



BMW Group Terms and Conditions for the Purchase of Accessories, Merchandising and Lifestyle Products Status 03.03.2014

- Please note that the only legal binding version is the German version -

Unless otherwise agreed in writing, these Terms and Conditions shall apply to the purchase of accessories, merchandising and lifestyle products (hereinafter **"Goods"**) being supplied by the contractor (hereinafter **"Supplier"**) to Bayerische Motoren Werke Aktiengesellschaft (hereinafter **"BMW"**). Any different or additional terms and conditions shall hereby be excluded, even though BMW may not have expressly objected to such different or additional terms and conditions.

1. Supply Contract

- 1.1 The supply contract shall be formed by BMW's written purchase order (hereinafter **"Purchase Order"**) and Supplier's acceptance. The same applies to any amendment or supplement to the supply contract.
- 1.2 In the event that the Supplier does not forward a written acceptance or start performance in relation to a Purchase Order within three (3) weeks after Supplier's receipt of the Purchase Order, BMW shall be entitled to revoke such Purchase Order without incurring any liability to Supplier.

2. Delivery Dates / Penalties

- 2.1 All delivery dates fixed in the Purchase Orders and/or BMW's delivery schedules shall be binding. Supplier's compliance with such delivery dates shall be connected to BMW's receipt of the Goods (if applicable including documentation pursuant Section 5) at the receiving place named in the delivery schedules. In the event of delayed deliveries the applicable statutory laws shall apply.
- 2.2 Even if the parties have agreed on a penalty for delayed deliveries, BMW still reserves the right to claim for any damages provably occurred beyond the agreed penalty. BMW's delay or omission to expressly reserve its right for penalties after a delayed delivery shall not operate as a waiver of such rights.

3. Delivery / Transfer of Risk

Once BMW has accepted the specimen pursuant Section 5.3 and unless otherwise agreed between the parties in writing, the time at which the risk of damage to or loss of the Goods shall pass to BMW shall be in accordance with the Incoterm agreed in the Supply Contract. Unless otherwise agreed between BMW and Supplier, the Goods shall be deemed to be sold „FCA“, with named place being the premises of Supplier where the Goods are ready for dispatch. Supplier shall not change any place named in connection with any Incoterm without BMW's prior written consent.

Unless otherwise agreed in writing the deliveries shall be completed in accordance with the BMW Group Manual "Important specifications and information from the BMW AG relating to delivery, packaging and identifying goods for Merchandising and Lifestyle", which is available in the internet under https://b2b.bmwgroup.net/en/group/b2b/gdz/logistik/logistische_anforderungen/bmw_group_verpackungshandbuch.

Supplier shall be entitled to appoint sub-contractors subject to BMW's prior written consent.

4. Exclusivity

Supplier shall be obliged not to produce, have produced, supply, have supplied or issue licences for the use of the Good by any third parties.

5. Quality / Documentation

- 5.1 Supplier ensures that a quality management system in compliance with DIN EN ISO 9001:2000 is implemented in its own business as well as in the businesses of its sub-contractors.
- 5.2 Supplier shall, together with the delivery of the Goods, provide a written documentation (e. g. permissions, test certificates, confirmations of conformity, operating manuals etc.) provided that such documentation is agreed between the parties or mandatorily required in the respective BMW sales markets. Supplier acknowledges that BMW will market the Goods abroad within Europe and overseas.
- 5.3 Supplier shall on its own expense provide three specimens of the Goods at the agreed date prior to the first delivery for the purpose of immediate inspection by BMW. Once the specimens have successfully passed such inspection, BMW issues a written release and provides the Supplier with one signed specimen, which has to be retained by the Supplier for a period of at least 5 years after the first delivery.
- 5.4 BMW shall be entitled to have access to Supplier's premises during normal business hours and without interfering with Supplier's business in order to verify Supplier's performance in accordance with the supply contract. BMW shall be entitled to exercise such right of access through authorised third parties.

6. Invoicing / Settlement of Accounts / Set-off

- 6.1 The accounts of Supplier will be settled via self-billing invoices by way of EDI, unless otherwise agreed in writing.
- 6.2 If the parties have agreed that Supplier's accounts will not be settled via self-billing invoices, Supplier shall submit a commercial invoice including the following data:
 - BMW's full corporate name and full registered address;
 - Supplier's corporate name, registered office and registered number;
 - BMW's supplier number of the invoicing party (8-digit) and, if different:
 - BMW's supplier number of the Supplier (8-digit) and/or
 - BMW's supplier number of the payee (8-digit),
 - BMW's Purchase Order number / BMW's Purchase Order modification number;
 - BMW's item number;
 - Specification of delivery or service rendered;
 - Delivery note number indicated by Supplier, date of shipping;
 - In case of re-delivery relating to prior delivery by BMW: Delivery note number indicated by BMW with respect to the said prior delivery;
 - Quantity, unit of scale;
 - Value of consignment (price per item and total price);
 - Price unit, currency unit;
 - Price of packaging (per unit of Goods);
 - Total value net and gross;
 - Number of packages, weight (gross/net);
 - Delivery address / point of unloading;
 - VAT percentage rate;
 - VAT percentage rate and VAT amount, total charge excluding VAT;
 - In the event of cross-border deliveries within the European Union:
 - VAT identification number of BMW,
 - VAT identification number of Supplier;
 - Reference to tax exemptions;
 - Charges split according to VAT-rates;
 - Date of invoice;
 - Running unique sequential invoice number;
 - Origin of the goods.

Invoices which fail to meet the requirements of this Provision 6.2 may be rejected by BMW. Supplier will be notified and costs arising therefrom will be passed on to Supplier. In that event the term allowed for payment shall begin on the day of receipt of the new, due and proper invoice, which meets the requirements of this Provision 6.2.

Any change of (a) the recipient of payment, (b) the invoicing party or (c) the party receiving the Purchase Order has to be agreed to by BMW in writing in advance. Any change in the flow of Goods/flow of invoices from the place of origin of the Goods to BMW has to be communicated in writing to BMW in advance. Costs arising from damages resulting from not meeting the requirements of this Provision 6.2 will be passed on to Supplier.

- 6.3 In the event that accounts are settled via self-billing invoices, payment of goods or services delivered or rendered in accordance with contract will be made after receipt, acceptance or confirmation of service, within 30 days net in full.

In the event that accounts are not settled via self-billing invoices, payment of goods or services delivered or rendered in accordance with contract will be made after receipt of a verifiable invoice, which is compliant with BMW's requirements with 30 days net in full.
- 6.4 Where goods are not supplied in accordance with the Supply Contract, BMW shall be entitled to withhold payment of the respective amount of the price until Supplier has fulfilled its obligations in full.
- 6.5 Supplier shall only be entitled to set off claims and to enforce retention rights if and to the extent that the claims in question are not in dispute or have been confirmed by a non-appealable court decision.
- 6.6 Supplier may not assign its payment rights hereunder without the prior written consent of BMW.

7. Packaging / Customs / Origin

7.1 Supplier shall package the Goods suitably and appropriately in accordance with the BMW Group Manual "Important specifications and information from the BMW AG relating to delivery, packaging and identifying goods for Merchandising and Lifestyle" and – unless provided otherwise in the foresaid Manual – in accordance with the "Packaging Manual of the BMW Group". The "Packaging Manual of the BMW Group" is available in the Internet under https://b2b.bmwgroup.net/en/group/b2b/gdz/logistik/logistische_anforderungen/bmw_group_verpackungshandbuch.

7.2 For customs purposes Supplier shall attach a commercial invoice in English to the shipping documents in duplicate. In the case of deliveries incurring customs duty the invoice shall specify as separate items:

- Cost of items not included in the price (such as commissions, brokerage, cost of licenses, cost of means of production, BMW's contributions);
- Cost of items included in the price (such as cost of assembly and freight cost);
- Value of repairs carried out, broken down into cost of materials and wages.

Even if deliveries are made free of charge, an indication of value is still required with the additional note "For customs purposes only". Either the invoice or the delivery note must include the reason why the delivery is made free of charge (e.g. sample deliveries).

Any variation to the process described above is subject to BMW's prior written approval. Should further official documents be required in the case of imports or exports for the intended use of the Goods delivered, Supplier shall procure such documents for BMW without delay and make them available to BMW at Supplier's cost.

7.3 Supplier shall be obliged to provide a declaration of origin for the Goods either by:

- Filling in a set of pre-printed forms "Long Term Supplier's Declaration" pursuant EU-Directive 1207/2001, which will be provided by BMW, such forms to be signed by Supplier's authorised representatives and submitted to BMW within fourteen (14) days after Supplier's receipt of the forms (or in the case of the first delivery of Goods, no later than the date of delivery) or
- By using the application "eOrigin" on the BMW Group Partner Portal (path: <https://b2b.bmw.com>) and submitting the declaration of origin to BMW by electronic means.

If Supplier delivers Goods, which get a preferential treatment in the import country, Supplier shall provide a declaration of origin suitable to that supply (e.g. Form sheet A, EUR 1). Such certificate is required with every such shipment.

Supplier shall inform BMW immediately in writing of any change of origin of Goods. The Supplier may use its own pre-printed forms for the declaration of origin only after BMW's prior written consent.

7.4 Supplier shall inform BMW of any export restrictions applicable in the country of manufacturing and/or dispatching of the Goods and Tooling. Supplier shall inform BMW if the Goods and Tooling are subject to any export/re-export license under U.S. law and regulations. If Supplier is located in the European Union, Supplier shall inform BMW about any obligation to obtain an export license with respect to Dual Use Goods as well as munitions subject to the European export control restrictions and the national codifications of the export control restrictions. Supplier shall advise BMW about the classification number applicable (e.g. ECCN - Export Control Classification Number for US products, "AL-Number" for Goods listed in the German Export Control List, etc.) and any license exceptions available for the Goods and Tooling. Supplier shall provide information directly to BMW AG, München (Deutschland), department of customs and export control. On Supplier's request, BMW will provide a declaration/notification document for Supplier's convenience.

8. Warranty

8.1 Supplier warrants that the Goods shall be free of defects. Supplier further warrants that the Goods shall comply with all laws and regulations in the relevant sales markets related to the Goods.

8.2 Supplier warrants in accordance with the applicable laws that the Goods are free from defects, unless provided otherwise in the following subsections 8.2 to 8.4.

8.3 In the event that Supplier has entered into a Warranty Agreement applicable to BMW's Purchase Order regarding the Goods, all consequences of the delivery of defective Goods shall exclusively be governed by the provisions of such Warranty Agreement. In all other cases the consequences of the delivery of defective Goods shall be governed by this Provision 8.

In the case of any discrepancy or inconsistency between (1) the Purchase Order, (2) the Warranty Agreement and (3) these Terms and Conditions, the documents shall prevail over each other in the order detailed above.

8.4 BMW shall notify Supplier in writing of any defects of the Goods once the defect has been discovered by BMW in the ordinary course of its business. BMW shall not be obliged to carry out inspections of incoming Goods and Supplier shall not be entitled to submit a plea of delayed notification of defects.

Compliance with any testing requirements and the fact that BMW has issued a release or has otherwise approved specimens of the Goods do not absolve the Supplier from its obligation to supply Goods, which is free from defects.

8.5 In the event that BMW is entitled to remediation of defective Goods, which have already been handed over to customers, Supplier shall pay a lump-sum handling charge equal to 20% of the price of the respective Good. This does not affect BMW's right to claim for any additional damages arising from defective deliveries in accordance with the applicable laws.

8.6 In the event that Goods, for which a specific service agreement has been concluded (e.g. bicycles, watches), are defective, the conditions of the service agreement shall apply in regard to the notification of defect. For all other goods, the written notification of defect issued by any authorised member of BMW's sales organisation shall be deemed as evidence for the defectiveness of the respective Good.

Supplier shall bear all costs directly related to the defect. Returned Goods are not submitted to the Supplier. If a Warranty rate is exceeded by 1% (referring to the total quantity delivered per calendar year), Supplier shall be obliged to illustrate and initiate corrective product specific measures for quality enhancement in coordination with the BMW quality management. The measures must be approved by BMW quality management before implementation within the scope of an initial sample inspection process (Section 5.3).

9. Intellectual Property Rights

9.1 The Supplier herewith guarantees that the Goods are free from any third party's intellectual property rights that would exclude or impair the use or the sale of the Goods by BMW.

9.2 The Supplier shall indemnify and hold BMW and BMW's customers harmless against liability, costs, damages and expenses arising from any third party claim in relation to the infringement of Section 9.1 above. Supplier is obliged to handle any court or other legal proceedings in relation to third parties' intellectual property rights on behalf and on its own cost. This does not affect BMW's right to claim for damages and to terminate the respective supply contract.

9.3 All copyrights, industrial property rights and legal positions similar to copyrights related to the Goods and all other written, machine-readable or other work results arising from Supplier's performance under any supply contract shall be assigned to BMW without any further conditions and at no additional expense. BMW shall be exclusively entitled to such rights without any limits as to area, period and contents.

In particular BMW shall be entitled to extend, assign, revise, adapt, modify, duplicate or publish such rights without Supplier's consent. BMW shall also be entitled to apply for a patent on patentable results.

10. Tooling

10.1 Any tooling, e. g. matrices, models, specimens, tools, devices, drawings etc., provided by BMW to the Supplier for the purpose of a supply contract, remain BMW's property.

If BMW has ordered the manufacture of an item of tooling, title to such tooling shall immediately be passed to BMW, once the agreed total costs for the respective tooling has been paid by BMW in full.

10.2 Any tooling owned by BMW or ordered by BMW for the purpose of a supply contract may not be sold, assigned by way of security, pawned, mortgaged, charged or otherwise encumbered or disposed of nor used for the manufacture of goods for parties other than BMW without the express prior written consent of BMW.

10.3 Supplier shall retain the tooling for a period of five (5) years after the expiration of the respective supply contract. Supplier shall submit a written notification three (3) months before such period ends.

11. Spares

Supplier shall be obliged to provide BMW with spares for period of (5) years after the expiration of the respective supply contract.

12. Designation of Good / Trademarks / Logos

12.1 Supplier is entitled, and also obliged, to mark the Goods as required by BMW and Supplier shall not place its own trademarks or logos on the Goods.

12.2 Except for the cases described in Section 12.1 above, Supplier shall not use BMW's trademarks and logos without BMW's prior written consent.

13. Confidentiality

Supplier shall be obliged to keep confidential all commercial and technical information, which comes to its knowledge during the course of their business relationship, unless such information is or becomes public knowledge.

14. Publications

Without BMW's prior written consent, Supplier shall not publish in any manner through any marketing or other medium any information regarding its business relationship with BMW, unless such publication is required by mandatory law.

15. Environment

- 15.1 Supplier shall ensure that all and any of its sub-contractors are contractually bound to comply with the terms of this Provision 15.
- 15.2 While performing under the Supply Contract Supplier shall use the necessary resources (in particular materials, energy and water) efficiently and shall reduce the environmental impact (in particular with respect to waste, wastewater, air pollution and noise) to a minimum. This also applies to the effort and expense of transportation and logistics. For the quantitative assessment of Supplier's resource efficiency Supplier shall on BMW's request provide the following information relating to the total annual scope of orders placed by and supplied to BMW and its Affiliated Companies during its manufacturing phase:
- 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.
- 15.3 Supplier shall establish and maintain a certified environmental management system in accordance with the requirements of ISO 14001 or an acknowledged and certified environmental management system derived from ISO 14001 within the period of the contract.
- 15.4 Supplier is responsible for registration and, where necessary, authorisation or notification of chemical substances contained in Goods in accordance with the statutory requirements that apply to the market concerned (e.g. EU Regulation EG/1907/2006, short: REACH). In the event of a chemical substance being imported into the EU, Supplier assumes responsibility for all obligations such as named above and all associated expenditure.

The declaration of constituent substances/materials in the material data sheet for the respective Goods in the International Material-Data-System IMDS (<http://www.mdssystem.com>) as defined in BMW Group Standard 93008-1 "Substances of concern - Prohibited and declarable substances in materials and components" constitutes an integral element of the scope of delivery and has to be met by Supplier. Exceptional of the acquisition in IMDS is the BMW Merchandising and Lifestyle product range, excluding technical products i.e. bicycles, kids pedal or electric cars. The compliance with the BMW Group Standard 93008-1 to 4 and the corresponding relevant constraint of substances has to be ensured by the Supplier throughout the entire life cycle of the Goods. For the Goods exempted from the reporting in IMDS the legal duty to report contained substances (e.g. according to REACH Art. 33) have to be met otherwise in a way agreed with BMW beforehand; in doubt the information has to be provided in written. On request the Supplier is also obliged to hand over information on the Goods and their substances, even if the Goods have already been delivered, and affirmations necessary for BMW to comply with their legal duties to inform in a complete and timely manner (e.g. REACH Art. 33).

In the event that Goods are chemical substances, preparations or materials, Supplier shall provide BMW with "Safety Data Sheets" for these Goods.

16. Social Responsibility

For BMW it is of paramount importance that corporate activities take account of the social responsibility to employees and society as a whole. This applies both to BMW itself and to its suppliers. BMW's and Supplier's aim must be to comply with the Directives of the UN Initiative Global Compact (Davos, 01/99) and the principles and rights set approved by the International Labour Organisation (IAO) in its "Declaration on fundamental principles and rights at work" (Geneva 06/98).

The following principles are of particular importance:

- Preservation of human dignity and human rights, ban on child and forced labour;
- Implementation of equal opportunities and family-friendly policies;
- No discrimination on the basis of religion, origin, nationality, age, handicap, marital status, sexual orientation, political affiliation, membership of a trade union or the like, gender and veteran status;
- The protection of indigenous rights;
- Ban on bribery and blackmail;
- Maintenance of adequate social working conditions;
- Protection from individual arbitrary personnel measures;
- Provision of conditions that enable employees to enjoy a reasonable standard of living;
- Positive and negative freedom of association;
- Maintenance of employability by basic and advanced training;
- Provision of information to personnel on the objectives, economic situation and current topics that affect the company and the personnel;
- Responsible action by all personnel in relation to the environment;
- Compliance with industrial health and safety standards;
- Compliance with current laws and regulations.

Supplier's aim shall be that all and any of its sub-contractors are contractually bound to comply with the terms of this Provision 16.

17. Manufacture, Use and Keeping of Production Equipment

- 17.1 These terms and conditions shall apply to Supplier's manufacture, use and keeping of production equipment on behalf of BMW, including forging dies, measuring and testing equipment (e.g. gauges), matrices, models, samples, tools, devices, drawings and similar items required for the production and examination of Goods.
- 17.2 Unless agreed otherwise, any and all production equipment owned by BMW, which is in Supplier's possession or possession of Supplier's agents, shall remain the property of BMW. Once the agreed total costs for an item of production equipment has been paid for by BMW in full, title to such production equipment and any and all Intellectual Property Rights with respect to such production equipment will immediately be transferred to BMW. The Parties agree that the transfer of possession shall be substituted by Supplier loaning the production equipment from BMW.
- In the event that the agreed total cost are not fully paid for, BMW may obtain title to such production equipment by paying to Supplier (i) (in relation to finished Production equipment) the outstanding portion of the agreed total costs; or (ii) (in relation to unfinished production equipment) such proportion of the outstanding costs as is represented by the costs actually incurred by Supplier in the supply of the production equipment as at the respective date.
- 17.3 Supplier shall treat all production equipment, regardless of ownership, with due care and diligence, constantly keeping it ready for operation and in compliance with the latest design status. Supplier shall be responsible in particular for the correct and accurate dimensions of the production equipment especially of gauges. BMW agrees to help Supplier in examining and correcting the gauges made available to Supplier, insofar as such items are not used as check gauges. Unless otherwise agreed in writing, the cost for the continuing repair, maintenance and readiness of the production equipment in immaculate condition shall be borne by Supplier in all respects.

In the event the production equipment is BMW's property, Supplier's liability shall be limited to care as applied in one's own affairs (*diligentia quam in suis*). Within a period of four (4) weeks after inspection of the first Goods for BMW's series production, Supplier shall send BMW a complete list of all Production equipment items utilized by Supplier with respect to the Goods and a document identifying the exact location of the respective Production equipment items. Supplier has to prove and substantiate that there is adequate insurance cover for the Production equipment owned by Supplier.

- 17.4 Notwithstanding BMW's right to demand surrender of Production equipment, Supplier shall be entitled to retain Production equipment owned by BMW to the extent to which Supplier requires the same for executing a Purchase Order for BMW. In all other cases Supplier shall be obliged forthwith upon the request of BMW to surrender the Production equipment owned by BMW. This applies in particular, in the event that Supplier becomes insolvent, or bankruptcy or insolvency proceedings of any nature are commenced in relation to Supplier.

18. Product Liability, Insurance

- 18.1 In the event of a product defect Supplier shall indemnify BMW and its affiliates (§ 15 German Stock Corporation Act) from all costs, damages, losses, claims and expenses (including legal expenses) occasioned by or arising from a necessary recall or any third party claim for death, personal injury or property damage resulting from such defect ("Product Liability").
- 18.2 In cases where a third party brings, in relation to the Goods, a Product Liability claim against BMW or its affiliates to court, BMW may, at its discretion, conduct the court procedures necessary to enforce indemnification in the court within which the principal claim is being or has been litigated. In such a case the laws of the forum state shall govern exclusively the rights and obligations of the parties involved.
- 18.3 Supplier shall procure and maintain at its sole expense insurances, which adequately cover the risks arising from the above indemnity. The minimum coverage shall be

for USA and Canada:

5 Mio. € per damage event, maximum 10 Mio. € for all damage events per calendar year;

for the rest of the world:

2.5 Mio. € per damage event, maximum 5 Mio. € for all damage events per calendar year.

On BMW's request, Supplier shall present certificates to verify the above insurances. The existence of such insurances shall not limit Supplier's liability under any aspect.

19. Termination of the Supply Contract

Each of the parties shall be entitled to terminate the supply contract right to terminate this Agreement without notice, if a grave cause exists. In particular, BMW shall be entitled to such termination, if Supplier ceases payments or if bankruptcy or composition proceedings are initiated against Supplier's assets by deed of arrangement or in court.

20. Miscellaneous

- 20.1 Supplier shall not assign the rights, duties or obligations of the supply contract without BMW's prior written consent.
- 20.2 Any amendments of and supplements to the supply contract shall be made in writing. This requirement of a written form can only be waived by the parties in writing.

- 20.3 The supply contract and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. The United Nations Convention for the International Sale of Goods (CISG) dated April 11th, 1980 shall hereby be expressly excluded.
- 20.4 Unless provided otherwise by mandatory law, the exclusive place of jurisdiction for all disputes arising from the supply contract shall be Munich.
- 20.5 Should any of the provisions of the supply contract be or become invalid, this shall not affect the validity of the supply contract in any other respect. Within reasonable limits, the parties hereto undertake in utmost good faith to replace such an invalid provision by a new, valid and admissible provision providing the same economic effect, to the extent to which such new provision does not represent a fundamental change of the contents of the supply contract.