

**BMW  
GROUP**

**BMW South Africa  
General Terms and Conditions (GTC) for Indirect Purchasing**

Version 8/2023

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## Definitions

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

Affiliated Company	With regard to a party, 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 more than 50 percent of the shares or voting rights are held.
BMW	The BMW Group company that actually procures goods or services on the basis of these GTC.
BMW AG	Bayerische Motoren Werke Aktiengesellschaft, Munich, Germany.
BMW Finance	BMW Financial Services (South Africa) (Proprietary) Limited.
BMW SA	BMW (South Africa) (Proprietary) Limited.
BMW Group	BMW AG, BMW SA , BMW Finance and its Affiliated Companies.
BMW Vehicles	Vehicles that have been manufactured by or for BMW Group by third parties or that are distributed using the trademarks of BMW Group.
Competitor	A company is a competitor of a party if (i) such company offers goods or services, which from the view of a typical customer, are interchangeable with the goods or services of such party (i.e. including comparable in terms of characteristics, price and intended purpose), or (ii) based upon concrete indications, it appears likely that within a short time such goods and services will be offered by such company.
Contractor	The contractual partner of BMW to which these GTC apply.
Self-billing Procedure	Automatic billing method of goods deliveries and services rendered by the Contractor to BMW.
Data	Characters (e.g. numbers, letters or other symbols) or patterns of characters which are stored or transmitted electronically, magnetically or in an otherwise not immediately perceptible way or are documented in any other form (e.g. on paper).
In writing or written	Includes in text form, e.g. via fax, email or electronic data interchange (EDI), unless written form is explicitly required by law. A document will be in writing or written if the document is in the form of a data message and is accessible in a manner usable for subsequent reference in terms of section 12 of the Electronic Communications and Transactions Act 25 of 2002 (ECTA).
ISO	International Organisation for Standardisation.
Trade Secrets	Technical as well as commercial information which are not publicly known or not readily accessible and therefore of commercial value, and including information that is marked as Trade Secrets.

## 1. Scope and supplier data

1.1 These GTC shall apply to the procurement of goods and works or services (including software and Data), which are neither production material nor motor vehicle parts.

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

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

1.3 The Contractor shall notify BMW completely and without undue delay of name changes, changes in legal form as well as changes which are material to the business relationship between BMW and the Contractor and which pertain to the Contractor's participation, shareholder- or ownership structure; the Contractor shall inform BMW of the aforementioned changes under email address [legalservices@bmw.co.za](mailto:legalservices@bmw.co.za) as well as the responsible BMW purchase specialist department(s).

To the extent permissible in accordance with applicable laws and contractual obligations, the Contractor shall inform BMW's 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 business relationship exists upon transfer of all or the greater parts of the assets or undertaking(s) of the Contractor, a merger or split of the Contractor with or to another legal entity, the conclusion of a control or profit transfer agreement by the Contractor as the controlled company, and the acquisition of more than 50 percent of the voting rights of the Contractor's company by one or more purchasers acting jointly in one or more transactions.

## 2. Integral parts of the contract and contract conclusion

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

This also applies to the conclusion of a framework agreement by the corresponding acceptance of a frame contract purchase order. In such framework agreement, the Contractor undertakes to render contractual performance at the conditions specified in the framework agreement, if BMW issues a call-off purchase order. A call-off purchase order refers to the framework agreement. The quantities stated in requests for quotation and/or offers serve only as non-binding orientation values, e.g., for the purpose of price calculations, and do not establish any obligation for BMW to order these quantities or to purchase corresponding volumes. There shall be no claim of the Contractor to the issuance of orders.

The individual purchase order, frame contract purchase order and call-off purchase order are hereinafter referred as "**BMW Purchase Order**".

2.2 In addition to these GTC and depending on the the actual contractual scope, Special Terms and Conditions ("**STC**"), referenced by BMW, may apply.

2.3 In the event of a conflict between the integral parts of the contract, the following order shall apply:

- a) BMW Purchase Order,
- b) Order placement/Negotiation protocol/individual contract (if any),
- c) Services Agreement (if any),
- d) Specification in the final quotation from the Contractor (excluding the Contractor's contract terms and terms of delivery) and BMW tender documents including all annexes thereto and referenced documents,
- e) Framework agreement between BMW and the Contractor (if any),
- f) STC (if any) and
- g) these GTC.

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

- 2.4 The calculation basis on which the final offer of the Contractor is based, is only used for the validation of its fixed price offer and does not become an integral part of the contract.
- 2.5 The Contractor's or a third party's different or additional contract, license or delivery terms shall not become an integral part of the contract, even if these are not expressly rejected. If the Contractor confirms the order from BMW in deviation from the Services Agreement or the BMW Purchase Order, these deviations shall only apply if and to the extent that BMW expressly agrees to them in writing.
- 2.6 The Contractor shall comply with applicable guidelines and directives of BMW Group that are referenced in the tender documents or the BMW Purchase Order. The Contractor has to inform itself about these guidelines and directives before placing its quotation and thereafter continuously, via the channels provided by BMW Group (esp. B2B-Portal).
- 2.7 The General Terms and Conditions for a principal order shall also apply as and where appropriate to any order additions or changes, even if this has not been specifically agreed.
- 2.8 If the Contractor creates, amends or provides software as part of its contractual performance, the "BMW terms for the Implementation of Open Source Software" ("**OSS Terms**") shall apply and shall be an integral part of the contract. The OSS Terms can be opened using the following path: B2B-Portal > login > departments > purchasing > purchasing direct material > contractual standards or will be sent by BMW on request of the Contractor.

### **3. Contractual performance**

- 3.1 The Contractor shall bear system responsibility for the contracted scope, i.e. the Contractor is responsible to BMW for the provision of the goods, works or services according to the contract in all process stages and for all parts of the contract regardless of whether it uses subcontractors directly or indirectly for the execution of the contract.
- 3.2 The Contractor shall ensure compliance with all the relevant legal regulations in force during the execution of the contract and with regard to the performance to be rendered, regardless of whether it uses subcontractors directly or indirectly for the execution of the contract.

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

- 3.3 The Contractor shall not have any rights to refuse performance or rights of retention against a claim of BMW or to enforce a claim of its own, unless it is in accordance with an order of a court with competent jurisdiction. This shall apply in particular to the Contractor's obligation to supply, the fulfilment of which the Contractor shall not be entitled to refuse or suspend by reference to its own, unrecognized and not legally proven claim or ongoing negotiations with BMW.
- 3.4 If the Contractor or one of its Affiliated Companies has engaged in any agreement or other conduct with respect to the provision of the contracted goods, works or services which has the effect of substantially preventing or lessening competition in the market, in the absence of a defence as provided for in the Competition Act, 1998 (in each case determined by a final regulatory or judicial decision) then BMW shall, in addition to the right to claim damages, be entitled to summarily terminate the procurement of the goods, works or services affected by such violation of Competition law.
- 3.5 The Contractor may only directly or indirectly engage subcontractors for the contractual performance with the prior written consent of BMW. Clauses 3.1 and 3.2 shall not be affected by this. BMW will not unreasonably withhold such consent.
- 3.6 Any material to be provided to BMW shall be ordered by the Contractor in good time and in the correct quantity to ensure the contractual performance by the Contractor in accordance with the contract.
- 3.7 The Contractor shall appoint a project manager:
  - a) The project manager shall plan, coordinate and monitor all the project's needs in compliance with the relevant guidelines (e.g. operating equipment guidelines, accident prevention policies, etc.) and shall act as the responsible contact for the BMW project manager.
  - b) The Contractor's project manager shall notify the BMW project manager of the status of the contractual performance at any time upon request. To do this, he must provide an up to date time schedule with the start and finish dates, level of completion and the status of each function.

- c) The project manager may only be replaced for material reason, and only after giving prior written notification to BMW. For its part, BMW may demand the replacement of the Contractor's project manager for a compelling reason.
- 3.8 The Contractor must ensure that its employees and other third parties engaged by it comply with the BMW visitor guidelines and the BMW site rules. Instructions issued by BMW site security officers must be obeyed in this respect. Serious breaches of the visitor guidelines or the site rules (e.g., the ban on photography) as well as a violation of the alcohol and drugs ban in Clause 3.9, shall entitle BMW to ban individuals engaged by the Contractor from the BMW site. Other rights of BMW remain unaffected.
- 3.9 Employees of the Contractor and other third parties engaged by the Contractor are prohibited from entering a BMW property under the influence of alcohol, bringing or distributing alcoholic beverages on a BMW property or consuming alcohol on a BMW property. Bringing and distributing alcohol by order of BMW are excluded from this.
- This also applies to all other types of drugs. The Contractor must ensure compliance with this alcohol and drugs ban.
- 3.10 If and to the extent the Contractor's employees have access authorisation for a BMW property and the access is no longer required for the contractual performance (in particular due to the termination of the employee's work assignment), the Contractor must report this to the ID Card Office of the relevant BMW site without undue delay and return the BMW partner ID card of the employee concerned to the BMW ID Card Office or to BMW Plant Security. The same applies to employees of a subcontractor engaged by the Contractor.
- 3.11 If and to the extent the Contractor uses areas on a BMW property assigned to the Contractor or on areas rented by BMW for the provision of services by the Contractor, the Contractor undertakes to comply with the requirements of the BMW Group Standards "Occupational safety" (GS-99001), "Environmental protection" (GS-99003) and "Safety information for external companies" (GS-99004). These are available under the following path: B2B-Portal > Login > Applications > TEREK.
- BMW shall be entitled to audit these areas with regard to occupational safety, environmental protection and fire protection. In addition, BMW shall be entitled to verify the Contractor's compliance with the agreed level of information/IT security (e.g., physical access protection, asset management and asset protection etc.)
- 3.12 The Contractor shall take all the action required to render the contractual performance without any additional compensation, even if such action is not expressly set out in the contract documents. This shall particularly apply to the following actions:
- a) The Contractor must mark the delivery items and, if relevant, tools and special equipment provided or owned by BMW, as specified by BMW.
  - b) The Contractor shall document all completed inspections and their results and shall ensure a clear assignment to the respective ordered goods, works or services. The Contractor shall preserve this documentation for a period of at least ten years after the completion of the contractual performance and shall supply it to BMW upon request and offer it to BMW before said documentation is destroyed (unless required to be destroyed earlier in accordance with applicable law).
  - c) The documents required for completing the work must be ordered or procured by the Contractor in good time. The Contractor must check these documents, including in relation to local conditions, to ensure that they are complete, correct and free of any irregularities as well as for the completion of preparations by third parties. The Contractor must notify BMW of reservations of any kind in writing and without undue delay giving its reasons for its reservations and must reach agreement with the BMW project manager on how to proceed with the work.
  - d) The documents and items supplied to the Contractor or produced using information supplied by BMW may only be copied or sold, used as security, pledged or otherwise passed on or used for third parties with the written consent of BMW. The same shall apply to the goods manufactured using these documents and/or items.
  - e) All documents and items supplied to the Contractor shall be provided on a loan basis and shall remain BMW's exclusive property. They must be returned to BMW at BMW's request or immediately after they are no longer required for the agreed purpose, at the latest after the end of the contract.
- 3.13 The Contractor is not entitled to render partial performance.
- 3.14 If the Contractor creates or amends software as part of its contractual performance, it must supply the created or amended programs to BMW after completing a program test, in testable and machine-readable form on a suitable data carrier, together with the source code and the documentation. Already during the contractual performance, the Contractor undertakes to enable BMW to examine the source code and the documentation.

#### **4. Changes and additions**

- 4.1 BMW may demand changes and additions to the commissioned service ("Changes") at any time and, if the contract constitutes the provision of work or goods, at least up to the acceptance, using reasonable discretion and taking into account the interests of the Contractor. The Contractor also undertakes to suggest changes to BMW which it considers necessary or appropriate in view of revised statutory or other mandatory provisions or for other reasons. Without a Change Order or an equal written confirmation by BMW, the Contractor is not entitled to deviate from the specification, in particular not to include additional functions or to change the contracted goods, works or services without notification to BMW.
- 4.2 If a change could result in an increase or a reduction in costs and/or in a deadline extension, the Contractor undertakes to notify BMW at the same time as providing its change proposal or immediately upon receipt of the change request from BMW and to submit an appropriate supplementary quotation. The change shall be made on the basis of a written agreement stipulating the payment of the additional costs or the reimbursement of the reduced costs and the timetable for the works.

#### **5. Acceptance**

- 5.1 If the contractual performance consist of the provision of work or goods, a formal acceptance shall be required. BMW shall conduct the acceptance once the notification of completion from the Contractor has been received and all the documents related to the contractual performance have been supplied. If the review of the contractual performance rendered by the Contractor requires a commissioning or start-up process for testing purposes, the acceptance shall not be carried out until after the successful completion of the tests.
- 5.2 The acceptance shall be recorded in a formal acceptance protocol. However, there shall be no formal acceptance, until such time as the Contractor has rectified any defects found. The rectification of defects must be completed without undue delay, at the latest within a deadline set by BMW. Acceptance may not be refused by reason of trivial defects.
- 5.3 The ready for use handover of the contractual performance rendered shall not constitute an acceptance. Payments by BMW shall not indicate that BMW has accepted the contractual performance.
- 5.4 The Contractor has no claim to partial acceptances.

#### **6. Termination**

- 6.1 If the contract constitutes the provision of work, BMW may terminate the contract or separately delimited parts of it at any time, without penalty. Other and further reasons for termination by the parties, e.g., acts of insolvency, business rescue proceedings, material breach etc., shall remain unaffected.
- 6.2 If the Contractor is responsible for the reasons for termination, BMW must only pay for contractual performance in accordance with the contract, which is completed and evidenced, provided that it can be used by BMW. Damages claims by BMW shall not be affected by this.
- 6.3 If the Contractor is not responsible for the reasons for termination, BMW shall compensate the Contractor with the costs the Contractor has incurred directly from the order up to the termination of the contract for which evidence can be produced, including the costs resulting from obligations which the Contractor is unable to break. Beyond this, the Contractor shall not be entitled to any other fulfilment or compensation claims as a result of the termination.
- 6.4 The intellectual property and/or ownership rights to the work results completed up to termination as described in Clause 15 ("Intellectual property rights and copyrights/Work Results") shall be transferred to BMW.
- 6.5 The right to extraordinary termination for cause shall remain unaffected. Cause shall in particular be assumed in the following cases:
- a) The Contractor commits a material or persistent breach of the contract and if such breach is remediable, fails to remedy it within fourteen days of receipt of written notice of the breach, specifying the breach and requiring its remedy; or
  - b) the insurer repudiating any claim made by the Contractor in terms of the insurance policy or giving notice in terms of the policy to the Contractor of the insurer's intention to withdraw cover; or
  - c) the liquidation, placing under judicial management, business rescue, effecting of a compromise with creditors, or committing any act of insolvency of or by the Contractor hereto; or

- d) any judgment being obtained against the Contractor and remaining unsatisfied for a period of 30 (thirty) days or more, that will affect the Contractor's ability to perform its obligations in terms of the contract; or
- e) the Contractor or a subcontractor directly or indirectly engaged by it fails to comply with or breaches a relevant legal regulation and BMW can therefore not be reasonably expected to continue the collaboration taking into account all the circumstances and interests of both parties; or
- f) the Contractor has offered, promised or given benefits to another company representative (including but not limited to a BMW employee) or public official, which could be to unduly influence such person in relation to the negotiation, decision-making process or performance of the contract.

6.6 BMW may by written notice to the Contractor terminate the contract (in whole or part) with immediate effect if:

- a) the Contractor acquires or is acquired by a competitor of any the BMW Group companys;
- b) any of the Contractor's personnel are found to be guilty of fraud, dishonesty or serious misconduct;
- c) in the event that to continue with the contract would place BMW or the Contractor in breach of applicable laws;
- d) any regulator or law enforcement agency requires or advises that the contract be terminated;
- e) the Contractor breaches or is in default of any warranty given by it under the contract; or
- f) an occurrence or event caused by a public health emergency including epidemics and / or pandemics and /or a force majeure event prevents the Contractor from providing part or the whole of the work, goods and / or services or prevents BMW from making use of or receiving part of or the whole of the work, goods and / or services.

6.7 The Contractor may terminate the contract by giving written notice to BMW if:

- a) it persistently fails to pay the Contractor where there is no dispute over payment and if such failure to pay is not remedied within forty five days of receipt of written notice of the breach, specifying the breach and requiring its remedy; or
- b) it is affected by an insolvency event.

## **7. Consequences Of Termination**

7.1 Upon termination of the contract by BMW for any reason:

- a) Subject to BMW not being liable for applicable charges where part or whole of the work, goods and / or services are not delivered or cannot be used or received by BMW, BMW's sole liability shall be to pay the Contractor the proportion of the charges applicable to the work, goods and / or services carried out and /or delivered prior to termination and any outstanding unavoidable commitments necessarily and solely incurred in properly performing the contract prior to termination that are not reflected in such charges;
- b) BMW shall not pay for any commitments that the Contractor entered into after the date of notice of termination or those that the Contractor is able to mitigate and BMW shall not be obliged to pay any charges for the work, goods and / or services which at the date of termination BMW is entitled to reject or has already rejected. BMW shall only pay for commitments that BMW has validated to its satisfaction;
- c) BMW's total liability under Clause 7.1 shall not in any circumstances exceed the charges that would have been payable by BMW to complete the work, services and / or deliver the goods if the contract had not been terminated; and
- d) BMW shall be entitled to terminate any Purchase Order with effect from the date of service of notice of termination of the contract.

7.2 Upon termination of the contract by BMW, BMW shall without limitation to any other of its rights, have the right to recover from the Contractor any additional cost of having the goods provided and / or the work, services completed by a third party.

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

## **8. Delivery periods and delay**

8.1 If deadlines are specified by calendar weeks or months, the first working day shall be agreed as binding. The deadlines specified in the BMW Purchase Order (including individual deadlines) shall be binding and if the Contractor is in delay, said deadlines must be met by means of additional work free of charge, including outside normal working



hours, to the extent permitted. The Contractor accepts the condition that delivery times and quantities are of the essence for the contract fulfilment and therefore BMW may reject and/or return at Contractor'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 BMW Purchase Order and/or delivery schedule. The Contractor shall bear the procurement risk along the supply chain, unless the parties have agreed otherwise. Otherwise, the common law in relation to delayed performance shall apply.

- 8.2 If the contract includes a contract penalty, BMW may also claim damages which goes beyond this. The right to demand payment of an agreed contract penalty shall not be waived by the fact that the contract penalty is not expressly reserved when the contractual performance is being accepted.
- 8.3 The above provisions shall also apply in the event that the Contractor renders the contractual performance, either partially or as a whole, in time, but it is not ready for acceptance.
- 8.4 In the event that delays occur for which the Contractor is not responsible, the Contractor shall, upon request, be entitled to a reasonable extension of the contract deadlines. In the event of delays which are the responsibility of BMW, the Contractor shall be entitled to claim the reimbursement of any costs it incurs as a result (excluding loss of profit).
- 8.5 The Contractor must notify BMW without undue delay and in writing on any threat to a deadline even if it assumes that BMW is already aware of the circumstances and reasons.
- 8.6 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 the reasonable control of the incapable party and which cannot be averted and foreseen even if utmost care is taken.

## **9. Indemnity and Limitation of liability**

- 9.1 Subject to the Contractor's obligation to indemnify BMW under Clause 15, the Contractor shall indemnify BMW and hold it harmless against any and all losses, costs, claims, damages and expenses (including any interest, fines, legal and other professional fees and expenses) awarded against or incurred or paid by BMW as a result of or in connection with any claim made against BMW arising out of, or in connection with the breach, negligent performance or failure or delay in performance of the contract by the Contractor, its personnel, agents or sub-contractors or in connection with the manufacture of or any defect in the goods.
- 9.2 In connection with the work, goods and/or services or otherwise, if the Contractor's employees, agents, subcontractors or other representatives (hereinafter "Contractor's Agents") are on or are present at any premises of BMW, the Contractor shall be and is responsible for the acts and omissions of the Contractor's Agents when they are on or are present at BMW's premises and agrees to indemnify and hold BMW harmless against liability for damage to property or injury or death to persons arising out of acts or omissions of the Contractor's Agents whether pursuant to the contract or otherwise. The indemnity in this Clause shall not apply insofar as the claim is caused by the negligence or fraud of BMW.
- 9.3 In the event of a claim by a third party against BMW, which may be the subject of indemnification provided for in this Clause 9 BMW shall provide written notification thereof to the Contractor. The Contractor shall provide BMW with such reasonable assistance in the response and prosecution of any defence as BMW may request.
- 9.4 The parties hereby agree that any provision which the parties have made in this Agreement for liquidated damages shall not prevent BMW seeking or obtaining additional damages for its actual loss in the circumstances.
- 9.5 Neither party shall be liable for any indirect, consequential or incidental injury, loss, damage, cost, expense or charges incurred by the other party, whether the same arises in contract or in delict.
- 9.6 The provisions of this Clause 9 shall survive the termination or expiry of the Agreement.

## **10. Power of representation**

- 10.1 The Contractor may not represent BMW in legal transactions unless BMW has authorised it in writing to do so. However, it shall be entitled to take action required to complete the contractual performance as set out in the contract and to ensure that the project can be conducted correctly, which action shall not have any negative effects of a qualitative, deadline or financial nature for BMW. This shall also apply to declarations which are materially necessary for the coordination and monitoring of the execution of the contract. In particular, the Contractor shall be commissioned and authorised to represent BMW against third parties involved in the project for dealing with defects, setting deadlines and for placing call-off orders and issuing warning notices for contractual performance.

- 10.2 Third parties engaged by BMW with planning and/or monitoring duties shall not be authorised to represent BMW in legal transactions. These third parties shall especially not be entitled to extend completion deadlines or legally accept invoice amounts, wage claims, subcontractor hourly payments, dimension tolerances or the like.
- 10.3 BMW shall be entitled but not obliged to accept goods in the absence of the Contractor on its behalf; however, BMW cannot accept any liability for the goods being complete or correct even if a written acknowledgment of receipt is provided. The Contractor shall be responsible for all safekeeping risks.

## **11. Remuneration, invoicing and payment**

- 11.1 All prices shall be net fixed prices exclusive of any statutory payable value-added tax and, unless otherwise agreed, shall include all additional costs (such as transport and installation costs, travelling expenses, supplements, lump sums, etc.). The prices shall apply without change until the fulfillment of all the obligations under the contract.
- 11.2 The payment of the agreed remuneration to the Contractor covers all obligations as agreed in the contract, including all rights to be assigned or to be granted.
- 11.3 Upon request of BMW, all invoicing documents must be supplied in electronic form ("BMW eInvoicing", available at B2B-Portal > Applications > eDocument Portal). The possible transfer variants will be specified by BMW.
- 11.4 If the supplies made to BMW by the Contractor satisfies the provisions stipulated in Sections 20(2) and 21(4) of the Value Added Tax Act no. 89 of 1991 ("VAT Act"), read together with Binding General Ruling (BGR) no 15 issued by the South African Revenue Service (SARS), BMW may demand that the account is dealt with using the Self-billing Procedure. The self-billed invoice shall be issued on the basis of the receipt of the goods or the confirmation of performance by BMW and sent to the Contractor. In this case the Contractor does not have to issue an invoice with the information set out in Clause 11.5.
- 11.5 If the Contractor is not invoiced by means of a self-billed invoice, the Contractor shall submit a commercial invoice using the invoice procedure. In the case of import deliveries, the Contractor shall attach a commercial invoice in English and in duplicate to the shipping documents for customs purposes. The commercial invoice shall contain the information required under Clause 11.5:
- a) The original invoice must be addressed to BMW as indicated on the purchase orders.
  - b) In the event that South African value-added tax law is applicable, the invoice must conform with Section 20 of the VAT Act and shall include the following information:
    1. Full corporate name and full address of the client`s (recipient of the services) registered office and of the Contractor`s (provider of the services) registered office.
    2. Contains the words "Tax Invoice", "VAT Invoice" or "Invoice".
    3. In case of a different invoicing party, it shall also be stated in whose name and order as well as tax number the invoice is issued.
    4. The Contractor's (Vendor's) tax or VAT registration number.
    5. BMW's VAT registration number.
    6. BMW Purchase Order number.
    7. Date of issue or invoice date.
    8. Consecutive and unique invoice number.
    9. Date of the delivery of goods or provision of works or services.
    10. An accurate description of the goods, works and/or services (indicating where applicable that the goods are second hand).
    11. Quantity details.
    12. Net total, itemised by tax rates.
    13. Tax rate, tax amount (itemised by tax rates).
    14. In case of billing without VAT, the reason for the tax exemption and the reference to the corresponding regulation of tax legislation.
    15. Delivery note number or reference document (e.g., specification) of the Contractor.

16. Any reduction in the remuneration agreed in advance, unless it has already been taken into account in the remuneration; any lower value-added tax amount must be shown separately.
17. Regarding tools:
- Location of the tools including full address (tooling may not be located in any country outside South Africa.).
- c) BMW may reject an invoice which does not contain the information required in Clause 11.5. The Contractor will not be notified and is required to check the Remittance and Open items on SupplierNet. The payment period shall then only begin on the date on which BMW receives a new, auditable, correct invoice which satisfies the requirements in Clause 11.5.
- 11.6 Any Change of (i) the recipient of payment, (ii) the invoicing party or (iii) the Purchase Order recipient requires BMW's prior written consent. 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 resulting from not meeting the requirements of this Clause 11.6 shall be borne by the Contractor.
- 11.7 Payment for performance in accordance with the contract will be made within the payment period agreed in the BMW Purchase Order:
- a) In the event that an invoice is done per self-billed invoice in accordance with Clause 11.4, 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) In the event that the invoice 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 BMW in accordance with Clause 11.5., will be decisive for calculating the start of the payment period.
  - c) For the calculation of the start 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.
- 11.8 If BMW demands the provision of a guarantee, the Contractor must provide this with no time limits. The form will be sent by BMW on request of the Contractor. The guarantee shall be provided either by a major local bank or an insurance company at BMW's discretion. Depending on the content of the guarantee, the guarantor must be liable for all claims by BMW resulting from an advance payment by BMW, non-contractual order completion, invoicing or warranty, as well as potential additional costs such as interests and costs of any kind that accrue from the secured principal claim or its assertion.
- 11.9 The Guarantor shall be released from its obligations under this Guarantee on return of this Guarantee, upon prior written request by the Principal to BMW, such request to be made only after 4 (four) weeks of acceptance of the goods and/or services supplied in accordance with the transaction and acceptance by BMW in writing.
- 11.10 No variations to the terms and/or conditions on this Guarantee are permitted without prior written agreement of all the contracting parties who are legally bound thereby. Payment under this guarantee will only be made upon presentation of the original Guarantee by BMW to the Bank. This guarantee is neither negotiable nor transferable and restricted to the payment of money only being the Guaranteed Amount. South African law shall apply to any disputes arising from this Guarantee and the South African courts shall have jurisdiction over any matters arising from this Guarantee. This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758 (URDG).
- 11.11 Payment may be made by bank transfer. All payments shall be made subject to a later review and possible claim of reimbursements plus interest claims. The Contractor may therefore, for example, not argue prescription in respect of such later claims. The Contractor is obligated to provide current accurate bank information, and upon request, to confirm such. Transfer fees will be split (transfer charge code "Share"), unless otherwise agreed.
- 11.12 Payment by BMW for any goods or services neither indicates nor constitutes acceptance of such goods or services.
- 11.13 Claims of BMW arising from or related to these GTC are due immediately, unless otherwise agreed in individual cases.
- 11.14 With regards to local South African contractors, BMW shall be entitled to offset its claims against receivables of the Contractor and also receivables that are assigned from the Contractor to any third party.
- 11.15 The Contractor shall not be entitled to assign accounts receivable or have them collected by third parties (e.g., leasing companies, banks) or to transfer any of its rights and obligations individually or in total to a third party, without the prior written consent of BMW.

## **12. Taxes**

- 12.1 Taxes shall comprise all current or future taxes, charges, levies, costs and other fees of any kind as well as additional payments such as interest, fines for delays, default supplements and fines, fines for late payment and penalty payments which must be or have been paid as a result of obligations under public law.
- 12.2 BMW and the Contractor shall each be responsible for fulfilling their fiscal obligations and liabilities. If a party fails to meet its fiscal obligations or liabilities and this results in loss, damage or any other disadvantage for the other party, the first party shall fully indemnify the other party from said loss, damage or other disadvantage.
- 12.3 If withholding tax falls due on the amounts to be paid by BMW to the Contractor, the withholding tax shall be withheld by BMW pursuant to applicable laws and regulations and paid to the competent tax authority in the name and for the Contractor's account, or respectively according to the applicable laws and regulations, in the name and for the account of the beneficial owner of the payment.

Upon request of the Contractor and in compliance with applicable tax laws and regulations, BMW shall provide the Contractor with a valid tax certificate evidencing payment of withholding taxes on behalf of the Contractor, or respectively according to the applicable laws and regulations, on behalf of the beneficial owner of the payment.

If an applicable double taxation agreement or another regulation provides for a reduction or exemption from withholding tax, BMW shall withhold the reduced amount or apply the exemption if the Contractor, or respectively according to the applicable laws and regulations, the beneficial owner of the payment has provided BMW with a valid tax exemption certificate (Freistellungsbescheinigung) and/ or all required supporting documentation to claim the reduction or exemption at least ten banking days prior to the respective invoice date. Otherwise BMW shall deduct and withhold the withholding taxes from the amounts due, which must be paid to the competent tax authority to comply with current income tax and corporation tax laws.

The Contractor, or respectively according to the applicable laws and regulations, the beneficial owner of the payment shall meet all its certification, information and documentation obligations and other duties required for the application of reduced tax rates or exemptions under the applicable double taxation agreements or other regulations.

- 12.4 The Contractor shall pay all taxes which the Contractor incurs in Germany or elsewhere due to the purchase, consumption or production of goods or for the use of services or from business trips by its own employees, which are required for the contractual performance. These taxes shall be included as costs in the price agreed with BMW unless the Contractor has a claim to reimbursement, deduction or repayment of these taxes in Germany or elsewhere. The Contractor shall not invoice BMW with these taxes separately as far as they are not included in the price. Statutory value-added tax shall be excluded from this.

## **13. Customs, origin and export controls**

- 13.1 The Contractor shall comply with all applicable laws and regulations, particularly those relating to customs and export controls (including US and locally applicable export control law) and all the requirements which relate to the security of the supply chain.
- 13.2 At the request of BMW, the Contractor undertakes to provide all the required documents, for example certificates or declarations (e.g., AEO security declarations, declarations under C-TPAT or similar programmes), to support BMW during official investigations and to use similar caution in its dealings with its business partners.
- 13.3 BMW shall be entitled to reject the contractual performance which forms part of the business relationships if the Contractor breaches regulations set out in Clause 13.1 and this would make the execution of the contract by BMW a breach of the law by BMW. The same shall apply, notwithstanding an infringement by the Contractor, if the execution of the contract by BMW would constitute a breach of the regulations set out in Clause 13.1. In these cases the Contractor shall waive its right to any compensation or other claims relating to the justified exercise of its right to withhold performance on the part of BMW.
- 13.4 The Contractor shall inform BMW

- a) of any possible export control applicable to the contractual performance (e.g., classifications in accordance with the Dual-Use Regulation or comparable regulations);
- b) if and insofar the goods and technologies are subject to any export/re-export licence under US law/US regulations, and
- c) of the relevant classification number applicable (e.g., the ECCN Export Control Classification Number for US products, the "AL number" of goods and technologies listed in the German Exports Control list or in the EC Dual Use Directive, etc.), as well as
- d) of any possible exemptions for the goods and technologies.

The Contractor shall send the aforementioned notes and information to the BMW department of customs and export control (for contact persons, see B2B-Portal > Login > Departments > Finance > Export Control). At the Contractor's request, BMW will provide the Contractor with the required declarations / notifications.

- 13.5 The Contractor shall provide BMW with all such support as may be necessary to enable BMW to reduce or minimise its payment obligations. The contractor undertakes to examine existing customs suspensions or punitive tariffs (e.g., "exclusions" under US law) and to notify BMW. If these customs suspensions are applicable, they shall be applied for. Upon BMW's request, the Contractor commits to implement, particularly in the EU, customs procedures with commercial impact pursuant to Art. 210 of Regulation (EU) No. 952/2013 (Customs Code of the European Union) or submit declarations (affidavits) pursuant to customs rules of third countries in close coordination with BMW. If the Contractor participates in an US foreign trade zone, MX IMMEX or comparable program (hereinafter "**Programs**"), then the Contractor undertakes towards BMW that it will comply with all applicable legal norms and regulations in connection with suchs Programs, as well as timely and in correct form, and with complete and correct content, and the Contractor will provide BMW with all information required for its compliance with its obligations.

In addition, the Contractor shall inform BMW in writing of applicable antidumping measures (e.g., for aluminium, steel) and punitive tariffs on imports into the corresponding importing countries.

- 13.6 If the Contractor provides goods, works or services which may be imported into the recipient country on preferential terms, the Contractor must attach a preferential certificate of origin with each consignment (e.g., movement certificates, EUR 1 or EUR-MED, etc.) or a non-formal proof of preference (e.g., declaration of origin) if the legal requirements have been satisfied for this. If certificates of origin other than preferential ones are required in the recipient country as a result of national import regulations, BMW must also be supplied with these by the Contractor.
- 13.7 The Contractor must contact the relevant BMW customs department to discuss any questions and instructions relating to customs duties.

BMW shall complete the customs clearance formalities in the country of import and the Contractor shall complete the customs clearance formalities in the country of export, unless otherwise agreed. If the Contractor completes the customs clearance formalities in the country of import without the prior written consent of BMW, it shall act on its own behalf and for its own account. This shall apply even if it claims to be acting on behalf of and for the account of BMW but does not hold any power of representation.

## 14. Warranty

- 14.1 The warranty shall be based on the applicable statutory regulations unless otherwise agreed. Regardless of this, BMW shall be entitled initially to demand delivery of goods free of defects or the defect rectification free of charge. If the Contractor is in default with this, BMW may rectify the defect itself and demand compensation for the costs incurred.
- 14.2 Defects in the contractual performance rendered shall be reported by BMW to the Contractor as soon as they are identified during its normal business routines. The Contractor waives its right to claim that a complaint was made too late.
- 14.3 Any notice of defect by BMW shall suspend the warranty period for the defective contractual performance. After the defect has been rectified, the warranty period for the affected contractual performance shall recommence.
- 14.4 The Contractor hereby indemnifies BMW and holds BMW harmless against and undertakes to pay BMW on demand the amount of any claim made by any third person against BMW arising out of or in connection with damages sustained by BMW in any proceedings brought or threatened against BMW in relation to the contract.
- 14.5 Any reference to BMW in the contract shall, unless the context indicates otherwise, be deemed to include its cesionary or delegate.

## 15. Intellectual property rights and copyrights/Work Results

- 15.1 The Contractor shall ensure that:
- a) the provided goods and works or services are free of third party intellectual property rights which exclude or adversely affect the use of the goods and works or services by BMW Group; and
  - b) it has the authority to assign or grant the appropriate rights of use to BMW Group.
- 15.2 The Contractor shall indemnify and hold BMW Group harmless from all claims by third parties, including the claims of any copyright authors involved, which may be asserted against BMW Group as a result of the use, in accordance with the contract, of the contractual performance rendered by the Contractor. The Contractor shall conduct any necessary legal disputes itself, if possible, on its own behalf and at its own expense. This shall not affect BMW's right under the statutory regulations to demand compensation and cancel the contract.
- 15.3 Unless otherwise agreed, all tangible and intangible results ("**Work Results**") created during the execution of the contract shall be transferred to BMW AG without any further conditions and without any additional remuneration. In case such transfer is legally not possible, the Contractor will grant BMW AG a right of use to the Work Results that is exclusive, unlimited in terms of time and content, assignable, sublicensable, worldwide, irrevocable and free of charge or royalties.
- 15.4 Unless otherwise agreed and to the extent required by BMW Group to be able to use the contractual performance rendered (including a Work Result) commercially, the Contractor hereby grants BMW Group a right of use to the property rights or similar legal positions required for this purpose, which right of use is non-exclusive, unlimited in terms of in time and content, assignable, sublicensable to third parties for the purpose of supplying products or providing services to companies of BMW Group as well as to companies of BMW Group, worldwide, irrevocable and free of charge or royalties.
- 15.5 If, during the execution of the contract, the Contractor creates or amends software, the rights of use as set out in Clause 15.3 shall not be limited to the object code but shall also extend to the source code and the documentation for the created and amended programs.
- 15.6 If in an individual case a company of BMW Group other than BMW orders goods, works or services on the basis of these GTC, BMW shall be legally represented by this company vis-à-vis the Contractor for the acquisition or licensing pursuant to Clause 15.3 or 15.4.

## 16. Data protection

- 16.1 The Contractor shall ensure that all persons involved in the execution of the contract comply with the statutory regulations relating to data protection, especially when processing personal data.
- 16.2 If the Contractor processes personal data as processor on behalf of BMW within the meaning of the Protection of Personal Information Act 4 of 2013 (POPIA) and Art. 28 GDPR during the contractual performance, it undertakes to conclude an agreement for the commissioned processing of personal data ("**DPA**") with BMW on the basis of the current DPA template which shall be supplied to the Contractor by BMW, and to ensure that any other necessary agreements for the processing of personal data are also concluded by its subcontractors. It may be necessary in individual cases that these agreements must be concluded directly between BMW and the subcontractors. The DPA may be downloaded from the following link: <https://www.bmw.co.za/en/footer/metanavigation/legal-disclaimer-pool/paia-manual.html> and shall be read together with the Privacy Statement found at the following link: <https://www.bmw.co.za/en/footer/metanavigation/legal-disclaimer-pool/privacy-statement.html>.
- 16.3 To the extent that personal data is processed in a third country as part of the provision of services, the contractor will comply with the provisions of Chapter V of the EU General Data Protection Regulation ("GDPR"), for example by implementing appropriate technical and organizational measures. The Contractor will, within reasonable limits, provide BMW with the available and relevant information necessary to comply with the applicable legal requirements, in particular the requirements of the GDPR, relating to the transfer of personal data to entities outside the EU/EEA. This includes but is not limited to, upon request of BMW, the provision of information and declarations of the Contractor within the context of the BMW questionnaire for international data transfers and information in respect of applicable statutory provisions and practices in the third country of destination for the protection of personal data within the meaning of the requirements resulting from the ECJ ruling Rs. C-311/18 („Schrems II”).
- 16.4 To the extent that personal data is transferred from a party in the EU/EEA to a third country as part of the provision of services, the parties will agree on the appropriate module of the EU standard contractual clauses 2021/914/EU before the start of the transfer. This shall not apply if the EU Commission has issued an adequacy decision in accordance with Art. 45 GDPR for the third country of destination, or if the transfer to third countries is secured by other appropriate safeguards as defined in Chapter V of the GDPR.

## 17. Rights to BMW Data

17.1 "BMW Data" for the purpose of these GTC refers to Data that

- a) a company of BMW Group provides to the Contractor, either by itself or via a commissioned third party,
- b) the Contractor creates upon order of BMW,
- c) the Contractor creates without order of BMW in connection with the contractual performance, but stores on data carriers that are perceptibly owned or possessed by BMW Group at the time of storage,
- d) result from a processing of Data in the sense of Clause 17.1 a) to c) in connection with the contractual performance, or
- e) the Contractor creates or obtains by any action according to Clauses 17.4 c) and d).

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

17.2 In relation to the Contractor and subject to data protection law or other mandatory legal provisions, companies of BMW Group are entitled to use BMW Data at their own discretion and without restrictions in terms of time, place or content, especially to reproduce, process, provide to third parties or to exploit BMW Data.

17.3 The Contractor is entitled to

- a) use BMW Data pursuant to Clause 17.1 a) to d), as far as this is necessary for the contractual performance,
- b) provide BMW Data pursuant to Clause 17.1 a) to d) to subcontractors, as far as this is necessary for the contractual performance and provided that the subcontractors were contractually bound in a way equivalent to these GTC prior to the transfer,
- c) provide BMW Data to third parties, as far as this is necessary pursuant to judicial, administrative or statutory rules or orders, always provided that the extent of the disclosure shall be kept as limited as possible and the Contractor shall notify BMW in writing of an intended disclosure prior to such disclosure, unless such notice could not reasonably be given,
- d) provide BMW Data to public authorities or, in case of a lawsuit with BMW to courts, as far as this is necessary for the enforcement of its rights or for the defence against claims,
- e) provide BMW Data to its consultants that are professionally bound to discretion (e.g., lawyers, auditors and/or tax advisors), as far as this is necessary for the provision of the consultancy services of such consultants and provided that the Contractor ensures that such consultant does not provide BMW Data to third parties or exploits it in any other way.

The Contractor's rights regarding Data, which the Contractor itself provides in the course of the contractual performance and which is not considered BMW Data, remain unaffected.

17.4 Unless authorised under Clause 17.3, by statutory provisions or by explicit consent of BMW, the Contractor is not allowed to

- a) provide BMW Data to third parties without order of BMW,
- b) obtain or to reproduce BMW Data without order of BMW, especially by means of functions listed in Clause 18.1,
- c) create Data without order of BMW in connection with the contractual performance, if it concerns items (e.g., machinery), that are perceptibly owned or possessed by BMW Group at the time of their creation,
- d) create or obtain Data in connection with the service provision without order of BMW, which concerns BMW Vehicles and/or components used in connection with them, their status and/or environment.

17.5 If the Contractor violates an obligation under Clause 17.4, BMW notwithstanding other contractual and statutory rights (especially injunction, rectification and compensation) has a right to be informed of existing Data and their use.

17.6 Upon request of BMW the Contractor shall hand over to BMW all BMW Data completely and free of charge, or – if this is neither possible nor reasonable for the Contractor – to give BMW access to the data carriers, on which such BMW Data is stored.

- 17.7 After the end of the contract and upon request of BMW, the Contractor shall destroy any and all BMW Data in such a way that renders a reconstruction of the BMW Data impossible. Upon request of BMW, the Contractor shall confirm to BMW without undue delay and in writing the successful destruction. The foregoing does not apply to routine back-up copies of electronically exchanged BMW Data, which the Contractor however may not use without prior written consent of BMW.
- 17.8 Notwithstanding Clauses 17.6. and 17.7, the Contractor may retain copies of BMW Data insofar and for so long that this BMW Data is subject to a legal or otherwise mandatory obligation to preserve records (e.g., for product liability reasons) or must be preserved in order to fulfil further contractual obligations (including warranty obligations) to BMW.
- 17.9 The Contractor is not entitled to a right of retention against BMW's claims for destruction or handing over of BMW Data.
- 17.10 This Clause 17 ("Rights to BMW Data") shall not restrict or suspend in any way in particular
- a) property or possession rights,
  - b) intellectual property rights, especially rights under copyright law, as well as assigned or granted rights of use or permissions,
  - c) legal provisions and agreements establishing non-disclosure obligations or exploitation restraints for the Contractor,
  - d) legal provisions and rights with regard to personal data (data protection law), and
  - e) rights on Work Results in accordance with Clause 15.
- 17.11 The terms set out in this Clause 17 ("Rights to BMW Data") shall also apply after the expiry or termination of a contract.

## 18. Information Security

- 18.1 The software and hardware deployed and delivered within the scope of the contractual performance shall not contain any features which the Contractor could have detected in accordance with the state of the art and which endanger the integrity, trustworthiness or availability of the contractually agreed performance, other hard- and/or software, or Data, including no feature
- a) for Unwanted transmission/extraction of Data,
  - b) for Unwanted change/manipulation of Data or the process logic, or
  - c) for Unwanted initiation of Data or Unwanted feature expansions.
- "Unwanted"** in this sense is a feature that
- BMW did not request,
  - the Contractor did not offer with a specific description of the feature and its effects, and state
  - that BMW also did not accept in writing in the individual case.
- 18.2 BMW Data must be treated as Trade Secrets. The Contractor shall secure BMW Data and its own Data which is necessary for the contractual performance against unauthorised 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, the Contractor shall prove the implementation of these measures (e.g., ISO/IEC 27001, ISO/IEC 62443, ISO/SAE 21434) without additional remuneration.
- The Contractor shall strictly segregate and handle separately BMW Data (with the exception of email communication) from Data from other customers, and employ appropriate protective mechanism against access by other customers to BMW Data. Insofar as the backup or processing of BMW Data is part of the contractual performance, the Contractor shall take all precautions in accordance with the state of the art in order to be able to restore the BMW Data at any time in a legally secure and loss-free manner.
- 18.3 Depending on the type and protection requirements of the affected BMW Data or the significance of the Contractor's contractual performance for the business operations of BMW Group, BMW may demand from the Contractor an appropriate level of security measures on Information Security during the entire contract period as well as proof as prescribed by BMW of an appropriate Information Security level within the Contractor's operations; especially by submission of appropriate certificates (e.g., ISO/IEC 27001 "Information technology – IT Security process – Information 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".

- 18.4 The Contractor shall ensure that no possibly damage-causing software (e.g., viruses, worms or trojans) is deployed during the contractual performance, e.g., via drivers or firmware included in the delivery. The Contractor shall inspect this in accordance with the state of the art and, upon BMW's request, confirm in writing that it has found no indications of harmful software during such inspections.
- 18.5 If the Contractor 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 BMW, including in the form of an unauthorized access by third parties to BMW Data (e.g., Data leak or cyber attack), (hereinafter "**Information Security Incident**") or if there are indications for the Contractor which upon reasonable assessment justify the suspicion of such Information Security Incident, then the Contractor shall, without undue delay and without additional remuneration for BMW
- a) inform BMW thereof, and
  - b) take all necessary steps to clarify the matter and limit the damage, as well as support BMW hereby and
  - c) 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 the IT-System connections) and
  - d) ensure trouble-free reconnection to the BMW IT infrastructure and
  - e) support BMW in the recovery of the Data if the Information Security Incident causes an interruption or delay of the contractual performance, a decrease in the operations efficiency, or the loss of Data and
  - f) 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
  - g) upon BMW's request, provide a security report for a specified period. The necessary contents 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 Contractor's obligations arising from the contractual relationship remain unaffected.

- 18.6 If BMW 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, BMW has the right to ensure compliance with the requirements for Information and IT Security in accordance with this clause 18 and the agreed data protection and security guidelines (cf. Clause 2.62.6) on data protection and security (hereinafter "**Audits**"). The Contractor shall tolerate BMW's Audits and shall provide cooperation services such as information, as far as this is necessary for the Audit. BMW may also convince itself of the compliance with the agreed technical and organisational measures within the business premises of the Contractor including the IT systems after timely announcement during normal business hours and, as far as possible and reasonable, without disturbance of the business procedures. BMW shall respect any confidentiality obligations which may exist between the Contractor and third parties. BMW is entitled to have Audits conducted by an external qualified company that is contractually bound to confidentiality regarding third parties, unless such company is a Competitor of the Contractor. BMW's statutory rights of control and information are neither limited nor excluded by this provision.
- 18.7 The Contractor shall notify BMW of a central contact person for Information Security via the B2B-Portal (Supplier Data Maintenance > Information Security Officer) before first delivery of goods or service provision and inform BMW of any changes without undue delay.
- 18.8 The Contractor shall ensure that through appropriate contractual regulations, all and any of its subcontractors are contractually bound to BMW to comply with the terms of this Clause 18 ("Information Security") and that this obligation is passed on accordingly along the supply chain.

## 19. Confidentiality, publicity

- 19.1 Each party shall handle confidentially all information which in the scope of the contracting party is disclosed directly or indirectly from the respective other party or from a party's Affiliated Company and (i) are marked as confidential or (ii) 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 contracting, regardless of whether such Confidential Information has been disclosed to the party or to an Affiliated Company. Each party undertakes to neither pass such information on to third parties nor otherwise make this information 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 the contractual performance also keep such information confidential and use it only in connection with the contractual performance. The employees and consultants of the parties are not considered as third parties within the meaning of this provision as long as they are bound by confidentiality obligations equivalent to this Clause 19 (e.g., due to their employment contract).

- 19.2 Confidential Information within the meaning of Clause 19.1 includes
- a) Prototypes, test parts or samples,
  - b) Trade Secrets, know-how or results of the other party exchanged in connection with the contracting,
  - c) the description and existence of the contracting, 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 contracting 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 contracting (e.g., also in the context of a visit or meeting) or the business correspondence and personal data held.

- 19.3 An Information is not classified as Confidential Information within the meaning of Clause 19.1, if and to the extent that it
- a) is or becomes publicly known without breach of the confidentiality obligations under this clause 19, 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.

The party which claims one or more of the above mentioned exceptions shall prove the underlying factual basis.

- 19.4 The confidentiality obligations under this Clause 19 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 prior to the intended disclosure, unless this is unreasonable.
- 19.5 If and to the extent that it becomes necessary in the scope of the contractual performance ("Need-to-know principle"), a party may transfer Confidential Information to
- a) its Affiliated Companies, and
  - b) third parties which in each case are contractually bound to the transferring party, 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 disclosure of the respective Confidential Information the recipient is bound by confidentiality obligations equivalent to this Clause 19 and complies with such.

- 19.6 The parties undertake not to reverse engineer mutually provided objects (e.g., prototypes, software or other materials and samples) that are not or are not yet available on the market by dismantling or disassembly ("**reverse engineering**"), unless corresponding rights arise from mandatory legal provisions or other contractual regulations.
- 19.7 Unless agreed otherwise, the confidentiality obligations of the parties under this Clause 19 shall continue to apply for a period of three more years following the end of the contractual performance.
- 19.8 Statutory confidentiality provisions remain unaffected.
- 19.9 The Contractor may only publicise its business relationship with BMW with prior written consent of BMW.

## 20. Insurance

- 20.1 The Contractor undertakes to adequately insure the liability risks relating to the contractual performance by means of suitable insurance policies at its own expense and with an adequate insured sum and to supply evidence of said insurance policies to BMW prior to the effective date of the contract or otherwise upon request.

- 20.2 The Contractor undertakes to adequately insure the liability risks relating to loss and / or damage to the Contractor's property and equipment. The Contractor indemnifies and holds BMW harmless against any and all losses, costs, claims, damages and expenses (including any interest, fines, legal and other professional fees and expenses) awarded against or incurred or paid by the Contractor as a result of or in connection with such loss or damages, unless proven to be caused by the negligence or wilful misconduct of BMW.
- 20.3 The Contractor undertakes to maintain adequate insurance cover for loss and / or damage relating to personal injury, death and accidental loss or damage in respect of all its personnel whilst on BMW property. The Contractor indemnifies and holds BMW harmless against any and all losses, costs, claims, damages and expenses (including any interest, fines, legal and other professional fees and expenses) awarded against or incurred or paid by the Contractor as a result of or in connection with such loss or damages, unless proven to be caused by the negligence or wilful misconduct of BMW.
- 20.4 A minimum general insured sum of no less than the contract value or ZAR 20 Million (whichever is the greater) shall apply to the insurance duties set out in this Clause 20.
- 20.5 The Contractor shall maintain the insurance cover for the duration of the contract.
- 20.6 The review or any failure to request evidence of the insurance policies referred to above by BMW shall not be regarded as a waiver of any of the duties set out in this Clause 20.
- 20.7 The Contractor's liability shall not be limited by taking out insurance policies.

## **21. Compliance**

- 21.1 For BMW it is of paramount importance that corporate activities take social responsibility towards its own employees and to society as a whole into account. This applies both to BMW itself and to its suppliers. BMW and the Contractor are committed to respecting the principles and rights adopted by the International Labour Organisation (ILO) in the "Declaration on Fundamental Principles and Rights at Work" (Geneva 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 of particular importance:

- Preservation of human rights,
  - Elimination of forced, compulsory, and child labour,
  - Positive and negative freedom of association,
  - Elimination of discrimination on the basis of gender, race, ethnic origin, religion or belief, membership of a trade union or the like, handicap, age, sexual identity, nationality, marital status, political affiliation, veteran status, or other characteristics protected by local laws,
  - Compliance with occupational safety and health requirements,
  - Protection from individual arbitrary personnel measures,
  - Maintenance of employability by training and continuing education,
  - Maintenance of adequate social working conditions,
  - Provision of conditions that enable employees to enjoy a reasonable standard of living,
  - Remuneration, which permits employees to secure their livelihoods including their social and cultural participation,
  - Implementation of equal opportunities and family-friendly policies,
  - The protection of indigenous rights,
  - Ban on bribery and extortion,
  - Safeguarding of animal welfare and animal protection, in particular the 3R principle (Replacement, Reduction, Refinement) in animal testing,
  - Compliance with current laws and regulations.
- 21.2 The Contractor 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. The Contractor shall comply with and implement the "BMW Group Supplier Code of Conduct" valid at the time of

conclusion of the contract (available in the B2B-Portal under > Collaboration > Sustainability > Environmental and social standards > Downloads); at the request of the contractor, BMW will send it to the Contractor.

21.3 In addition, the Contractor has the following obligations:

- a) For the quantitative assessment of the Contractor's resource efficiency as required by the BMW Group Supplier Code of Conduct, the Contractor shall provide BMW, upon request, the following information relating to the total annual scope of orders placed by and supplied to BMW and its Affiliated Companies: total energy consumption; CO<sub>2</sub> emissions; total water consumption; process waste water; metric tons of waste; VOC emissions. In addition, the Contractor shall provide upon BMW's request Data for a life cycle assessment relating to goods or parts thereof (including Data with regard to the materials input) according to the data collection format for life cycle assessment of the VDA.
- b) Polymer materials contained in goods shall comply with the BMW requirements for goods derived from the applicable statutory targets or standards for hydrocarbon emissions of vehicles throughout the entire life cycle of the goods. The production processes for goods shall be adapted to comply with such BMW requirements.
- c) The Contractor shall comply with the requirements stated in BMW Group Standard GS 93008 (1, 2 and 4) "Substances of concern" throughout the entire life cycle of the goods. The Contractor is responsible for registration and, where necessary, authorisation or notification of chemical substances contained in goods in accordance with the statutory requirements that apply to the market concerned (e.g., according to Regulation (EC) No. 1907/2006 (REACH), EU).

In the event of a chemical substance being imported into the area of applicability of a relevant law, the Contractor assumes responsibility for all obligations named in the BMW Group Supplier Code of Conduct and all associated expenditure.

Furthermore, the Contractor will upon request and without undue delay provide BMW with any and all information about goods and substances contained therein, even if such goods have already been delivered, as well as declarations and confirmations, required by BMW in order to fully and timely fulfil its statutory information duties (e.g., under Art. 33 of REACH).

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

21.4 The Contractor warrants that, within the context of the contracting, it shall only transmit such data to BMW as it is entitled to transmit.

21.5 In order to implement the obligations set out in this Clause 21, the Contractor shall take appropriate training, information, control and sanction measures in its organization, establish a responsible compliance function and appoint it upon request.

21.6 It shall be the responsibility of the Contractor to ensure that all and any of his subcontractors act in accordance with the provisions of this Clause 21.

21.7 Upon written request, the Contractor shall share information on non-financial performance indicators such as environmental, employee and social concerns, respect of human rights and combating corruption and bribery as well as the underlying strategies and processes according to recognised standards, e.g. in the form of a sustainability report that address the aspects of Clause 21. If due to statutory requirement the Contractor is obliged to inform on its non-financial performance indicators, then the forwarding of such corresponding report will suffice.

21.8 The Contractor warrants that the information provided by him with regard to its non-financial performance indicators as per Clause 21.7 is accurate, complete and - with regard to any date referred to in the documents or information - current and fairly represents its actual non-financial conditions.

21.9 BMW shall be entitled to refuse the participation in the contractual performance, acceptance of the contractual performance as well as its remuneration if and to the extent a relevant mandatory legal provision would be violated thereby or as long as a relevant mandatory legal provision is being violated.

## 22. General Provisions

22.1 Changes and additions, that are not subject to Clause 4 ("Changes and Additions") and notices of termination must be made in written form. In the event of changes and additions, it shall be sufficient that they are supplied in writing to comply with this requirement for written form. Notices of termination, on the other hand, must be made in writing by letter or email. The requirement for written form as stated in Sentence 1 may only be waived by means of a written agreement.

- 22.2 If any provision in whole or a part of a provision of these GTC or of the referenced STC is or becomes invalid or unenforceable, this shall not affect the validity of the remainder of the contract. BMW and the Contractor must undertake, in good faith within reason to replace the invalid or unenforceable provision by a valid, enforceable provision which has the similar economic result as long as this does not result in a major change to the content of these GTC, a services agreement or of the referenced STC.
- 22.3 To the extent permitted by law, the Contractor will provide BMW with appropriate information (in particular quarterly, half-quarterly, half-yearly and annual financial statements plus the associated final reports including appendices and information on key company figures) at any time upon written request from BMW, which allow BMW to assess the contractor's current economic and financial circumstances with regard to its continued ability to deliver. BMW is obliged to treat this information confidential, as far as it is not publicly available or otherwise demonstrably already generally known or becomes known through no fault of its own.

### **23. Governing law, place of jurisdiction and jurisdiction**

- 23.1 The legal relations between the parties shall be governed by South African law.
- 23.2 The place of fulfilment and exclusive place of jurisdiction for all disputes arising from or in conjunction with the contractual performance shall be Johannesburg, South Africa unless a different place of jurisdiction or place of performance is mandatory by law. The parties consent to the jurisdiction of the High Court of South Africa with competent jurisdiction in respect of any proceedings arising out this Agreement, unless otherwise agreed in writing between the parties.