property rights related to copyrights (including the right to databases), other industrial or intellectual property rights irrespective of whether such have been registered or registration has been applied for (including the right to apply for one of the aforementioned property rights), and Trade Secret rights including know-how.

In writing or written

also includes in text form, e.g., via fax, email or electronic data interchange (EDI), unless written form (signed version) is explicitly required.

ISO/IEC

International Organization for Standardization and International Electrotechnical Commission, respectively.

Long-term Supply Contract

means a framework agreement that grants the companies of the BMW Group the right to issue Purchase Orders for delivery of Goods to the Seller, on an ongoing basis over the entire Project Period for consecutive periods of time (usually calendar years), at the agreed and mutually updated conditions over the Project Period (including prices, capacities and volume flexibilities) and thus close the Supply Contracts for the period and the conditions specified in the Purchase Order.

Project Period

unless agreed otherwise, the entire serial delivery period starting at SOP (Start of Production), via EOP (End of Production) to EOS (End of Service) respectively end of the delivery obligation of spare parts.

Purchase Order

any order for the delivery of Goods issued by Buyer to Seller for a specific period of time (usually one calendar year).

Self-billing Procedure

automatic billing method of Goods deliveries and services of the Seller to the Buyer.

Seller

the party who is obligated to deliver Goods to the Seller on the basis of a Supply Contract.

Subcontractor

third party engaged by the Seller within the framework of a Supply Contract (including Affiliated Companies) for whose actions the Seller is fully responsible.

Supply Contract

any contract normally concluded (a) by an order issued by the Buyer to the Seller on the basis of a Long-term Supply Contract or (b) by an explicit or implied acceptance by the Seller of an order issued by the Buyer and obliges the Buyer to deliver Goods, for the period agreed in the Supply Contract, to the company of the BMW Group that issued the order and concluded the Supply Contract as Buyer.

Tooling

production equipment, including but not limited to forging dies, testing and measuring equipment (e.g., gauges), matrices, models, samples, tools, devices, drawings and similar items required for the production and examination of Goods.

Trade Secrets

technical and commercial information that is not publicly known or not readily accessible and therefore of economic value and including information that is marked as Trade Secrets.

VDA

Verband der Automobilindustrie e. V. (German Association of the Automotive Industry), Berlin, Germany.

Workdays

All calendar days of the week except Sundays and holidays.

1. General

- 1.1** These BMW Group International Terms and Conditions for the Purchase of Production Materials and Automotive Components (hereinafter "**Purchase Terms and Conditions**") shall apply to the purchase of Goods for unrestricted worldwide use by BMW Group, including unrestricted worldwide distribution of Goods to third parties. Unless expressly provided otherwise in these Purchase Terms and Conditions, the relevant statutory rules of the applicable law according to Clause 22.1 shall apply.
- 1.2** Seller has read and understood these Purchase Terms and Conditions. Upon conclusion of a Supply Contract according to Clause 2.1, but at the latest upon delivery of the Goods by Seller, the Terms and Conditions are binding and authoritative.
- 1.3** To the extent that the following terms and conditions refer to internal documents/requirements of Buyer (e.g., "**BMW Group Standards**"), each of these are published on the BMW Group Partner Portal at <https://b2b.bmw.com> (hereinafter "**B2B-Portal**") /> Applications /> TERE (Technical Rules and Standards); upon request Buyer will provide them to Seller.
- 1.4** Seller shall provide its current supplier master data on the B2B-Portal under /> Applications /> Supplier data maintenance (hereinafter "**Supplier Data Base**") or in an application named by BMW, keep it up to date at all times and designate a responsible master administrator for this. Where Seller is obligated under these Purchase Terms and Conditions to submit certificates, declarations or other verifications, Seller shall submit each of these immediately and with current validity date to the Supplier Data Base.

Buyer's review of, or failure to request such certificate, declaration or other verification identified in these Purchase Terms and Conditions, shall not constitute a waiver by Buyer of any of Seller's obligations under these Purchase Terms and Conditions, nor shall such be construed as Buyer's consent to Seller's behavior.

- 1.5** Seller shall promptly and completely inform Buyer of name changes, changes in legal form, as well as of changes which are material for the supply relationship between Buyer and Seller and which pertain to Seller's participation, shareholder, or ownership structure; Seller shall inform Buyer of aforementioned changes under email address lieferantenstammdaten@bmw.de as well as the responsible purchase department(s).

To the extent permissible in accordance with applicable laws and contractual obligations, Seller shall inform the responsible purchasing department(s) in advance of any planned changes that are significant to the business relationship.

Among other things, a significant change for the supply relationship exists on the part of Seller in the event of a transfer of all or substantially all assets of Seller to another legal entity, a merger or split of Seller with or to another legal entity, the conclusion of a control or profit transfer agreement by Seller as the controlled company, or the acquisition of at least 30 percent of the voting rights of Seller's company by one or more purchasers acting jointly in one or more transactions.

2. Purchase Orders and Supply Contract

- 2.1** A Supply Contract is concluded between the parties if a company of the BMW Group, as Buyer, issues a Purchase Order for the delivery of Goods to Seller on the basis of a Long-term Supply Contract for a specific period of time (usually a calendar year).

If a company of the BMW Group, as Buyer, issues a Purchase Order to Seller for the delivery of Goods without an underlying Long-term Supply Contract, the Seller submits a written acceptance within fourteen (14) workdays of receipt of the Purchase Order. Notwithstanding the foregoing, any action taken by Seller to fulfil the Purchase Order shall constitute acceptance of this Purchase Order. If Seller refrains from submitting a written acceptance or does not begin to fulfill the Purchase Order within fourteen (14) workdays of its receipt, Buyer has the right, but not the obligation, to object the respective Purchase Order without Seller being entitled to raise any claims against Buyer.

- 2.2** Any terms and conditions in the Purchase Order, these Terms and Conditions (IPC) as well as the conditions of the Long-term Supply Contract shall apply to a Supply Contract. Any additional or deviating terms or supply conditions of Seller are expressly excluded and shall not be part of the Supply Contract, unless agreed otherwise by the parties in written form. In case of discrepancy or inconsistency between the Supply Contract and these terms and conditions or a Long-term Supply Contract, the Supply Contract shall prevail.

- 2.3** If Goods are ordered on the basis of a BMW part number, then such Goods shall comply with the applicable BMW drawings and additional documentation referenced in such drawings (including 3D-models, PRISMA metadata, office supplementary sheets, published technical product specifications) as well as the corresponding project specifications (Lastenhefte) and service level agreements (Leistungsschnittstellenvereinbarungen) in all particulars, unless otherwise agreed in writing with Buyer in a specific case.

If the aforementioned drawings, documentation, or project specifications (Lastenhefte) contain cross references to other documents without indication of an issue date, the version valid at the time of the most recent release of the referencing document shall apply, unless Buyer and Seller have reached a different, separate agreement hereto.

- 2.4** Buyer shall have the right to request changes with respect to the Goods including but not limited to specifications, drawings, designs, constructions as well as changes regarding date/time and place of delivery, packaging, quality, quantity and means of transportation. Such change requests shall consider Seller's reasonable interests. Seller is under a duty to suggest changes to Buyer, which Seller considers necessary or appropriate in view of revised statutory or other mandatory provisions or for other reasons. If a change results in an increase or a reduction of Seller's costs or in a potential move of the delivery date, Seller shall immediately inform Buyer and the parties shall agree on a reasonable adjustment of Seller's remuneration for which Buyer places a change order. The content of a change order shall be deemed to be agreed if Seller does not contradict the change order in writing within fourteen (14) days after its receipt.

In the event that any such change request results in an increase in Seller's stock, which is no longer usable by Buyer in serial production, Buyer will reimburse the costs Seller actually incurs in relation to

- finished and semi-finished products as well as corresponding raw materials, for which Delivery Schedules have been issued for a delivery date within one (1) month after receipt of Buyer's change request,

- finished and semi-finished products and corresponding raw materials which, upon Buyer's written request, are included in a buffer stock,

provided that in all cases Seller is unable to find an alternative use.

2.5 Seller shall not be entitled to carry out changes with respect to the Goods (including, but not limited to specifications, additional and functionalities not agreed upon, drawings, designs, software, constructions, production process, date/time and place of delivery, packaging, quality, quantity and means of transportation) without Buyer's prior written consent.

2.6 Unless otherwise provided in Clause 22.1 the substantive law is applicable to the Supply Contract, Buyer may terminate a Supply Contract for extraordinary reasons by written notice to Seller, if Seller:

- commits a breach of the Supply Contract, for which there is no remedy, or
- commits a breach of the Supply Contract, which is capable of remedy but fails to remedy the breach within thirty (30) days of a notice from Buyer specifying the breach and requesting it to be remedied, or
- violates applicable law, provided that a continuing collaboration is unreasonable for Buyer because of such violation, considering all circumstances and weighing the mutual interests of both Parties, or
- offered, promised or granted a benefit of any kind to another business representative (including but not limited to an employee of Buyer) or public official which could be suitable to unduly influence such representative in connection with the negotiation, decision-making process or performance of the Supply Contract.

If Buyer is entitled to terminate a Supply Contract in accordance with this Clause 2.6, then Buyer may terminate other contracts with Seller if a continuance of such other contract(s) would be unreasonable for Buyer.

Other or further termination rights of the parties, e.g., according to applicable statute, shall remain unaffected.

2.7 Buyer and Seller shall be entitled to extraordinarily terminate the respective Supply Contract by giving written notice, if there is a significant deterioration in the economic situation of the other contracting party, including if insolvency or over-indebtedness is imminent or the application for the opening of insolvency proceedings has been rejected or the opening of such proceedings has been refused.

2.8 Termination of any Supply Contract under this Clause 2 shall be without prejudice to the accrued rights and duties of the parties and shall not affect the applicability or further applicability of any provision which expressly or implicitly should apply following a termination.

2.9 The quantities stated in any requests for quotation and/or offers serve solely as non-binding orientation values, e.g., for the purpose of price calculations, and do not establish any obligation for Buyer or its Affiliated Companies to order or to call off such quantities. Delivery quotes set out in a Supply Contract, or any Purchase Order are in no way connected to quantities in requests for quotation and/or offers.

2.10 If it is agreed in the Supply Contract that price components for raw materials are remunerated based on independent, listed or markable raw material indices with agreement of a settlement model e.g., as a price adjustment clause (RIK), then the other price elements shall be considered and negotiated separately from the price elements for raw materials.

2.11 Seller shall not have any rights to refuse performance or rights of retention against a claim of the Buyer or to enforce a claim in connection with the Supply Contract of its own unless it is an undisputed or legally established claim of Seller. This shall apply in particular to Seller's obligation to supply, the fulfillment of which Seller shall not be entitled to refuse or suspend by reference to its own, unrecognized, and not legally established claim or ongoing negotiations with Buyer.

3. Delivery Times and Delay

3.1 Delivery dates and quantities shall be determined by the agreements in the Supply Contract, in the Purchase Order and/or Delivery Schedules. Seller accepts the condition that delivery times and quantities are of the essence for the contract fulfillment and therefore Buyer may reject and/or return at Seller's expense any delivery of Goods or part thereof received before or after the delivery date or in a different quantity than specified in the Purchase Order and/or Delivery Schedule. Seller shall bear the procurement risk along the supply chain, unless the parties have agreed otherwise.

- 3.2** Seller shall be bound to comply with any Delivery Schedule or any change thereto issued by Buyer, unless Seller notifies Buyer of his reasonable objection thereto in writing within the following periods:
- one (1) working day after receipt of the Delivery Schedule or change notification thereto, if the requirements or amendments therein are to come into effect within ten (10) working days (inclusive) after receipt of the Delivery Schedule or amendment thereto.
 - three (3) working days after receipt of the Delivery Schedule or change notification thereto, if the requirements or amendments therein are to come into effect eleven (11) working days to three (3) calendar months (inclusive) after receipt of the Delivery Schedule or amendment thereto.
 - ten (10) working days after receipt of the Delivery Schedule or change notification thereto, if the requirements or amendments therein are to come into effect more than three (3) calendar months after receipt of the Delivery Schedule or amendment thereto.
- 3.3** Where specified in the Supply Contract, in the Purchase Order and/or in the Delivery Schedules, Seller shall deliver Goods "**just-in-time**", that is, at an appointed time of delivery without delay immediately prior to the serial production, or "**just-in-sequence**", that is, in the correct, in the Delivery Schedule specified sequence of delivery.
- 3.4** Seller agrees to take all actions necessary and appropriate to ensure that the Goods reach Buyer as required under the relevant Supply Contract. Should concrete circumstances or events become known to Seller which will or could lead to non-compliance with a delivery date or delivery quantity (hereinafter "**Critical Supply Situation**"), Seller shall take all necessary and appropriate corrective measures and without undue delay inform Buyer. Upon request by BMW, Seller shall also inform BMW of abstract risks which could lead to a Critical Supply Situation and demonstrate protective and contingency plans.
- 3.5** If Seller breaches its delivery obligations, Buyer may claim compensation for resulting damage, including lost profit and lost contribution margins. This shall not apply if Seller is not responsible for the breach of the delivery obligation, but the substantive law applicable to the Supply Contract according to Clause 22.1 requires Seller's responsibility. Buyer can only claim compensation for lost profit if the delivery date has been exceeded by more than ten (10) days or if Seller breached an obligation according to Clause 3.4.
- 3.6** A party shall be released from its obligation to perform as long as and to the extent that it is unable to provide the respective service as a result of force majeure. Force majeure is defined as an event beyond reasonable control of the incapable party, and which cannot be averted and foreseen even if utmost care is taken. Obligations according to Clause 3.4 shall remain unaffected.
- 3.7** If the parties have agreed that Seller should maintain a buffer stock, or in case of a Critical Supply Situation according to Clause 3.4, Seller shall notify Buyer of the current inventory level at monthly intervals (or within another reasonable interval to be determined by Buyer).

4. Packaging, Transport

- 4.1** Goods shall be suitably, carefully and appropriately packed in accordance with the "BMW Group Packaging Manual" (hereinafter "**Packaging Manual**") and in accordance with the instructions of Buyer's packaging department. Seller shall comprehensively provide the packaging data with regard to all required and necessary information in a form defined by Buyer. In the event that the packaging data provided by Seller contains incorrect or incomplete information, Seller shall reimburse Buyer for any costs incurred by Buyer as a result thereof. The Packaging Manual is available under B2B-Portal /> Departments /> Logistics /> Packaging, or Buyer will send it upon request.

Further, the "Logistics Requirements for Suppliers of BMW Group" apply; these are available under B2B-Portal /> Departments /> Logistics; upon request, these will also be sent by Buyer.

- 4.2** Delivery documents must be made in writing. With regard to documents accompanying Goods (physical or electronic documents), Seller shall comply with Buyer's EDI implementation guidelines and the Packaging Manual. Buyer's EDI implementation guidelines are available under B2B-Portal /> Departments /> Logistics /> Electronic Exchange of Logistical Data, or these will be sent by Buyer upon request.
- 4.3** Seller shall execute the shipping notification (notification of readiness for dispatch) following the VDA Standard 4933 in accordance with Buyer's EDI implementation guidelines over the BMW Connected Supply Chain (CSC) Portal under B2B-Portal /> Departments /> Logistics, unless otherwise agreed.

If an Incoterm other than FCA is agreed between the parties, then Seller is obligated to communicate the shipping notification information following the VDA Standard 4933 in addition to the shipping information following VDA 4945/IFTSTA in accordance with Buyer's EDI implementation guidelines.

- 4.4** The following Clauses 4.5 to 4.8 apply to Supply Contracts under Incoterms "FCA" or "EXW" only.
- 4.5** All shipments shall be handled by a carrier contracted by Buyer and specified to Seller. Buyer reserves the right to choose the mode of transport.
- a) In order to ensure compliance with the agreed delivery date Seller has to calculate the day of the planned pick-up of the Goods considering the lead-time specified by Buyer separately. Lead-time is defined as the time from pick-up of the Goods by the carrier at the agreed location up to drop-off at Buyer's specified place of delivery.
- b) Seller shall notify the carrier of the Goods' readiness for dispatch by 12 noon at the latest on the day before the planned pick-up of the Goods. The notification of dispatch readiness shall be made in writing on the basis of the carrier's formats, templates, procedures and communication media, which have been agreed to with Buyer. The notification of the readiness for dispatch shall contain the following data:
- shipping location and specific loading point,
 - quantity, type and BMW identification numbers of all loading units,
 - gross weight and dimensions per loading unit, including pile factor (in case stackability is restricted or not possible) particularly for alternative and cardboard packaging,
 - pickup day,
 - agreed date and time of delivery to Buyer,
 - Buyer's place of delivery and unloading point (including address and BMW unloading point number) and plant code,
 - information in the case of dangerous Goods, and
 - information in the case of customs Goods.
- c) Seller shall grant access to the shipment area (ramps/loading area) on its business premises to the carrier, provided that the carrier complies with the statutory and other provisions (e.g., rest periods, presence of safety gear) and it does not conflict with Seller's Trade Secrets.
- d) In the event that the notification of readiness for dispatch completed by Seller contains incorrect or incomplete information, or Seller otherwise violates its duties in the scope of the transport process, any additional costs incurred shall be borne by Seller. Insofar as the carrier has legal claims for reimbursement of failure freight and/or stall fee, Seller shall reimburse the carrier directly for these charges.
- 4.6** For domestic German shipments, courier, express and parcel shipments (CEP-shipments) shall be carried out by CEP-service providers contracted by Buyer. Outside Germany all domestic and international CEP-shipments shall be carried out solely by CEP-service providers to which Buyer agrees.
- 4.7** Special transports at the expense of Buyer are only permitted upon special request of Buyer's material planning departments.
- 4.8** Buyer shall send empty containers and pallets at its own expense unless otherwise agreed. Generally, a pallet exchange does not occur.

5. Transfer of Risk

Unless otherwise agreed between the parties in writing, the risk of damage or loss to the Goods shall transfer to Buyer in accordance with the Incoterm agreed in the Supply Contract. Unless otherwise agreed between Buyer and Seller, the Goods shall be deemed to be sold "FCA", with named place being the premises of Seller where the Goods are ready for dispatch. Seller shall not change any place named in connection with any Incoterm without Buyer's prior written consent.

6. Notice of Defects

Buyer shall conduct an inspection of incoming Goods only with respect to externally visible transport damages, the quantity of containers according to the loading list as well as regarding identity deviations of the delivered Goods from the Goods specified in the shipping documents and notify Seller of any such defects without undue delay. Moreover, Buyer shall conduct an inspection of incoming Goods in compliance with the technical specifications IATF 16949 "Quality management system requirements for automotive production and relevant service parts organizations (IATF 16949:2016)"

(hereinafter "IATF 16949") and notify of any defects of the delivery once such has been discovered by Buyer in the ordinary course of its business.

7. Invoicing and Payment

7.1 The exchange of billing documents, both for the Self-billing Procedure (Clause 7.2) and for the invoicing procedure (Clause 7.3), is done electronically via BMW eInvoicing, available under B2B-Portal /> Applications /> eDocument Portal eInvoice.

7.2 The invoicing of Seller shall be carried out in the Self-billing Procedure where permitted by law. Sending separate invoices to Buyer is not necessary since invoicing will be done based on the receipt of Goods and the terms agreed in the Supply Contract.

If Seller is invoiced not by means of a self-billed invoice, Seller shall submit a commercial invoice using the invoice procedure. For customs purposes regarding import deliveries, Seller shall attach a commercial invoice in English, in duplicate, to the shipping documents. Such commercial invoice shall include the required data as set out in Clauses 7.3 and 8.

7.3 The original invoice shall be sent to Buyer's invoice verification and accounts payable department or (if specified on the relevant Purchase Order) to its billing address. Such invoices shall comply with the requirements of the national law stated in Clause 22.1, including, but not limited to, the requirements of the applicable taxation legislation. The invoices shall include the following data:

- Buyer's (service recipient's) full corporate name and full address of the registered office;
- in case of intra-European (EU) deliveries:
 - VAT ID of Buyer
 - VAT ID of Seller;
- in case of billing without VAT, the reason for the tax exemption and the reference to the corresponding regulation of tax legislation;
- origin of the Goods;
- for all invoices showing foreign tax or for deliveries outside Germany, the legal billing requirements of the respective country shall be implemented (e.g., indication of tax amount and exchange rate in local currency, etc.);
- supplier number of the invoicing party assigned by Buyer (8 digits) and, if otherwise stated, the indication in whose name and on whose behalf as well as tax number the invoice is issued. If the invoicing party acts in its own name, the order shall also be issued to it (invoicing party = contracting party);
- supplier number of the Seller/contractor assigned by Buyer (8 digits) and/or supplier number of the recipient of payment assigned by Buyer (8 digits);
- Buyer's Purchase Order number;
- Buyer's part number;
- Seller's delivery note number;
- date of shipment of the Goods (explicitly stated on the invoice), delivery location / unloading point;
- in case of re-delivery of a prior delivery to Buyer: Delivery note number indicated by Buyer with respect to the said prior delivery;
- For tools:
 - tool location including full address (a separate invoice is required for each tool location country);
 - it shall be stated whether it is an acquisition of property, a tool cost sharing or a right of use.

Invoices which fail to meet the requirements of this Clause 7.3 may be rejected by Buyer. Seller will be notified; costs arising therefrom will be invoiced to Seller. In such case the term allowed for payment shall begin on the day of receipt of the new, due and proper invoice, which meets the requirements of Clause 7.3.

7.4 Any change of (a) the recipient of payment, (b) the invoicing party or (c) the Purchase Order recipient requires Buyer's prior written consent. Any change in the flow of Goods/flow of invoices from the place of origin of the Goods to Buyer has to be communicated in writing to Buyer in advance. Costs resulting from not meeting the requirements of this Clause 7.4 shall be borne by Seller.

7.5 Payment of Goods delivered, or services performed according to contract will be made within the payment period agreed in the Supply Contract or in the Purchase Order:

- a) If the invoicing is done per self-billed invoice in accordance with Clause 7.2, then the receipt of the Goods at the demand location or the acceptance with confirmation of performance will be decisive for calculating the start of the payment period.

- b) If the invoicing is not done per self-billed invoice, then the receipt of the Goods at the demand location or the acceptance with confirmation of performance, as well as in each case the receipt of a proper, auditable invoice which corresponds to the requirements of Buyer in accordance with Clause 7.3, will be decisive for calculating the start of the payment period.
- c) For the calculation of the payment period for a service which was performed prior to the due date, such service will count as performed on the due date which was agreed.
- 7.6** The mode of payment will be at Buyer's option, either bank transfer or check. Seller 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. The Buyer is authorized to settle Seller receivables in another currency other than that of the Purchase Order currency if Seller's account provably does not enable payment in the currency of the Purchase Order. The conversion rate in such case will be that which is effective on the payment day.
- 7.7** Where delivery is not made in accordance with the Supply Contract, Buyer shall be entitled to withhold a proportional amount of the price until Seller has fulfilled its obligations in full.
- 7.8** Seller may not assign its claims or receivables hereunder without the prior written consent of Buyer.
- 7.9** Payment by Buyer for any Goods neither indicates nor constitutes acceptance of such Goods.
- 7.10** Buyer receivables which arise from these Purchase Terms and Conditions, or which are in connection with such, are immediately due unless otherwise agreed in an individual case.
- 7.11** Buyer shall be entitled to offset its claims against receivables of Seller and also receivables that are assigned from Seller to any third party. Buyer may convert its receivables at the day rate of the offset to the currency of Seller's receivable. In addition, Buyer is entitled to offset its receivables against Seller's claims against any of the following companies:
- BMW AG,
 - BMW Fahrzeugtechnik GmbH,
 - BMW Hams Hall Motoren GmbH,
 - BMW M GmbH,
 - 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.,
 - BMW SLP S.A. de C.V. (Mexico),
 - BMW Brilliance Automotive Ltd.,
 - BMW Mobility Development Center s.r.o.,
 - BMW Manufacturing Hungary Kft. and
 - BMW DO BRASIL LTDA
 - BMW OF NORTH AMERICA, LLC.

Moreover, Buyer is entitled to offset its claims against Seller's claims, also regarding receivables to which any of the above-named companies are entitled to against Seller.

8. Customs, Conformity, Origin and Export Control and Supply Chain Security

- 8.1** For customs purposes, Seller shall attach a complete commercial invoice according to applicable legal requirements, which shall include information on the description of the Goods, customs tariff number and origin, in English and in duplicate to the shipping documents. Any deviation from this procedure is only permitted subject to Buyer's prior written consent.
- a) For deliveries incurring customs duties, the invoice shall additionally specify as separate items:
- costs not included in the price (such as commissions, broker fees, license costs, Tooling costs),
 - costs included in the price (such as cost of assembly and freight cost),
 - value of repairs carried out according to costs of materials and wages and
 - value of components contributed by Buyer (Beistellungen) related to the Goods delivered.

- b) Even if deliveries are made free of charge, an indication of value is still required with a note "For Customs Purposes Only", which should reflect usual market price. Either the invoice or the delivery note shall include the reason that the delivery is made free of charge (e.g., free of charge sample deliveries).
- c) Should further official documents or documents of accredited inspection bodies (e.g., Partner Government Agency, CCC or InMetro certification) be required for the intended use of the Goods as per Buyer's specifications (including the project specifications) in the case of imports or exports, for the type approval or for the proof of product conformity, Seller shall at its own cost procure such documents for Buyer without delay and make them available to Buyer via the transmissions system prescribed by Buyer (e.g., post, email, exchange server, IT system).

8.2 Seller shall make a binding communication to Buyer of the non-preferential and preferential origin of the Goods as well as any modification thereof by either:

- using the BMW Group application Central Supplier Solicitation Tool (CALLISTO) or other applications made available via the B2B-Portal and submitting the required origin data electronically within fourteen (14) days of the receipt of Buyer's request, or
- in exceptional cases and after written consent by Buyer, communicating the origin data in written form within fourteen (14) days after receipt of Buyer's request but at the latest by the time of the first delivery of the Goods. The written form is maintained if an authorized representative of Seller signed by hand in the original or, if permitted by the respective agreements of origin, Seller sends the origin data to Buyer by email or electronically via the respective EDI interface.

Without prior written approval from Buyer, origin declarations printed upon the business forms of Seller will not be recognized by Buyer, unless required by law.

If Seller supplies Goods, which may be granted preferential treatment in the import country, Seller shall attach a suitable proof of origin to that shipment (e.g., EUR 1, declaration of origin). Such proof is required with every such shipment in a legal format accepted by the customs authority of the country of import.

Insofar as the respective preferential agreement offers the possibility of issuing proof of origin for multiple shipments, this shall be transmitted by Seller as described in this section. Seller is obliged to obtain the necessary registrations or permits (e.g., from customs authorities) on its own responsibility.

If proof of origin is required by virtue of other local import rules in the country of import, Seller shall likewise provide Buyer with such proof.

8.3 Seller shall provide Buyer with all such support as may be necessary to enable Buyer to reduce or minimize its obligation to pay customs duties. Seller shall examine existing customs suspensions or punitive tariffs (e.g., "exclusions" under US law) and notify Buyer. If these customs suspensions are applicable, they shall be applied for. Upon Buyer's request, Seller commits to implement, particularly in the EU, customs procedures with commercial impact pursuant to Art. 210 of regulation (EU) No. 952/2013 (European Customs Code), to carry out Goods origin investigations for his Goods and to obtain appropriate preliminary evidence in its supply chain (in UK: GBEORI Statement on Origin for multiple shipment (SoO fmS) Callisto) or submit declarations (affidavits) pursuant to customs rules of third countries in close coordination with Buyer. If Seller participates in an US Foreign Trade Zone, MX IMMEX or comparable program (hereinafter "**Programs**"), then Seller undertakes towards Buyer that it will comply with all applicable legal standards and regulations in connection with such Programs, as well as timely and in correct form, and with complete and correct content, provide Buyer with all necessary information for its compliance with its duties under such Programs.

In addition, Seller shall inform Buyer in writing of applicable anti-dumping measures (e.g., for aluminum, steel) and punitive tariffs on imports into the corresponding importing countries.

8.4 For any and all questions and instructions arising out of or required in connection with customs and declarations of origin, Seller shall contact Buyer's respective customs department.

Unless otherwise agreed, customs clearance in the country of export shall be the responsibility of Seller and customs clearance in the country of import shall be the responsibility of Buyer. If Seller assumes responsibility for customs clearance in the country of import without Buyer's prior written approval, Seller shall bear the costs of such clearance.

8.5 Seller shall ensure supply chain security and observe legal requirements. Seller shall, upon Buyer's request, provide reasonable evidence such as certificates or declarations (for example in the AEO security statement, explanations in the scope of C-TPAT or similar programs), to support Buyer in official audits and ensure a comparable standard of care towards Seller's business partners.

If Seller is supplying a production plant or logistics facility of Buyer from a dispatch location or via an airport which is located in a member state of the European Union by air freight (also as a substitute for a standard sea freight process), Seller shall hand over the Goods to a 'regulated agent' in the sense of Art. 3 Para. 26 Regulation (EC) No. 300/2008, assigned by Buyer in such condition that the Goods can be transported according to Annex 6.1.1. and Annex 6.3.2. of Regulation (EU) No. 1998/2015 on a passenger plane without further security checks as according to Annex 6.2 of Regulation (EU) No. 1998/2015. If the dispatch location of Seller is certified as 'known sender' in the sense of Art. 3 Sec. 27 Regulation (EC) No. 300/2008 or as 'regulated agent' in the sense of Art. 3 Sec. 26 of Regulation (EC) No. 300/2008, Seller shall inform Buyer about this fact. Seller shall notify BMW (Purchasing) of any foreseeable changes or threats to this status without undue delay.

8.6 Seller shall inform BMW

- of any possible export restrictions applicable to the Goods and technologies (e.g., registrations in accordance with the Dual-Use Regulation or comparable regulations),
- if and to the extent the Goods and technologies are subject to any export/re-export license under US law/US regulations, and
- of the relevant classification number applicable (e.g., ECCN - Export Control Classification Number for US products, "AL-Number" for Goods and technologies listed in the German Export Control List, the "Dual-Use-Number" for Goods and technologies in accordance with the Dual-Use Regulation, etc.), as well as
- of any possible exemptions for the Goods and technologies.

Seller shall provide the aforementioned notices and information directly to the BMW department of customs and export control (contact persons see under B2B-Portal /> Departments /> Finance /> Export control). Upon Seller's request, Buyer will provide Seller with the required declarations/notifications.

9. Quality

9.1 Seller shall be certified in and compliant with the latest edition of IATF 16949; the certification has to be evidenced to Buyer through submission of a respective certificate. Buyer and Seller may agree in writing on variations of the requirements set out in Sentence 1 above.

9.2 A production process and product approval of the series process (hereinafter "**PPA-Procedure**") shall be successfully completed by Seller before Goods are supplied:

- for the first time or
- under a new part number or
- after any process modification.

For the purposes of this Clause 9, a PPA-Procedure is a performance test of Seller's manufacturing process, including its production plants, equipment and machines and its production logistics processes, under serial conditions and according to Buyer's requirements, to prove that Seller is able to produce the required quantity and quality of Goods with the plant, personnel, and machine capacity.

Seller will use the PPA-Procedure to produce initial samples of the Goods. Seller will inspect initial samples in accordance with the VDA publication "Quality Management in the Automotive Industry, Volume 2: Quality Assurance for Supplies", in its version valid at such time.

Further, the BMW Group Standards GS 98001 "Process series", GS 90018-1 "Requalification of product and process at suppliers – General specifications" and GS 90018-2 "Requalification of product and process at suppliers – Process, checklist" apply. Seller is particularly obligated to conduct an unaccompanied requalification at least every twelve (12) months after completion of the PPA-Procedure.

9.3 In case of a conflict between the Supply Contract and IATF 16949 or the abovementioned VDA publication, the Supply Contract shall prevail.

9.4 In the event that any authorities responsible for vehicle safety standards demand inspection of the production process and disclosure of the test records, Seller shall, upon request of Buyer, give such authorities access to such records and provide them with any support as may reasonably be expected.

- 9.5** Seller shall comply with the VDA process description "Special Characteristics (SC)". Special Characteristics are product features or production process parameters which could have effects on the safety (SC safety requirements) or compliance with government regulations (SC legal/ production conformity), the fit, the function (SC functions), the performance or other processing of the product. Further information on this can be found in the IATF 16949 as well as in the BMW Group Standards GS 90000-1 "Technical regulations – Presentation of documents", GS 91005-1 "Technical Drawings – Drawing generation, design rules, agreements" and GS 91011 "Special Characteristics and L-Marking – Identification, designation and handling of Special Characteristics and L-marking".
- 9.6** Seller shall ensure that each of its Subcontractors is contractually bound to Seller to comply with the terms of Clauses 9.2 to 9.6 and Clause 9.8 Sentence 1 and that this obligation is passed on accordingly along the supply chain.
- 9.7** If Seller repeatedly or grossly violates the agreed quality and/or quantity objectives (including criteria for escalation according to the overview under B2B-Portal /> Collaboration /> Escalation process, or project goals of the Service Level Agreement), Buyer – if due to capacity reasons it is absolutely necessary, also with the support of third parties – shall be entitled to take supportive action for failure analysis and the failure correction within an escalation process (including, support by Quality Management Parts (QMT), Logistics Quality Specialist (LQS) and/or value stream management). Seller undertakes to assist herewith and to reimburse Buyer's actual and not unreasonable costs incurred due to such violations without prejudice to any other rights and claims which Buyer may have in such a case. In the aforementioned cases Buyer shall provide Seller with a complaint report invoice (Prüfberichtsabrechnung) or other suitable invoice documents. Seller may object against the support of third parties if there is a material reason in the person of the third party (particularly, Competitor).
- 9.8** Unless there is a good cause to the contrary, Seller shall inform BMW about its supply chain (including Subcontractors) to a reasonable extent upon request. Any change of the production location or of the dispatch location of the Goods requires the prior written consent of Buyer, which may not be unreasonably withheld. Any costs which are incurred by Buyer due to the non-compliance with this provision or otherwise due to a change of location initiated by Seller, shall be borne by Seller. Seller will inform Buyer immediately of any relocation in its supply chain in the sense of Sentence 2 above or of any changes in its supply chain (including a change of Subcontractor) known to Seller.
- 9.9** In order to ensure product safety and to avoid product liability cases regarding the Goods, prior to the first delivery, Seller shall qualify a Product Safety and Conformity Officer (PSCO) in its company for the respective production locations and designate such individual as the current contact person in the B2B-Portal (Supplier Database).
- 10. Warranty**
- 10.1** Seller warrants that the Goods shall be free of defects according to the applicable law and particularly warrants that the Goods are suitable for the use intended under the Supply Contract, as yielded from the documents referenced in Clause 2.3. Seller further warrants that the Goods shall comply with all laws and regulations in the relevant sales markets related to the Goods.
- In the event that Seller has entered into a valid warranty agreement applicable to the Supply Contract and to Buyer's Purchase Order regarding the Goods, such warranty agreement shall apply in lieu of the following Clauses 10.2 to 10.5. In all other cases the consequences of delivering defective Goods shall be governed by these Purchase Terms and Conditions.
- In the case of any discrepancy or inconsistency between (a) the Supply Contract, (b) the warranty agreement and (c) these Purchase Terms and Conditions, the documents shall prevail over each other in the order of their aforementioned listing in this sentence.
- 10.2** For all Goods the warranty period ends on the sooner of:
- a) the expiration of any warranty period provided to end-customers of the Goods or of the products into which the Goods are incorporated or
 - b) the fifth (5th) anniversary of the delivery date of the Goods to Buyer.
- The provisions of this Clause 10.2 are subject to any longer warranty period prescribed by the national laws of any sales market into which Goods or products into which the Goods have been incorporated are supplied.
- 10.3** If a defect is discovered before the defective Good has left Buyer's production sites or that of an undertaking commissioned by Buyer, Seller shall be given the opportunity to remedy the defect or to replace the defective Goods before production commences, provided that any such remedy does not cause any delay in Buyer's production.

If Buyer cannot reasonably be expected to allow Seller to remedy the defect or to replace the defective Goods due to operational reasons (including reasons related to the time and sequence of assembly) or if Seller is not able to remedy or replace the defective Goods, then Buyer shall have the right either (a) to remedy the defect itself at Seller's cost or (b) to have it remedied by a third party at Seller's cost or (c) return or scrap the defective Goods at Seller's cost in accordance with the following terms.

Seller shall in the case of (c), within the time frame prescribed in BMW Group Standard GS 95015 "Requirements placed on the supplier's defect analysis and elimination for zero kilometer issues", communicate whether Buyer should return the affected Goods to Seller or scrap them. If Seller does not communicate its decision to Buyer within the abovementioned period, then Buyer will scrap them at Seller's cost. Further claims of Seller in this respect do not exist.

If Goods are repeatedly delivered in a defective condition, Buyer shall have the right to terminate the entire Supply Contract, provided that Buyer has notified Seller in writing that the Goods are defective, and Seller continues to supply defective Goods after such notification.

In each case described under this Clause 10.3, Seller shall indemnify Buyer against all damages and losses incurred by Buyer resulting from the delivery of defective Goods.

- 10.4 If a defect is discovered after the defective Good has left Buyer's production sites or that of an undertaking commissioned by Buyer, Seller shall indemnify Buyer against all damages and losses incurred by Buyer resulting from the delivery of defective Goods.
- 10.5 Where possible, upon Seller's request, defective Goods within the meaning of Clause 10.4 will be made available to Seller at Seller's cost.

11. **Liability and Damage Compensation**

- 11.1 If Seller breaches an obligation under the Supply Contract or a Long-term Supply Contract, Buyer may claim compensation for resulting damage, unless otherwise provided by these Purchase Terms and Conditions. This shall not apply if Seller is not responsible for the breach of duty, but the relevant statutory provisions require Seller's responsibility.
- 11.2 Seller shall indemnify, defend and hold Buyer and its Affiliated Companies harmless against all liabilities, costs, damages, losses and expenses (including in- and out-of-court costs, legal fees and expenses) occasioned by or arising out of any legal claim for death, personal injury and/or property damage, which results from or are attributable to (a) defective Goods or any product in which this defective Good was assembled (b) Seller's breach of its obligations under the Supply Contract and/or a Long-term Supply Contract, (c) intentional misconduct or negligence of Seller or (d) Seller's non-compliance with any applicable law, statutes, regulation, provisions or notices.
- 11.3 If Seller's employees, agents, Subcontractors or other representatives (hereinafter "**Representatives**") are on Buyer's premises, Seller shall be and is, without prejudice to Seller's liability for agents and other auxiliary persons according to applicable statutory rules, responsible for the acts and omissions of its Representatives on or in the proximity of Buyer's premises, and shall indemnify, defend and hold Buyer harmless against liability for damage to property or injury or death to persons (including in- and out-of-court costs, legal fees and expenses) arising out of acts or omissions of the Representatives whether pursuant to performance under a Supply Contract or otherwise. The duty to indemnify in this Clause 11.3 shall not apply insofar as the claim is caused by Buyer's negligence or intentional misconduct.
- 11.4 In the event that Seller delivers defective Goods and Buyer therefore conducts a recall of products into which the relevant Goods have been incorporated, due to legal obligation or upon consultation of relevant authorities, Seller shall hold Buyer and its Affiliated Companies harmless against liabilities, costs, damages, losses, claims and expenses (including in- and out-of-court costs, legal fees and expenses) occasioned by or arising out of or attributable to such recall. While making a decision for such action to recall, Buyer will exercise reasonable discretion and duly consider Seller's interests.
- 11.5 If a third party asserts a claim against Buyer (hereinafter "**Third Party Claim**"), which may be the subject of the indemnification provided for in this Clause 11, Seller shall provide Buyer with appropriate and reasonable assistance in the defense and prosecution of claims upon Buyer's request.
- 11.6 If a third party asserts claims against Buyer or one of its Affiliated Companies for death, personal injury and/or property damage, which, according to the third party's allegation, was caused by (a) defective Goods or any product in which this defective Good was assembled, (b) Seller's breach of its obligations under the Supply Contract and/or a Long-term Supply Contract, (c) intentional misconduct or negligence on the part of Seller or (d) Seller's non-compliance with any applicable law, statutes,

regulations, provisions or notices, Seller and Buyer shall in good faith, immediately attempt to reach an agreement specifying the terms under which Seller and Buyer would apportion responsibility and liability for the defense of any such Third Party Claim or Third Party action as well as the financial burdens arising therefrom.

- 11.7** This Clause 11 shall nonetheless apply whether the stated costs, damages, losses, claims and expenses mentioned above are incurred by Buyer itself or its Affiliated Companies. However, Seller shall not be liable according to this Clause 11 insofar as the liabilities, costs, damages, losses, claims and expenses mentioned are caused by negligence or intentional misconduct of Buyer or one of its Affiliated Companies.
- 11.8** If Seller or one of its Affiliated Companies has entered into any culpable agreement or has undertaken any other conduct with respect to the delivery of the contractual supplies, which constitutes an unlawful restraint of competition according to applicable antitrust rules (in each case determined by a final regulatory or judicial decision), then Seller shall pay to Buyer eight (8) percent of the net invoice amount of the supplies affected by such violation of antitrust law as damages, unless Seller can prove that Buyer has suffered no or only lesser damage. This obligation shall survive termination or fulfillment of the Supply Contract and/or a relating Long-term Supply Contract. Any other or further contractual or statutory claims of Buyer shall remain unaffected; in particular, Buyer may claim higher damage upon presentation of relevant proof.

12. Labelling of Goods; Advertising

- 12.1** Seller shall mark the Goods as Buyer requires.
- 12.2** Neither party shall use the other party's copyrights, logos and/or trademarks without prior written consent of the other party.
- 12.3** Without Buyer's prior written consent, Seller shall not publish in any manner, through marketing or in any other means, that Seller has contracted with or has been supplying Goods to Buyer, unless such publication is required by mandatory law. In such case, Seller shall nevertheless timely inform Buyer prior to the statement concerned.

13. Tooling

- 13.1** If a Purchase Order of Tooling is placed, the BMW Group's "Terms for Transfer of Title of Production Means" referred to in this Purchase Order shall apply.
- 13.2** Whether or not a Purchase Order of Tooling has been placed Seller has the following obligations:
- a) Seller shall prove evidence of adequate insurance coverage for the Tooling. Such insurance coverage shall not affect Seller's liability, for example under a Supply Contract and/or a Long-term Supply Contract.
 - b) Seller shall treat the Tooling with due care and diligence and keep it continuously in working condition and in compliance with the latest design status. Seller shall be responsible for the correct and accurate dimensions of the Tooling, particularly of gauges. At Seller's request, Buyer shall support Seller in examining and correcting the gauges provided to Seller by Buyer, unless they are used as check gauges. Unless agreed otherwise in writing, the cost for the continuing repair, maintenance, and readiness of the Tooling in unobjectionable condition shall be borne by Seller in all respects.
 - c) Seller shall maintain Tooling for a period of fifteen (15) years following the end of Seller's supply of the Goods for Buyer's serial production in good working condition ready for the continued supply of Goods.
 - d) By no later than the time that initial samples of the Goods are produced by means of such Tooling for the PPA, Seller shall provide Buyer with (a) information concerning such Tooling as required in the QAF and in the WAF, (b) drawings and CAD-data (as a 3D-data-model in a format customary in the industry) of such Tooling, and (c) a complete list of such Tooling and a document identifying the exact location of such Tooling.
- 13.3.** Seller shall ensure that all of its Subcontractors are contractually bound to comply with the provisions contained in Clause 13.2 and that this obligation is passed on accordingly along the supply chain.

14. Spare Parts

- 14.1** Whether or not a Supply Contract remains in effect, Seller will at the request of Buyer provide Buyer or its designated third parties with sufficient quantities of Goods for use as spare parts for a period of fifteen (15) years following the end of Seller's supply of the Goods for Buyer's serial production (End of Production, EOP) or for such lesser period of time as Buyer shall determine in writing. Seller shall ensure that its Subcontractors comply with this Clause 14.1 and that this obligation is passed on accordingly along the supply chain.

One (1) year before expiration of the abovementioned deadline, Seller shall submit proposals in writing to BMW for an economically reasonable supply of spare parts for the time afterwards (hereinafter "**Classic Supply**"). Seller's proposals shall be based on Buyer's estimated future demands, which will be provided to Seller by Buyer upon written notice. Seller's proposals should contain a reasonable offer for an all-time stocking on the basis of the last valid spare parts price or further supply at comparable and reasonable conditions. Seller shall inform Buyer in good time before the intended scrapping of Seller-owned Tooling required for the Classic Supply at email address forecasts.classicparts@bmwgroup.com.

- 14.2** During the term of a Supply Contract for Buyer's serial production, the price of the Goods used as spare parts shall be equal to the serial price agreed in the Supply Contract. During the extended term as set out in Clause 14.1, the price shall be separately negotiated by the parties in accordance with Clause 14.4.
- 14.3** Buyer and its Affiliated Companies shall be entitled to purchase Goods used as spare parts directly from Seller's Subcontractors or from any other third party.
- 14.4** Seller shall comply with the requirements stated in the BMW Group Standard GS 90022 "Process chain spare parts and consumables". For Goods for which a shelf life is agreed between Buyer and Seller, the BMW Group Standard GS 90034 "Marking of Parts – Marking of shelf life" applies.

15. Intellectual Property Rights

- 15.1** Irrespective of any warranty claims under Clause 10, Seller shall indemnify, defend and hold the BMW Group harmless from and against all liabilities, costs, damages, claims and expenses (including in- and out-of-court costs, legal fees and expenses, as well as any costs arising from settlement agreements of such claims or actions) incurred by the BMW Group as a result of any claim arising out of the Intellectual Property Rights of any third party with respect to the Goods or the use thereof.

Notwithstanding the foregoing, Seller shall not be liable to the extent that the infringement of Intellectual Property Rights of a third party results from the production of the Goods in accordance with the Buyer's technical instructions, namely through drawings, designs or similar descriptions provided by Buyer, and Seller despite taking diligence customary in the industry concerned did not know and could not have known that following these instructions would result in an infringement of third party's Intellectual Property Rights.

Claims in accordance with Clause 15.1 against the contractor shall be time-barred after three (3) years. The limitation period begins at the end of the year in which the corresponding claim arose, and BMW became aware of the circumstances giving rise to the claim or had to become aware without gross negligence, but at least regardless of knowledge or grossly negligent lack of knowledge within ten (10) years from delivery of Goods.

- 15.2** The parties will inform each other forthwith of all such third party infringements or allegations of third party infringements of which they become aware. BMW Group is free to select its own legal representative for the defense of any such claims or actions, subject to Seller's consent, which shall not be unreasonably withheld. Seller shall assist BMW Group in its investigation, defense or handling of any such claims, including the provision of any documents required for the defense by BMW Group. If Buyer considers that it may be desirable for Seller to join legal proceedings, Seller shall consult with BMW Group and consider any reasonable request for Seller to join legal proceedings. However, the decision to intervene in an action remains Seller's sole decision.

If BMW Group selects its own legal representation, Seller's indemnification obligation under Clause 15.1 extends to the reasonable costs and fees associated with such representation. If Buyer does not select its own legal representation, Buyer will give Seller sole conduct of the defense of any such claims or actions.

- 15.3** Upon Buyer's request, Seller shall specify any and all Intellectual Property Rights known or becoming known to it, which are used in the design or manufacture of, or which otherwise affect or relate to the Goods.

15.4 In the event that Seller is notified of an allegation of infringement of any third party rights, Seller shall take all necessary steps to secure a supply of Seller's Goods by Buyer without such infringement, which may be done, for example, by taking license or redesigning the Goods (according to all contract requirements and qualification specifications) or taking other adequate steps.

16. Electronic Data Interchange ("EDI")

Seller shall comply with the requirements set out in Buyer's EDI implementation guidelines.

Seller shall ensure that the communication between the mail servers of Buyer and those of Seller is transacted via mandatory transport layer security (mandatory TLS), unless otherwise agreed with Buyer.

17. Information Security

17.1 The software used or delivered in connection with a Supply Contract shall not contain any features which Seller could have detected in accordance with the state of the art, and which endanger the integrity, trustworthiness, and availability of the contractually agreed Goods (including software), other hard- and/or software, or Data, including no feature

- for Unwanted transmission/extraction of Data,
- for Unwanted change/manipulation of Data or process logic, or
- for Unwanted initiation of Data or Unwanted feature expansions.

"Unwanted" in this sense is a feature which

- Buyer did not request,
- Seller did not offer in its specific description of the feature and its effects, and
- which Buyer also did not accept in writing in the individual case.

"Data" in the meaning of this Clause 17 is information which is stored or transmitted either electronically, magnetically, or otherwise not immediately perceptible.

17.2 Seller shall secure Buyer's Data and its own Data which is necessary for the delivery of the Goods against unauthorized access, modification, destruction and other misuse (hereinafter **"Information Security"**) and shall utilize state-of-the-art technical and organizational measures to ensure Information Security. At BMW's request, Seller shall prove the implementation of these measures (e.g., ISO/IEC 27001, ISO/IEC 62443, ISO/SAE 21434) without additional remuneration. Seller shall strictly segregate and handle separately Buyer's Data (with the exception of email communication) from Data from other customers and employ appropriate protective mechanisms against access by other customers to such Buyer's Data. Insofar as the backup or processing of BMW Data is part of the provision of services, Seller shall take all precautions in accordance with the state of the art in order to be able to restore this Data at any time in a legally secure and loss-free manner.

17.3 Depending on the type and protection requirements of the affected Buyer Data, or the significance of the Goods' delivery by Seller for the business operations of BMW Group, Buyer may demand from Seller an appropriate level of security measures on Information Security during the entire term of the Supply Contract and during the Project Period as well as proof as prescribed by BMW of an appropriate Information Security level within Seller's operations; in particular by submission of the appropriate certificates (e.g., ISO/IEC 27001 "Information technology – IT Security process – Information's Security Management Systems – Requirements") or by certification 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".

17.4 Seller shall ensure that no possibly damage-causing software (e.g., viruses, worms or trojans) is deployed in connection with the Supply Contract, e.g., in included drivers or firmware. Seller shall check such in accordance with the state of the art and, upon request by Buyer, shall confirm in writing that upon such check Seller found no indications of damage-causing software.

17.5 If Seller obtains knowledge of an incident which involves a breach of the Information Security requirements (e.g., security gaps, Data losses, malfunctions, endangerments, attack by damage-causing software, Data misuse) and which could concern Buyer, including in the form of unauthorized access

by third parties to Buyer's Data (e.g., Data leak or cyber attack), (hereinafter "**Information Security Incident**") or if there are indications for Seller which upon reasonable assessment justify the suspicion of such Information Security Incident, then Seller shall, without undue delay and for BMW without additional remuneration,

- inform BMW thereof, and
- take all necessary steps to clarify the matter and limit the damage, as well as support BMW hereby, and
- accept all appropriate measures taken at BMW as a result of the Information Security Incident by BMW to protect the BMW IT infrastructure (e.g., disconnection of IT system connections), and
- ensure trouble-free reconnection to the BMW IT infrastructure, and
- support BMW in the recovery of the Data if the Information Security Incident causes an interruption or delay in the delivery of Goods, a decrease in the operations efficiency or the loss of Data, and
- upon BMW's request, provide all relevant details regarding the Information Security Incident, including Indicator of Compromise (IOC), Tactics, Techniques and Procedures (TTP) or an incident closure report, and
- upon BMW's request, provide a security report for a specified period. The necessary content of such report shall include results of the security checks, identified Information Security risks, as well as identified Information Security Incidents and their handling.

The Seller's obligations arising from the supply relationship shall remain unaffected.

- 17.6** Before the first delivery of Goods, Seller shall notify Buyer via the B2B-Portal (Supplier Database) (Supplier Data Maintenance /> Information Security Officer) of a central contact person for Information Security and inform Buyer of any changes without undue delay.
- 17.7** Seller shall ensure that through appropriate contractual regulations, its Subcontractors are contractually bound to Seller to comply with the provisions of this Clause 17 and that this obligation is passed on accordingly along the supply chain.
- 17.8** If Buyer becomes aware of an infringement of the agreed implementation and maintenance of Information Security, the existence of an Information Security Incident or if there are reasonable indications of this, Buyer has the right to ensure compliance with the requirements for Information and IT Security in accordance with this Clause 17 and the agreed data protection and security guidelines (hereinafter "**Audits**"). Seller shall tolerate Buyer's Audits and provide cooperation services such as information, insofar as this is necessary for the Audit. Clause 21.5 applies accordingly. Buyer is entitled to have Audits carried out by a qualified external company bound to confidentiality regarding third parties unless such company is a Competitor of Seller. Statutory control and information rights of Buyer are neither restricted nor excluded by this.

18. Confidentiality

- 18.1** Each party shall handle confidentially all information which in the scope of their business relationship is disclosed directly or indirectly from the respective other party or from a party's Affiliated Company and (a) are marked as confidential or (b) are usually considered as confidential by the public, in particular according to the type of information or the circumstances of the transmission of the information, as confidential ("**Confidential Information**") and shall only use such Confidential Information in connection with the supply relationship, regardless of whether such Confidential Information has been disclosed to the party or to an Affiliated Company of the other party. Each party undertakes to neither pass such information on to third parties nor otherwise make such accessible in any other way, and to take all reasonable precautions in order to prevent any access by third parties. The parties ensure each other that their Affiliated Companies that receive Confidential Information in connection with this project also keep such information confidential and use it only in connection with the project. The employees and consultants of the parties are not considered third parties in the meaning of this provision as long as they are bound by confidentiality obligations equivalent to this agreement (e.g. due to their employment contract).

18.2 Confidential Information within the meaning of Clause 18.1 includes

- a) Prototypes, test parts or samples,
- b) Trade Secrets, know-how or results of the respective other party exchanged as part of the business relationship,
- c) description and existence of the business relationship, contractual agreements and drafts, tender documents, technical specifications, process descriptions, volume and cost data,
- d) the planned schedules, goals, ideas and inventions of the other party in connection with the project or (test) results arising in connection with it,
- e) other not publicly available information, including knowledge of internal circumstances and processes that one party obtains about the other party in the course of the business relationship (e.g., also in the context of a visit or meeting) or the business correspondence and personal data held.

18.3 If and to the extent that it becomes necessary in the scope of their business relationship ("**Need-to-know-principle**"), Seller and Buyer may forward Confidential Information to

- a) their Affiliated Companies and
- b) third parties (e.g., cooperation partner and Subcontractors) which in each case are contractually bound to such party, in connection with the Supply Contract, if such is not excluded in the individual case for specific Confidential Information,

provided that the recipient is not a Competitor of the other party and to the extent permitted by law.

The parties shall ensure that prior to the forwarding of Confidential Information the recipient is bound by confidentiality obligations equivalent to this Clause 18 and complies with such.

18.4 An information is not classified as Confidential Information within the meaning of Clause 18.1 if and to the extent that it

- a) is or becomes publicly known without breach of the confidentiality obligations under this Clause 18, or
- b) was legally acquired by a third party, or
- c) was already at the time of delivery known by the receiving party and not otherwise obtained by the receiving party, directly or indirectly, from the disclosing party under an obligation of confidentiality, or
- d) was independently developed by the receiving party without use of or reference to the information of the other party.

A party which claims one or more of the abovementioned exceptions shall prove the underlying factual basis.

18.5 The confidentiality obligations under this Clause 18 shall not apply if and to the extent that Confidential Information must be disclosed due to mandatory judicial, official or statutory regulations or orders, whereby the disclosure shall be kept to a minimum and the receiving party shall inform the other party in writing or in text form prior to the intended disclosure, unless this is unreasonable.

18.6 Unless agreed otherwise, the confidentiality obligations of the parties under this Clause 18 shall continue to apply for a period of three (3) more years following the end of the last Supply Contract between the parties.

19. Insurance

19.1 Seller shall at its own expense, obtain and maintain business liability insurance, product liability insurance and vehicle recall insurance of adequate coverage in line with industry norms, with a reputable and financially solvent insurance company. Such insurance shall cover Seller's liability towards

Buyer and third parties to the necessary extent. At any time upon Buyer's request, Seller shall immediately provide Buyer with proof of the existence of and the extent of coverage of such insurance.

19.2 Existence of any insurance contract shall not limit Seller's obligation under any clause of these Purchase Terms and Conditions.

19.3 Where not otherwise required pursuant to any applicable Incoterm under Clause 5, Seller shall oblige any carrier engaged by Seller to insure the carrier's liability.

20. Compliance

20.1 For Buyer, it is of paramount importance that corporate activities take social responsibility towards their own employees and society as a whole into account. This applies both to Buyer and to its Suppliers. Buyer and Seller are committed to respecting the principles and rights adopted by the International Labour Organization (ILO) in the "Declaration on Fundamental Principles and Rights at Work" (Genova, 06/98), the guidelines of the UN Initiative Global Compact (Davos, 01/99) and the UN Guiding Principles on Business and Human Rights (2011).

The following principles are especially important:

- Preservation of human rights
- Elimination of forced compulsory and child labor
- Positive and negative freedom to 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 or cultural participation
- Implementation of equal opportunities and family-friendly policies
- The protection of indigenous rights
- Ban on bribery and extortion
- Respect of animal welfare

20.2 Seller shall comply with all applicable laws, standards and official rules and regulations, including antitrust and competition law, prevention of corruption, prevention of money laundering, export control and data protection. Seller shall comply with and implement the "**BMW Group Supplier Code of Conduct**" (the latest version is available under B2B-Portal /> Collaboration /> Sustainability /> Environmental and social standards /> Downloads or will be sent by Buyer upon request). The applicable version of the supplier relationship is usually stated in the Supply Contract or the respective Purchase Order.

20.3 In addition, Seller has the following obligations:

- a) For the quantitative assessment of Seller's resource efficiency as required by the BMW Group Supplier Code of Conduct, Seller shall provide Buyer, upon request, the following information relating to the total annual scope of orders placed by and supplied to Buyer and its Affiliated Companies:
 - Total energy consumption in MWh,
 - CO₂ emissions from energy generated in-house and externally in metric tons,
 - Total water consumption in m³,
 - Process wastewater in m³,
 - Waste for disposal in metric tons,
 - Waste for recycling in metric tons,
 - VOC emissions (volatile organic compound) in metric tons.
- b) Upon Buyer's request, Seller shall provide Buyer data (including data on material usage) for a life cycle assessment relating to Goods or parts thereof according to the data collection format for life cycle assessments of the VDA.
- c) Seller shall comply with the requirements of the BMW Group Standard GS 93024 "Recycling-optimized vehicle design" during the entire life cycle of the Goods. Upon Buyer's request, a recycling concept has to be provided.

- d) Seller shall mark Goods made of polymeric materials or metals as well as metallic coatings, in accordance with the relevant standards (VDA Material Data Sheet 260 "Components of motor vehicles – Marking of material" and/or BMW Group Standards GS 91001 "Marking of parts with trademark and part identification data" and GS 91003 "Marking of parts – Marking of materials").
 - e) For polymeric materials contained in Goods, Seller shall throughout the entire life cycle of the Goods, comply with the BMW requirements according to specification (including project specification) derived from the applicable statutory targets and standards for hydrocarbon emissions of vehicles and shall adapt the production processes of the Goods to comply with these requirements accordingly.
 - f) Seller shall comply with the requirements stated in BMW Group Standard GS 93008 (1 to 4) "Substances of concern" throughout the entire life cycle of the Goods.
 - i) Seller is responsible for registration and where necessary, authorization or notification of chemical substances contained in Goods in accordance with the statutory requirements that apply to the concerned market (e.g., according to Regulation (EC) No. 1907/2006 (REACH), EU). In the event that a chemical substance being imported falls within the area of applicability of a relevant law, Seller assumes responsibility for all obligations named above and all associated expenses.
 - ii) For the respective Goods, Seller shall provide the required data as according to BMW Group Standard GS 93008-1 "Substances of concern – Materials and components, Prohibited and declarable substances" for the constituent substances/materials in the International Material Data System IMDS (<http://www.mdssystem.com>). The data provision forms an integral part of the scope of supply and Seller shall comply therewith. This applies for e.g., to serial development, type approval and initial sampling inspection for PPA.
 - iii) In the event that Goods are chemical substances, mixtures or materials, Seller shall provide Buyer with "safety data sheets" for such Goods.
 - iv) For Goods which are labeled as dangerous Goods for transport according to international dangerous Goods regulation (e.g., ADR/RID, IMDG, ICAO/IATA), e.g., airbags, Seller shall provide Buyer with safety information, for example in accordance with VDA recommendation 11-007.
 - v) If the Goods are raw materials, then Seller shall ensure according to the state of the art and in compliance with the applicable thresholds, that such are free from radioactivity or radioactive contamination and ionizing radiation. For this purpose, upon request by Buyer, Seller shall conduct corresponding measurements and disclose their results.
- 20.4** Seller warrants that, within the scope of the supply relationship, it shall only transmit such data to BMW as it is entitled to transmit.
- 20.5** It shall be Seller's responsibility to cause all and any of its Subcontractors to act in accordance with the regulations of this Clause 20.
- 20.6** In order to implement obligations, set out in this Clause 20, Seller shall take appropriate training, information, control, and sanction measures in its organization, establish a responsible compliance function, and appoint it upon request.
- 20.7** Buyer shall be entitled to refuse its participation in the service provision, acceptance of the service as well as its remuneration if and to the extent that a relevant mandatory legal provision would thereby be violated or as long as a relevant mandatory legal provision is violated.

21. General Provisions

- 21.1** No amendment, modification, termination or waiver of any provision of these Purchase Terms and Conditions or of any Supply Contract, and no consent to any deviation by either party therefrom, shall under any circumstances be effective unless the same shall be in written form and signed by both parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or request to Seller in any event, case or occurrence, shall of itself entitle Seller to any other or further notice or request in any similar or other circumstances.
- 21.2** The headings of the various clauses of these Purchase Terms and Conditions are solely for convenience and shall not be used for the purposes of interpretation.

- 21.3** If any provision in whole or part of these Purchase Terms and Conditions is held by any competent court or authority to be invalid or unenforceable, such shall be deemed severed and omitted so that the validity of the remaining portions hereof remain unaffected. If required, Buyer and Seller shall replace such invalid or unenforceable provision with a valid and enforceable provision having similar economic consequences, provided that the content of the Purchase Terms and Conditions is not materially altered.
- 21.4** No course of dealings between Seller and Buyer or any delay or omission of Seller or Buyer to exercise any right or remedy granted under these Purchase Terms and Conditions shall operate as a waiver of such rights. Every right and remedy of Buyer provided herein shall be cumulative, concurrent and in addition to any other rights and remedies available at law or in rules of equity under the applicable legal system.
- 21.5** Upon forty-eight (48) hours' notice, Buyer shall be entitled to have access to Seller's premises during normal business hours and without interfering with Seller's business in order to inspect all documents, instruments, books and records relating to any Supply Contract or the Goods which are subject of such Supply Contracts, or to Seller's manufacturing process. Alternatively, Buyer and Seller may agree to conduct a remote or hybrid Audit. Buyer is entitled to have the Audit carried out by a qualified external company bound to confidentiality regarding third parties unless such company is a Competitor of Seller. The right of access and inspection shall be limited to those areas which are necessary for this purpose and confidentiality obligations which may exist towards third parties shall be respected. Seller agrees to maintain all such records for at least ten (10) years after the last delivery of the Goods to Buyer unless otherwise agreed or where a longer period is required by law.
- 21.6** Seller shall not assign the rights or the duties of any Supply Contract and/or a Long-term Supply Contract, in whole or in part to any third party without the prior written consent of Buyer.
- 21.7** To the extent allowed by law, Seller shall at any time, upon prior written notice, provide BMW with suitable information (including quarterly, semi-annual and annual financial statements together with related final reports including appendices and information on key business indicators) required for evaluating the current economic and financial situation of Seller regarding its continuing ability to supply Goods to BMW. BMW is obligated to keep this information strictly confidential unless the respective information is publicly available or becomes available without BMW's fault.
- 21.8** Upon written request by BMW, Seller shall share information on non-financial indicators such as environment, employee and social concerns, respect of human rights and combating corruption and bribery as well as the underlying strategies and processes according to recognized standards, e.g., in the form of a sustainability report in accordance with GRI or DNK compliance declaration. If due to statutory requirement Seller is obligated to inform on its non-financial performance indicators, then the forwarding of such corresponding report will suffice.
- 21.9** Seller warrants that the information provided with regard to its economic and financial situation as per Clause 21.7 as well as in reference to its non-financial performance indicators according to Clause 21.8 is accurate, complete and – with regard to any date referred to in the documentation or information – current and fairly represents its actual economic, financial, and non-financial condition. Seller warrants that all financial statements of Seller have been/are prepared in accordance with accounting principles generally accepted in its jurisdiction.
- 21.10** Seller warrants that at the time of the conclusion of the Supply Contract it has not filed an application for the institution of insolvency proceedings, and that there is no indication that such proceedings are likely to be warranted or instituted. Seller further warrants that there is no indication that it is insolvent or over-indebted or is facing impending insolvency or over-indebtedness, which would provide grounds for the institution of insolvency proceedings. Seller further warrants that it has not ceased making payments, either permanently or temporarily, or entered into negotiations with creditors for an out-of-court settlement or a deferment of payment in order to avert its inability to pay triggering the commencement of insolvency proceedings.
- 22. Governing Law; Place of Venue and Jurisdiction**
- 22.1** The terms of any Supply Contract (including these Purchase Terms and Conditions), also regarding its interpretation, shall be governed by and construed in accordance with the laws of the country (and state or province, if applicable) of Buyer's principal place of business to the exclusion of the conflicts of law of Private International Law (IPR) and the United Nations Convention for the International Sale of Goods (CISG).

- 22.2** The parties agree that the courts having jurisdiction over Buyer's principal place of business shall have exclusive jurisdiction and venue for any action or proceedings commenced under any Supply Contract. This choice of court agreement shall not apply for claims in accordance with Clause 11.8 or other contractual or statutory antitrust damage claims. The parties consensually waive the right to a jury trial. THE PARTIES KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION WAIVE ALL RIGHTS TO A JURY TRIAL OF ALL DISPUTES ARISING OUT OF OR RELATED TO ANY SUPPLY CONTRACT OR PURCHASE ORDER BETWEEN THE PARTIES.
- 22.3** In the event that a third party brings to court a claim against Buyer or one of its Affiliated Companies for damages for personal injury and/or property damage resulting from a product defect ("Product Liability") or because of an infringement of Intellectual Property Rights, Buyer may at its discretion, conduct at such court of venue the proceedings necessary to enforce indemnification from Seller or seek recourse against Seller. In such a case the applicable laws of the forum state shall exclusively govern the rights and obligations of the parties involved.