

## BMW Group International Terms and Conditions for the Purchase of Production Materials and Automotive Components

Status 19.12.2011

### List of Definitions:

- **Seller**  
means the party to whom the Purchase Order is addressed or means the supplier signing the Supply Contract.
- **Buyer**  
means the party which issues a Purchase Order or on whose behalf a Purchase Order is issued or means the buyer signing the Supply Contract.
- **Delivery Schedule**  
means any instruction issued by Buyer to Seller specifying the required delivery quantities, place, date and (if relevant) time of delivery of Goods.
- **Goods**  
means all production materials and automotive components specified in the Purchase Order and includes Tooling, software, spare parts and services.
- **Tooling**  
means production equipment, including, but not limited to 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.
- **Supply Contract**  
means any contract formed by Seller's acceptance of a Purchase Order or any contract signed by Seller and Buyer for the purchase of Goods.
- **Incoterms**  
means those trade terms published by the International Chamber of Commerce and entitled „Incoterms 2010“.
- **in writing or written**  
means a document served by any means including fax, email and EDI.
- **Intellectual Property Rights**  
means patents, design rights, copyrights, trademarks and service marks (whether registered or not and applications for any of the foregoing), know-how, and rights of a like nature, throughout the world.
- **EDI**  
means Electronic Data Interchange, i.e. the transmission of data via electronic communication links between the parties or other machine-readable data media.
- **Purchase Order**  
means any order for the purchase of Goods issued by Buyer to Seller.
- **Affiliated Companies**  
Affiliated Companies are the companies affiliated according to Section 15 German Stock Corporation Act (Aktengesetz).
- **Warranty Agreement**  
means any contract signed by Seller and Buyer with regard to the liability for defects of the Goods.

### Provision 1: **General**

- 1.1 These BMW Group International Terms and Conditions for the Purchase of Production Materials and Automotive Components (“Terms and Conditions”) shall apply to the purchase of Goods by Buyer from Seller.
- 1.2 Seller has read and understands these Terms and Conditions and agrees that Seller's written acceptance of or its performance in relation to a Purchase Order shall constitute Seller's acceptance of these Terms and Conditions.

**Provision 2: Purchase Orders**

**2.1** Buyer shall issue a Purchase Order for Goods to Seller. Acceptance of a Purchase Order by Seller is expressly limited to the terms of the Purchase Order and to these Terms and Conditions. Unless agreed by the parties in writing, any additional or different terms and conditions are expressly excluded and shall not form part of any Supply Contract. Each Purchase Order accepted by Seller pursuant to Provision 2.2 will constitute a separate and individual Supply Contract. In the case of discrepancy or inconsistency between a Supply Contract and these Terms and Conditions, the Supply Contract shall prevail over these Terms and Conditions.

If Goods are ordered on the basis of a BMW part number, then such Goods shall comply with the respective BMW drawing in all its particulars.

**2.2** Seller will forward a written acceptance of the Purchase Order within fourteen (14) working days after Seller's receipt of said Purchase Order. In any event any performance by Seller in relation to a Purchase Order will constitute acceptance of such Purchase Order. In the event that Seller does not forward a written acceptance or does not start performance in relation to a Purchase Order within fourteen (14) working days after Seller's receipt of the Purchase Order, Buyer shall be entitled but not obliged, to revoke such Purchase Order without incurring any liability to Seller.

**2.3** Buyer shall have the right to request changes with respect to the Goods including, but not limited to specifications, drawings, designs, constructions as well as changes regarding date and place of delivery, packaging, quality, quantity and means of transportation. Such change request shall duly consider Seller's reasonable interests. If such change results in an increase or a reduction of Seller's costs or in a potential delay of delivery, Seller shall immediately inform Buyer and the parties shall agree in writing on a reasonable adjustment of Seller's remuneration.

In the event that any such change request results in Seller accumulating stock, which is no longer suitable for use by Buyer in series production, Buyer will reimburse the costs actually incurred by Seller in relation to

- finished Goods, semi-finished Goods and related raw materials, for which Delivery Schedules have been issued for a delivery date within one (1) month after receipt of Buyer's change request,
- finished Goods, semi-finished Goods and raw materials included in a buffer stock, which has been required by Buyer in writing,

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

**2.4** Seller shall not be entitled to carry out changes with respect to the Goods (including, but not limited to specifications, drawings, designs, constructions as well as changes regarding the date and place of delivery, packaging, quality, quantity and means of transportation) without Buyer's prior written consent.

**2.5** Unless otherwise provided by the law of the country (and if relevant the state / province) applicable to the Supply Contract, Buyer may terminate a Supply Contract immediately by notice to Seller, if Seller:

- commits a breach of the Supply Contract, which is not capable of remedy, or
- commits a breach of the Supply Contract, which is capable of remedy and fails to remedy the same within thirty (30) days of a notice from Buyer specifying the breach and requiring it to be remedied.

**2.6** In the event that either party becomes insolvent, or bankruptcy or insolvency proceedings of any nature are commenced in relation to that party, the other party shall be entitled to terminate the Supply Contract forthwith by written notice.

**2.7** Termination of any Supply Contract under this Provision 2 shall be without prejudice to the accrued rights and liabilities of the parties and shall not affect the coming into or continuance in force of any provision, which is expressly or by implication to come into or to continue in force after such termination.

**2.8** The volumes set out in any tenders and/or offers are solely assumptions, e.g. for the purpose of price calculation, and do not establish any obligation of Buyer or its Affiliated Companies to order such volumes. Delivery quotes set out in any Purchase Order is not in any way related to any volumes in tenders and/or offers.

**2.9** In case the Supply Contract states that prices for raw materials are based on "MTZ" (Materialkostenanpassung), these prices shall be determined on an average of the market value (e.g.

indexes) agreed on by the parties in the Supply Contract. In this case the other price components shall be treated and negotiated separately to the raw material costs. Notwithstanding any other provisions the raw material prices shall be updated quarterly and shall be calculated within the month before the beginning of the following quarter taking the monthly average of the three passed months as the basis.

**Provision 3: Delivery Times and Delay**

- 3.1** Delivery dates and quantities shall be as agreed according to the Purchase Order and/or Delivery Schedules. Seller acknowledges that delivery times and quantities are of the essence and Buyer may reject and/or return at Seller's expense any delivery of Goods or part thereof received before or after the delivery date or in excess of the quantity specified in the Purchase Order and/or Delivery Schedule.
- 3.2** Seller shall be bound to comply with a Delivery Schedule or an amendment thereto issued by Buyer, unless Seller notifies Buyer of his reasonable objection thereto in writing within the following periods:
- one (1) working day after receipt of the Delivery Schedule or amendment thereto, if the requirements or amendments therein are to come into effect within ten (10) working days (inclusive) after the receipt of the Delivery Schedule or amendment thereto.
  - three (3) working days after receipt of the Delivery Schedule or amendment thereto, if the requirements or amendments therein are to come into effect eleven (11) working days to three (3) months (inclusive) after the receipt of the Delivery Schedule or amendment thereto.
  - ten (10) working days after receipt of the Delivery Schedule or amendment thereto, if the requirements or amendments therein are to come into effect more than three (3) months after the receipt of the Delivery Schedule or amendment thereto.
- 3.3** Upon notice set out in the Purchase Order and/or Delivery Schedules, Seller shall deliver Goods „just-in-time“, that is, at an appointed time of delivery immediately prior to standard production without delay, such time and timing to be set out in Delivery Schedules, and "just-in-sequence", that is in the correct sequence of delivery, such sequence also to be set out in Delivery Schedules.
- 3.4** Seller agrees to take all actions necessary and appropriate to ensure that Goods are received by Buyer as required under the relevant Supply Contract. Seller will inform Buyer promptly of any occurrence which will or may result in any delay of delivery at any time or which will or may result in Seller's inability to fulfil the quantities specified in the Purchase Order and/or Delivery Schedules. Seller shall also advise Buyer in writing of corrective measures which Seller is taking to minimize the effect of such occurrence.
- 3.5** Except for excusable delay (hereinafter, „Excusable Delay“,) as set forth in Provision 3.6 below, in the event that Seller fails to effect delivery consistent with the delivery dates specified in the Purchase Order and/or Delivery Schedules, Buyer shall be entitled to recover from Seller all losses and damages. However, Seller shall not be obliged to reimburse Buyer's losses of profit, unless Seller has exceeded the above delivery dates for a period of more than ten (10) days.
- 3.6** Either of the parties may suspend performance of a Supply Contract during the occurrence of an Excusable Delay, which shall mean any delay not occasioned by the fault or negligence of the delayed party and which results from (without limitation) acts of God or public enemy, restrictions, prohibitions, priorities or allocations imposed by governmental authority, embargoes, fires, floods, seismic sea-waves, typhoons, hurricanes, earthquakes, epidemics, unusual severe weather, delays of similar natural or governmental causes, and strikes or labour disputes (of or involving the delayed party's employees or suppliers) or any other circumstances beyond such party's reasonable control. Nothing contained in this Provision 3.6 shall limit either party's rights under other Provisions of these Terms and Conditions. Further, Buyer shall be entitled to obtain the Goods covered by the Supply Contract from other sources for the duration of Seller's inability to perform due to Excusable Delay and to reduce without any obligation to Seller, the quantity of the Goods specified in the Purchase Order and/or Delivery Schedules.
- 3.7** In the event that Seller discovers any fact which may, or could with the passage of time, result in Excusable Delay, Seller will immediately advise Buyer of such fact and use its best endeavours to take all measures and precautions to reduce the effect of the Excusable Delay. In addition, at any time, at Buyer's request, Seller will furnish to Buyer such information as Buyer may request concerning matters which could result in delays and assurance or contingency plans

with respect to those matters. Seller will notify Buyer immediately of any actual or potential labour dispute delaying or threatening to delay timely performance of a Supply Contract or a Delivery Schedule and will include all relevant information.

- 3.8 If the parties agree on a buffer stock to be maintained by Seller, Seller is obliged to notify Buyer at monthly intervals of the latest status of this stock or at any other interval as reasonably requested by Buyer.

**Provision 4: Packaging, Shipping**

- 4.1 Goods shall be suitably, carefully and appropriately packed in accordance with Buyer's packaging manual („Packaging Manual“) and in accordance with the instructions of Buyer's packaging department. Seller shall comprehensively provide the packaging data with regard to all required and necessary information in a form defined by BMW. In the event that the packaging data provided by Seller contains incorrect or incomplete information, any costs incurred by Buyer as a result thereof shall be for the account of Seller.
- 4.2 Delivery notes shall be made in writing. With regard to documents accompanying Goods (physical or electronic documents), Seller shall comply with Buyer's "EDI Implementation Guidelines" and the "Packaging Manual".
- 4.3 The following Provisions 4.4 to 4.7 apply for Supply Contracts with Incoterms "FCA" or "EXW" only.
- 4.4 All shipments have to be carried out by the transport provider specified by Buyer. Buyer reserves the right to choose the mode of transport.

In order to ensure compliance with the agreed delivery date Seller has to calculate the day of the planned pick-up of the Goods considering the lead time specified by Buyer separately. Lead time is defined as the time from pick-up of the Goods by the transport provider at the agreed place of loading to delivery at the specified Buyer's place of delivery.

Seller shall notify readiness for dispatch of the Goods to the transport provider by 12 noon at the latest the day before the planned pick-up of the Goods. The notification of readiness of dispatch has to be made in writing on the basis of the transport provider's formats, templates, proceedings and communication media, which have been agreed to with Buyer. The notification of the readiness of dispatch shall contain the following data:

- Shipping location and specific loading point
- Quantity, type and BMW packaging identification numbers of all loading units
- Gross weight and dimensions per loading unit
- Agreed date and time of delivery at Buyer
- Buyer's place of delivery and unloading point (including address and number) and plant code.

In the event that the notification of readiness for dispatch completed by Seller contains incorrect or incomplete information, any additional costs incurred by Buyer as a result thereof shall be for the account of Seller.

- 4.5 Domestic courier, express and parcel shipments (CEP-shipments) within Germany have to be carried out by CEP-service providers specified by Buyer. Outside Germany all domestic and international CEP-shipments have to be carried out by CEP-service providers solely with the agreement of Buyer.
- 4.6 Emergency transports at the expense of Buyer are only permitted on special request of Buyer's material planning departments.
- 4.7 The return of empty containers and pallets shall be on Buyer's account unless otherwise agreed. In principle a pallet exchange does not take place.

**Provision 5: Transfer of Risk**

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

**Provision 6: Notification of Deficiencies**

Buyer shall conduct an inspection of incoming Goods, which is in compliance with the technical specifications ISO/TS 16949 „Quality management systems, particular requirements for the application of ISO 9001: 2000 for automotive production and relevant service parts organizations“ (hereinafter called „ISO/TS 16949“). Buyer shall notify Seller in writing of any deficiency of Goods once the deficiency has been discovered by Buyer in the ordinary course of its business.

**Provision 7: Settlement of Accounts and Payment**

**7.1** The accounts of Seller will be settled via self-billing invoices by way of EDI, unless otherwise agreed in writing.

Seller does not need to send additional invoices to Buyer because payments will be made based on the receipt of Goods and the terms agreed in the Supply Contract. For customs purposes, only a commercial invoice in English shall be attached by Seller to the shipping documents of import deliveries in duplicate. Such invoice shall include the data as set out in Provision 7.2 and additional data as described in Provision 8.

**7.2** If the parties have agreed that Seller's accounts will not be settled via self-billing invoices, a commercial invoice shall be submitted by Seller. The original invoice shall be sent to Buyer's incoming invoice verification department or (if specified on the relevant Purchase Order) to its payment address. Such invoices shall comply with the requirements of the national law referred to in Provision 22.1, including in particular, but not limited to, the requirements of the applicable taxation legislation of the relevant country. If requested by Buyer, Seller shall transfer all invoices electronically (e-Invoicing). The invoices shall in particular include the following data:

- Seller's full corporate name, full registered address and registered number;
- Buyer's full corporate name and full registered address;
- Buyer's supplier number of the invoicing party (8-digit); and, if different:
  - Buyer's supplier number of the Seller (8-digit) and/or
  - Buyer's supplier number of the payee (8-digit);
- In case of intra community (EU) supplies:
  - VAT identification number of Buyer
  - VAT identification number of Seller;
- In case of national deliveries within Germany:
  - VAT number or national tax number of Seller;
- In case of national deliveries within the United Kingdom:
  - VAT number of Seller
  - When ordered by BMW AG: British VAT ID of BMW AG (GB748003249);
- In case of national deliveries within Austria:
  - VAT number of Seller
  - When ordered by BMW AG: Austrian VAT ID of BMW AG (ATU31792209);
- Origin of the Goods;
- VAT rate and VAT amount, total charge excluding VAT;
- Reference to tax exemptions;
- Charges split according to VAT-rates;
- Date of invoice;
- Running unique sequential invoice number;
- Specification (quantity with scale unit/type) of delivery or service rendered;
- In case of prepayments/advance payments: the date of receipt of remuneration;
- Any reduction of charges agreed in advance, if not already accounted for; lower VAT value has to be stated;
- Buyer's Purchase Order number / Buyer's Purchase Order modification number;
- Buyer's item number;
- Delivery note number indicated by Seller;
- Date of delivery of the Goods (explicitly stated on the invoice), delivery address / point of unloading;
- In case of re-delivery relating to prior delivery by Buyer: Delivery note number indicated by Buyer with respect to the said prior delivery;
- Value of consignment (price per item and total price);
- Price unit, currency unit;
- In case of national deliveries within the UK not being invoiced in GBP then, in addition to the currency values, the VAT and net values shall be recorded in GBP and the rate of exchange used shall be shown;
- Price of packaging (per unit of Goods);
- Number of packages, weight (gross/net).

Invoices which fail to meet the requirements of this Provision 7.2 may be rejected by Buyer. Seller will be notified and costs arising therefrom will be passed on to Seller. 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 7.2.

- 7.3** 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 Buyer in writing in advance. Any change in the flow of Goods/flow of invoices from the place of origin of the Goods to Buyer has to be communicated in writing to Buyer in advance. Costs arising from damages resulting from not meeting the requirements of this Provision 7.3 will be passed on to Seller.
- 7.4** 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 Goods receipt, acceptance or confirmation of Service, within 40 days net in full.
- 7.5** 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, within 40 days net in full.
- 7.6** Payment is made either by bank transfer or by cheque, as specified by Buyer.
- 7.7** Where Goods are not supplied in accordance with the Supply Contract, Buyer shall be entitled to withhold payment of the respective amount of the price until Seller has fulfilled its obligations in full.
- 7.8** Seller may not assign its payment rights hereunder without the prior written consent of Buyer.
- 7.9** Payment by Buyer for any Goods does neither indicate nor constitute acceptance of such Goods.
- 7.10** Buyer shall be entitled to offset or recoup claims against receivables of Seller and also receivables that are assigned from Seller to any of Seller's Affiliated Companies. In addition, Buyer is entitled to offset or recoup its receivables against Seller's claims against any of the following Affiliated Companies of Buyer:
- Bayerische Motoren Werke Aktiengesellschaft;
  - BMW Hams Hall Motoren GmbH;
  - BMW Motoren GmbH;
  - BMW (UK) Manufacturing Ltd.;
  - Rolls-Royce Motor Cars Ltd.;
  - Swindon Pressings Ltd.;
  - BMW Manufacturing Co., LLC.;
  - BMW (South Africa) (Pty) Ltd.

**Provision 8: Customs, Origin and Export Control**

- 8.1** For customs purposes Seller will attach a commercial invoice in English to the shipping documents in duplicate. Any simplification of that procedure is only permitted subject to Buyer's prior written consent.

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, Buyer'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 shall include the reason why the delivery is made free of charge (e.g. sample deliveries).

Should further official documents be required in the case of imports or exports for the intended use of the Goods delivered, Seller shall procure such documents for Buyer without delay and make them available to Buyer at Seller's cost.

- 8.2** Seller 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 Buyer, such forms to be signed by

Seller's authorised representatives and submitted to Buyer within fourteen (14) days after Seller'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 "OPAL" on the Partner Portal of the BMW Group (path: <https://b2b.bmw.com>) and submitting the declaration of origin to Buyer by electronic means.

Seller may not submit a declaration of origin on its own business forms without prior written consent by Buyer.

Seller shall inform Buyer immediately in writing of any change of origin of Goods.

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

- 8.3** Seller shall provide Buyer with all such support as may be necessary to enable Buyer to reduce or minimize its liability to customs duties.
- 8.4** For any and all questions and instructions arising out of or required in connection with customs and declaration of origin, Seller shall contact Buyer's respective customs department.

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

- 8.5** Seller shall ensure Supply Chain Security and observe legal policies and conditions. Seller shall, on Buyer's request, provide evidence by certificates or statements (e.g. Security Declaration for Authorised Economic Operators AEO, Compliance statement regarding C-TPAT initiative).
- 8.6** Seller shall inform Buyer of any export restrictions applicable in the country of manufacturing and/or dispatching of the Goods and Tooling. Seller shall inform Buyer if the Goods and Tooling are subject to any export/re-export license under U.S. law and regulations. If Seller is located in the European Union, Seller shall inform Buyer 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. Seller shall advise Buyer 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. Seller shall provide information directly to BMW AG, München (Deutschland), department of customs and export control. On Seller's request, Buyer will provide a declaration/notification document for Seller's convenience.

**Provision 9: Quality**

- 9.1** Unless stated otherwise in the Supply Contract, Seller shall comply with ISO/TS 16949.
- 9.2** A series process quality evaluation (as defined in this Provision 9.2) („Series Process Quality Evaluation“) shall be successfully completed by Seller before Goods are supplied:
- for the first time; or
  - under a new part number; or
  - after any process modification.

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

Seller will use the Series Process Quality Evaluation to produce initial samples of the Goods. Seller will inspect initial samples in accordance with the German Association of the Automotive Industry (Verband der Automobilindustrie – VDA) publication „Quality Management in the Automotive Industry, Volume 2: Quality Assurance of Supplies“, as the same may be amended or replaced from time to time.

- 9.3** In case of a conflict between the Supply Contract and ISO/TS 16949 or the above-mentioned VDA publication the Supply Contract shall prevail.

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

**9.5** Upon Buyer's request Seller shall make available to Buyer all quality records. Quality records are documents and any other data, which relate to specified requirements and the effectiveness of Seller's quality system.

Seller shall retain such quality records for at least fifteen (15) years following the end of series supply relating to Goods with specially marked drawings („D“ or „L“) and relating to Goods with critical features (as agreed between both parties), or for at least three (3) years following the end of series supply in any other case, unless a longer period is otherwise required by law.

For guidance on this issue, see the publication „Leitfaden zur Dokumentation und Archivierung von Qualitätsanforderungen / Code of practice for the documentation and archiving of quality requirements and quality records“ of the German Association of the Automotive Industry (Verband der Automobilindustrie – VDA).

**9.6** Seller shall ensure that all and any of its sub-contractors are contractually bound to comply with the terms of this Provision 9.

***Provision 10: Warranty***

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

In the event that Seller has entered into a Warranty Agreement applicable to Buyer'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 these Terms and Conditions.

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

**10.2** For all Goods the warranty period begins on the date of delivery and ends on the sooner of:

- (i) the expiry of any warranty provided to end-customers of the Goods, or products, into which the Goods are incorporated; or
- (ii) the fifth (5th) anniversary of the delivery date.

The terms of this Provision 10.2 are subject to any longer warranty period prescribed by the national law of any sales market, into which Goods or products into which the Goods have been incorporated are supplied.

**10.3** If a defect is discovered before the defective Good has left Buyer's production sites or that of an undertaking commissioned by Buyer, Seller shall be given the opportunity to remedy the defect or to replace the defective Goods before production commences, provided that any such remedy does not cause any delay in Buyer's production.

If Buyer cannot reasonably be expected to allow Seller to remedy the defect or to replace the defective Good due to operational reasons (in particular reasons related to the time and sequence of assembly) or if Seller is not able to remedy or replace the defective Good, then Buyer shall have the right either (i) to remedy the defect itself at Seller's expense or (ii) to have it remedied by a third party at Seller's cost or (iii) to return defective Good at Seller's cost.

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

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

**10.4** If a defect is discovered after the defective Good has left Buyer's production sites or that of an undertaking commissioned by Buyer, Seller shall indemnify Buyer against all damages and losses incurred by Buyer resulting from the delivery of defective Goods.



- 10.5 At Seller's request the defective Goods will be made available to Seller at Seller's cost, if possible.

**Provision 11: Liability and Indemnity**

- 11.1 Unless otherwise provided by these Terms and Conditions Seller shall be liable for damages and losses actually incurred by Buyer and occasioned by or arising out of any breach of Seller's obligations under the Supply Contract.
- 11.2 Seller will indemnify, defend and hold Buyer and its Affiliated Companies harmless against liability, costs, damages, losses and expenses (including court costs and legal expenses) occasioned by or arising out of any claim for death, personal injury or property damage, which results from (a) any defect in the Goods; (b) Seller's breach of any term of the Supply Contract; or (c) the fault or negligence of Seller, or (d) failure to comply with any applicable law, statute, regulation, ordinance or promulgation.
- 11.3 In connection with the Goods or otherwise, if Seller's employees, agents, sub-contractors or other representatives (hereinafter „Seller's Agents“) are on or present at any premises of Buyer, Seller shall be and is responsible for the acts and omissions of Seller's Agents within or about Buyer's premises and agrees to indemnify, defend and hold Buyer harmless against liability for damage to property or injury or death to persons (including court costs and legal expenses) arising out of acts or omissions of Seller's Agents whether pursuant to a Supply Contract or otherwise. The indemnity in this Provision 11.3 shall not apply insofar as the claim is caused by Buyer's negligence or intentional acts.
- 11.4 In the event that Seller delivers defective Goods, Seller will hold Buyer and its Affiliated Companies harmless against liability, costs, damages, losses, claims and expenses (including legal expenses) occasioned by or arising out of any action to recall any vehicle, Goods, or any product into which Goods have been incorporated. While making a decision for such action to recall, Buyer will exercise reasonable discretion and duly regard Seller's interests.
- 11.5 In the event of a claim by a third party against Buyer (hereinafter „Third Party Claim“), which may be the subject of indemnification provided for in these Terms and Conditions, Buyer shall provide written notification thereof to Seller. Seller shall provide Buyer with such reasonable assistance in the response and prosecution of any defence as Buyer may request.
- 11.6 In the event of any claim against Buyer or one of its Affiliated Companies by a third party for death, personal injury and/or property damage alleging a defect in Seller's Goods or any product into which the Goods are incorporated or alleging any of the violations set out in Provision 11.2, Seller and Buyer shall, in good faith, promptly attempt to reach an agreement specifying the terms under which Seller and Buyer would apportion responsibility and liability for the defence of any such Third Party Claim or suit and the financial burdens arising therefrom.
- 11.7 This Section 11 shall apply irrespective whether the costs, damages, losses, claims and expenses mentioned above are incurred by or addressed against Buyer or its Affiliated Companies. However, Seller shall not be liable according to this Provision 11 insofar as the liability, costs, damages, losses, claims and expenses mentioned are caused by negligence or intentional acts of Buyer or its Affiliated Companies.

**Provision 12: Designation of Goods; Publications**

- 12.1 Seller shall mark the Goods as required by Buyer.
- 12.2 Neither of the parties shall use any of the other party's proprietary names, logos, trade names, trademarks or service marks without the prior written consent of the party, which owns or controls such proprietary names or trademarks.
- 12.3 Without Buyer's prior written consent, Seller shall not publish in any manner through any marketing or other medium that Seller has contracted with or has been supplying Goods to Buyer, unless such publication is required by mandatory law.

**Provision 13: Tooling**

- 13.1 Once the agreed total costs for an item of Tooling have been paid for by Buyer in full, title to such Tooling and any and all Intellectual Property Rights created in the course of the development of the Tooling for Buyer with respect to such Tooling will immediately be transferred to Buyer. To the extent that Seller's pre-existing know-how or background Intellectual Property Rights are necessary for the utilization of the Tooling, Buyer shall hereby receive a non-

exclusive right of use with respect to such Tooling, unrestricted both in terms of location and time, free of charge, which includes the use for the purpose of series and spare part production by Buyer and for Buyer by third parties and the equivalent use by Affiliated Companies of Buyer. Seller shall mark such Tooling as Buyer's property.

In the event of cancellation or termination for any reason of a Supply Contract for the supply of Tooling where, at the date of cancellation or termination, title to the Tooling is not vested in Buyer, Buyer shall obtain title to such Tooling by paying to Seller (i) (in relation to finished Tooling) the outstanding portion of the agreed total costs; or (ii) (in relation to unfinished Tooling) such proportion of the outstanding costs as is represented by the costs actually incurred by Seller in the supply of the Tooling as at the date of cancellation or termination.

- 13.2** Any and all Tooling owned by Buyer, which is in Seller's possession or possession of Seller's Agents shall remain the property of Buyer. Seller shall mark such Tooling as the property of Buyer. Such Tooling shall 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 Buyer without the express prior written consent of Buyer.
- 13.3** Tooling owned by Buyer will be insured by Buyer, unless otherwise agreed in writing between Buyer and Seller.
- 13.4** Seller has to prove and substantiate that there is adequate insurance cover for the Tooling owned by Seller. Maintenance by Seller of such insurance coverage shall be without prejudice to Seller's liability under any Supply Contract.
- 13.5** Seller shall treat all Tooling, regardless of ownership, with due care and diligence, constantly keeping it ready for operation and in compliance with the latest design status. Seller shall be responsible in particular for the correct and accurate dimensions of the Tooling especially of gauges. Buyer agrees to help Seller in examining and correcting the gauges made available to Seller, insofar as such items are not used as check gauges.
- 13.6** Unless otherwise agreed in writing, the cost for the continuing repair, maintenance and readiness of the Tooling in immaculate condition shall be borne by Seller in all respects.
- 13.7** Notwithstanding Buyer's right to demand surrender of Tooling owned by Buyer, Seller shall be entitled to retain such Tooling to the extent to which Seller requires the same for executing a Purchase Order for Buyer. In all other cases Seller shall be obliged forthwith upon the request of Buyer to surrender the Tooling owned by Buyer.
- 13.8** Regardless of ownership, Seller shall maintain Tooling used to manufacture Goods in good working condition for the continued supply of Goods for a period of fifteen (15) years after termination of Seller's supply of the Goods for Buyer's series production. Seller's obligation to retain such Tooling shall expire once the foresaid fifteen (15) years retention period has ended and Seller has notified Buyer in writing. Seller shall ensure that any and all sub-contractors are contractually bound to adhere to the requirements under this Provision 13.8.
- 13.9** Fourteen (14) years after termination of Seller's supply of the Goods for Buyer's series production, Seller shall submit a written proposal for an economic supply of spare parts after the period specified in Provision 13.8, Sentence 1. Seller's proposal shall be based on Buyer's estimated future demands, which will be provided by Buyer on Seller's written notice.
- 13.10** In the event that Buyer issues a Purchase Order for Tooling, Seller shall immediately provide Buyer with all available information with regard to such Tooling as demanded in the BMW "Quotation Analysis Form" (QAF) and the BMW "Tooling Analysis Form" (WAF).

No later than the time that initial samples of the Goods are produced by means of such Tooling, Seller shall (1) provide Buyer with complete information with regard to such Tooling as demanded in the QAF and in the WAF, (2) provide Buyer with all drawings and CAD-data of such Tooling and (3) send Buyer a complete list of such Tooling and a document identifying the exact location of such Tooling.

**Provision 14: Spare Parts**

- 14.1** Whether or not a Supply Contract remains in effect, Seller will at the request of Buyer provide Buyer or Buyer's nominee(s) with sufficient quantities of Goods for use as spare parts for a period of fifteen (15) years after termination of Seller's supply of the Goods for Buyer's series production or for such lesser period of time as Buyer shall require in writing. Seller shall ensure that its sub-contractors comply with this Provision 14.1.

- 14.2 During the term of a Supply Contract for Buyer's series production, the price of the Goods used as spare parts shall be equal to the series price agreed in the Supply Contract. However, during the extended term as set out in Provision 14.1 above, the price shall be determined by mutual negotiation.
- 14.3 Buyer and Buyer's Affiliated Companies shall be entitled to purchase Goods used as spare parts directly from Seller's sub-contractors or from any other third party.
- 14.4 Seller shall comply with the requirements stated in the BMW Group Standard 90022 "Distribution parts-requirements, documentation".

**Provision 15: Intellectual Property Rights**

- 15.1 Seller shall indemnify, defend and hold Buyer, and Buyer's Affiliated Companies harmless from and against all liabilities, costs, damages, claims and expenses (including court costs and legal expenses and any settlement of such claim or action) incurred by Buyer in respect of any claim or action brought by any third party against Buyer that the Goods or their use by Buyer or Buyer's customer infringe the Intellectual Property Rights of such third party. Notwithstanding the foregoing, Seller shall not be liable to the extent that the infringement results from the manufacture of the Goods in accordance with instructions received from Buyer and Seller taking the level of care that is customary in the industry could not have known that following these instructions would result in an infringement of a third party's Intellectual Property Right.
- 15.2 The parties will inform each other forthwith of all such third party infringements or allegations of third party infringements of which they become aware. At Buyer's option, Buyer may select its own legal representation subject to the approval of Seller, such approval not to be unreasonably withheld, in the defence of any such claims or actions. Seller will assist Buyer in its investigation, defence or handling of any such claim, including by providing any documents needed by Buyer to defend the action. If Buyer determines that it may be desirable for Seller to intervene in any action, Seller agrees to consult with Buyer and to consider any reasonable request that Seller intervene in the action. However, the decision to intervene in an action remains Seller's sole decision.
- If Buyer selects its own legal representation, Seller's indemnification obligation under Provision 15.1 extends to the reasonable costs and fees associated with such representation. If Buyer does not select its own legal representation, Buyer will give Seller sole conduct of the defence of any such claims or actions.
- 15.3 Upon Buyer's request, Seller shall specify any and all Intellectual Property Rights known or becoming known to him, which are used in the design or manufacture of, or which otherwise affect or relate to the Goods.
- 15.4 In the event of a claim of infringement of any third party rights that is communicated to Seller, Seller shall take the needed steps to insure for Buyer a non-infringing source of supply, which may involve securing the needed licenses (if any), redesign of the product (subject to any contract requirements and qualification obligations), or other steps Seller deems necessary to ensure that a non-infringing product is delivered to Buyer.

**Provision 16: Electronic Data Interchange („EDI“) and Information Security**

Seller shall comply with the requirements set out in Buyer's „EDI Implementation Guidelines“.

Upon Buyer's written request, Seller shall comply with the international information security standard ISO 27001, which shall be attested by means of a certificate.

**Provision 17: Confidentiality**

- 17.1 Seller and Buyer each commit themselves to treat as business secrets and to keep confidential all commercial and technical information of the other party which comes to their knowledge during the course of their business relationship unless such information is or becomes public knowledge without fault of the party receiving such information.
- 17.2 Drawings, models, patterns, samples and similar objects shall not be disclosed or otherwise made available to third parties without the prior written consent of the party, which owns them. Reproduction of such items is permitted only if agreed in writing with the party, which owns them and is in all cases subject to compliance with the applicable laws of copyright.

- 17.3** Seller shall include obligations equivalent to Provision 17.1 and 17.2 in all contracts with sub-contractors and will ensure that all sub-contractors are contractually obliged to comply with the same.
- 17.4** The terms of this Provision 17 shall survive the expiration or termination of any Supply Contract.

**Provision 18: Insurance**

- 18.1** Seller shall procure and maintain at its sole expense insurances with reputable and financially responsible insurance companies, which adequately cover Seller's liability against Buyer and third parties. Buyer is entitled to require certain insurance coverages and amounts to be taken out by Seller.
- Seller shall provide to Buyer certificates or memoranda of such insurances and renewals thereof signed by the issuing company or agent or other information respecting such insurance at any time promptly upon Buyer's request.
- 18.2** Buyer's examination of, or failure to request or demand any evidence of insurance hereunder, shall not constitute a waiver of any requirement of this Provision 18 and the existence of any insurance shall not limit Seller's obligation under any Provision hereof.
- 18.3** Save to the extent to which Seller is not obliged to do so pursuant to any applicable Incoterm under Provision 5, Seller will cause any carrier engaged by Seller to insure all shipments of Goods.

**Provision 19: Environment**

- 19.1** While performing under the Supply Contract Seller 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 Seller's resource efficiency Seller shall on Buyer's request provide the following information relating to the total annual scope of orders placed by and supplied to Buyer and its Affiliated Companies during its manufacturing phase:
- Total energy consumption in MWh;
  - CO<sub>2</sub> emissions from energy generated in house and externally in metric tons;
  - Total water consumption in m<sup>3</sup>;
  - Process wastewater in m<sup>3</sup>;
  - Waste for disposal in metric tons;
  - Waste for recycling in metric tons;
  - VOC emissions (volatile organic compound) in metric tons.
- 19.2** In addition, Seller shall provide on Buyer's request data for a life cycle assessment relating to Goods or parts thereof (including data with regard to the material input) according to the data collection format for life cycle assessment of the German Association of the Automotive Industry (Verband der Automobilindustrie - VDA).
- 19.3** Seller 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 no later than two years following Purchase Order placement.
- 19.4** Seller shall comply with the requirements of the BMW Group Standard 93024 "Recycling of motor vehicles-Recycling-optimized vehicle design". On Buyer's request a recycling concept has to be provided.
- 19.5** Goods made of polymer materials or metals or Goods with metal coatings shall bear identification markings in accordance with the relevant standards (VDA Material Data Sheet 260 "Vehicle components - Marking of material" and/or BMW Group Standards 91001 "Marking of parts with trademark and part identification data" and 91003 "Marking of parts - Marking of materials").
- 19.6** Polymer materials contained in Goods shall comply with the BMW requirements for Goods derived from the respective 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. Seller shall use only solvent free adhesives in Goods.

- 19.7** Seller shall comply with the requirements stated in BMW Group Standard 93008-1 to 4 "Substances of concern" throughout the entire life cycle of the Goods.

Seller 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. REACH, EU). In the event of a chemical substance being imported, Seller 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>) – for e.g. series development, type approval and initial sampling inspection – 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 Seller.

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

- 19.8** Seller shall ensure that all and any of its sub-contractors are contractually bound to comply with the terms of this Provision 19.

**Provision 20: Social Responsibility**

For Buyer 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 Buyer itself and to its suppliers. Buyer's and Seller's aim shall 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 (ILO) 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.

Seller's aim shall be that all and any of its sub-contractors are contractually bound to comply with the terms of this Provision 20.

**Provision 21: General/Miscellaneous**

- 21.1** No amendment, modification, termination or waiver of any provision of these Terms and Conditions or of any Supply Contract, and no consent to any departure by either party therefrom, shall under any circumstances be effective unless the same shall be in writing and signed by both parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Seller in any event, case or occurrence, shall of itself entitle Seller to any other or further notice or demand in any similar or other circumstances.
- 21.2** The headings of the various Provisions of these Terms and Conditions are solely for convenience and shall not be used for the purposes of interpreting the same.
- 21.3** If any Provision hereof or any part Provision is or is held by any competent court or authority to be invalid or unenforceable, such Provision or part Provision will be deemed severed and omitted, the remaining portions hereof continuing in full force and effect. If required, Buyer and

Seller shall replace such invalid or unenforceable Provision with a valid and enforceable provision having similar economic consequences, provided that the content of the Terms and Conditions is not materially altered.

- 21.4 No course of dealings between Seller and Buyer or any delay or omission of Buyer to exercise any right or remedy granted under these Terms and Conditions shall operate as a waiver of such rights, and every right and remedy of Buyer provided herein shall be cumulative, concurrent and in addition to any other further rights and remedies available at law or in equity.
- 21.5 Upon forty-eight (48) hours notice, Buyer shall be entitled to have access to Seller's premises during normal business hours and without interfering with Seller's business in order to inspect all documents, instruments, books and records relating to any Supply Contract or the Goods, which are subject of such Supply Contracts, or Seller's manufacturing process. Save as provided in Provision 9.5, Seller agrees to maintain all such records for at least ten (10) years after the last delivery of the Goods to Buyer, unless otherwise agreed or unless a longer period is otherwise required by law.
- 21.6 Seller shall not assign the benefit or the burden of any Supply Contract, in whole or in part to any third party without the prior written consent of Buyer.
- 21.7 Seller shall not change the location of the manufacture and/or dispatch of the Goods without notifying Buyer in writing 3 months in advance.
- 21.8 Upon reasonable prior written notice given by Buyer and/or BMW AG to Seller at any time, Seller shall at any time provide Buyer and/or BMW AG with suitable information, including but not limited to, quarterly, semi-annual and annual financial statements together with the appertaining reports (including appendices) and information on key business ratios required for evaluating the current economic and financial situation of Seller.
- 21.9 Seller warrants that the information provided with regard to its economic and financial situation as per Provision 21.8 is accurate, complete and – in respect of any date referred to in the documentation or information – current and fairly represents its actual economic and financial condition. Seller warrants that all financial statements of Seller have been/are prepared in accordance with accounting principles generally accepted in its jurisdiction.
- 21.10 Seller warrants that at the time of the conclusion of the Supply Contract it has not filed an application for the institution of insolvency proceedings, and that there is no indication that such proceedings are likely to be instituted; Seller further warrants that there is no indication that it is insolvent or overindebted or is facing impending insolvency or overindebtedness, which would provide grounds for the institution of insolvency proceedings. Seller further warrants that it has not ceased making payments, either permanently or temporarily, or entered into negotiations with creditors for an out-of-court settlement or a deferment of payment in order to avert over-indebtedness triggering the institution of insolvency proceedings.

**Provision 22: Governing Law; Place of Venue and Jurisdiction**

- 22.1 The terms of any Supply Contract (including these Terms and Conditions) shall be governed by and construed in accordance with the laws of the country (and state/province, if applicable) of Buyer's principal place of business. The terms and conditions set out in the United Nations Convention for the International Sale of Goods (CISG) are hereby expressly excluded.
- 22.2 The parties agree that the courts having jurisdiction over Buyer's principal place of business shall have exclusive jurisdiction for any action or proceedings commenced under any Supply Contract.
- 22.3 Notwithstanding Provisions 22.1 and 22.2 above, in the event that a third party brings to court a claim against Buyer or its Affiliated Companies for death, personal injury or property damage resulting from a product defect ("Product Liability"), Buyer may, at its discretion, conduct the court procedures necessary to enforce the indemnification against Seller in terms of these Terms and Conditions. In such a case the laws of the forum state shall govern exclusively the rights and obligations of the parties involved.