



PORSCHE

## Dr. Ing. h.c. F. Porsche Aktiengesellschaft Terms and Conditions of Purchase for Production Material

Status 11/2018

### 1. Standard conditions

- 1.1 The legal relationship between the Supplier and Dr. Ing. h. c. F. Porsche AG (hereinafter the "Purchaser") shall be in accordance with these conditions and any other written agreements, including amendments and additions. As well as the written form, the text form and transactions concluded by means of an electronic system provided by the Purchaser shall suffice. The Supplier's General Terms and Conditions shall not apply, even if they have not been expressly rejected in specific cases.
- 1.2 The contract shall be based in the following order of precedence on the supply contract concluded with the Supplier or the particular orders/supply call-offs including the respective reference documents and these conditions of purchase.

### 2. Ordering

- 2.1 Supply contracts (order and acceptance) and supply call-offs as well as amendments and additions thereto must be concluded in writing. Supply call-offs may also be placed by remote data transmission.
- 2.2 If the Supplier does not accept the order within five working days of its receipt, the purchaser shall be entitled to revoke the order. Supply call-offs become binding if the Supplier does not object within five working days of receiving the order.
- 2.3 To the extent reasonable for the Supplier it shall be possible for the Purchaser to request changes to the design and type of the delivery items. In this case, appropriate and mutually agreed action shall be taken to manage the consequences, particularly with regard to additional or reduced costs and delivery dates.

### 3. Invoicing and payment

- 3.1 As a basic principle, the Purchaser will settle invoices using the invoicing procedure. Invoices must be submitted by the Supplier exclusively in electronic form as follows:
  - a) Direct submission of invoice via EDI in valid VDA format,
  - b) Free-of-charge entry of invoice via the group business platform [www.vwgroupsupply.com](http://www.vwgroupsupply.com) => Login => Information => Tools => Financial application (FIN),
  - c) Submission of invoice via a specified provider.If electronic invoicing is agreed by the contracting parties, the Supplier has to ensure that the original invoices are already created electronically.  
Information on electronic invoicing and the current EDI guidelines can be obtained under [edi-rechnungswesen@porsche.de](mailto:edi-rechnungswesen@porsche.de) and under [www.vwgroupsupply.com](http://www.vwgroupsupply.com).
- 3.2 In justified exceptional cases, by agreement with the Purchaser's creditor accounts department, the Supplier shall submit his invoices in paper form to the following address:  
Dr. Ing. h. c. F. Porsche AG, Kreditorenbuchhaltung, Porscheplatz 1, D-70435 Stuttgart.
- 3.3 Invoices must be submitted in a form suitable for checking stating the Porsche supplier number, order number, delivery note number, Porsche material number, place of unloading and name of contact in the Purchaser's organization. All necessary invoicing documents must be attached. Invoices must be produced in accordance with German sales tax law. Accounting vouchers in the form of credit notes, debit notes and payment advice notes will be made available to the supplier electronically by EDI or email or as a download under [www.vwgroupsupply.com](http://www.vwgroupsupply.com) => Login => Information => Tools => Financial application (FIN). In exceptional cases, they will be sent by post or fax.
- 3.4 Payment will be made within 30 days from receipt of invoice unless otherwise expressly agreed. This period shall commence on the day on which the invoice is received but not, however, before the agreed delivery date or service date and not before the actual shipment of the goods or the provision of the service.
- 3.5 Payment shall be made by bank transfer.
- 3.6 If deliveries are faulty, the Purchaser shall be entitled to withhold payment pro rata by value until orderly completion.
- 3.7 Unless prior written approval is granted by the Purchaser, the Supplier shall not be entitled to assign his claims against the Purchaser or to arrange for such claims to be collected by third parties.  
If, contrary to Clause 1, the Supplier cedes his claim against the Purchaser to a third party without the Purchaser's consent, the cession shall nevertheless be valid. The Purchaser may, however, make payment to the Supplier or the third party at his own discretion with the effect of discharging his obligations.

### 4. Notification of defects

The Purchaser must notify the Supplier in writing within 14 days of receipt of delivery of any defects in the delivery where these involve clearly recognizable defects and transport damage or identity and quantity deviations. In the case of all other defects, notification of the defects shall be deemed to be timely if this takes place within 14 days of discovering the defect.

### 5. Confidentiality, Information security

- 5.1 The contracting parties shall treat all commercial and technical details which are not common knowledge and to which they become party in the context of the business relationship as trade secrets.
- 5.2 Drawings, models, templates, samples and other similar items may neither be supplied nor in any other way made accessible to unauthorized third parties. Such items may only be reproduced where such reproduction is essential to meet operational requirements and if permitted by the applicable copyright provisions.
- 5.3 A corresponding duty shall be imposed on subcontractors.
- 5.4 The contracting parties may only refer to their business relationship in advertising with prior written consent.
- 5.5 The Supplier undertakes to take state-of-the-art measures to protect with immediate effect all of

the Purchaser's information and data against unauthorised access, manipulation, destruction or loss, prohibited transmission or any other prohibited processing or other misuse. The full range of current recognized state-of-the-art precautions and measures must be taken to back up Purchaser data and to ensure that data stocks are at all times archived and can be restored in compliance with the law and at no risk of loss. On request of the Purchaser, the Supplier is obliged to have a TISAX assessment ([www.tisax.de](http://www.tisax.de)) carried out with the TISAX assessment scope specified by the Purchaser. Also, the Supplier should make the result available to the Purchaser within a reasonable period of time.

### 6. Delivery dates and deadlines

Agreed dates and deadlines for the respective supply contracts and supply call-offs – including reference documents in each case – are binding. The key date for determining compliance with delivery dates and deadlines shall be the date on which the products are received by the Purchaser. If delivery "CIP to our factory" is not agreed, the Supplier shall make the goods ready in good time taking account of customary times for loading and dispatch.

### 7. Late delivery

The Supplier shall be obliged to compensate the Purchaser for damages due to delay. The Supplier shall be deemed to be late if he should exceed the delivery date agreed in the supply contracts and supply call-offs – or in the respective reference documents thereto – unless he is not responsible for exceeding the agreed delivery date. The statutory provisions relating to delay shall also apply.

### 8. Force majeure

Force majeure, labour disputes, civil disturbances, action by official bodies and other unforeseeable, unavoidable and serious occurrences shall release the contracting parties for the duration of the disruption and, to the extent affected by such occurrences, from their duties to perform. The contracting parties shall, wherever reasonably possible, be required to immediately provide the required information and adjust their obligations to suit the changed conditions in good faith.

### 9. Quality and documentation

- 9.1 The deliveries must comply worldwide especially in Europe (geographically), the United States (including California), Canada, Australia, New Zealand, Japan, India, South Africa, Saudi Arabia and Arab Gulf States, China, South Korea, Hong-Kong, Taiwan, Brazil and Russia with all approval regulations, the applicable safety requirements, and all rules pertaining to testing, the environment (including vehicle emissions and certification requirements as well as information reporting obligations), and identification/labeling.  
The Supplier agrees to promptly notify the Purchaser, the California Air Resources Board („CARB“) and the Attorney General of the State of California (the „California Attorney General“) when the Supplier providing, or performing work related to, engine control unit hardware or software has reason to believe that a Defeat Device, as defined in 40 C.F.R. § 86.1803-01 and 42 U.S.C. § 7522(a)(3)(B), has been included in, designed for or requested for a vehicle.  
If the subject matter of this contract includes creating or modifying engine control unit software and that is anticipated to be the subject of any filing with CARB, the Supplier agrees to (a) disclose, in the documentation for the software, for; and to (b) maintain a change log of, any feature, that is known or reasonably should be known to detect emissions testing or function as an AECD (Auxiliary Emission Control Device), as defined in 40 C.F.R. § 86.1803-01.  
The Supplier shall be obliged to make available to the Purchaser the material composition and formula of the delivery item in full along the structure of the smallest product at an early stage before the start of the inspection process for initial sampling, but at the latest at the request of the Purchaser. Until the end of the delivery relationship, the Supplier is obliged to inform the Purchaser immediately of any changes to the material composition and formula. Depending on the delivery item, the material must be provided in K-CMS (for operating materials, productive and non-productive process materials), IMDS (for parts, operating materials and productive process materials) and CDX (for parts and devices falling under RoHS or WEEE) in the format specified therein. At the request of the Purchaser, the Supplier undertakes to provide a "Letter of Conformity" for the delivery item. The Supplier shall immediately inform the Purchaser of any information and notifications he has made to courts, authorities or other official bodies regarding the material composition and formula of the delivery item. Unless there is an obligation to disclose the material composition/formula to courts, authorities or other official bodies, Supplier and Purchaser shall treat the information confidentially. Upon request, the Supplier shall provide the Purchaser with the results of a random sample of the material composition and formulation carried out by an independent testing laboratory for validation of the data supplied. Furthermore, the Supplier shall support the Purchaser upon request in random sampling tests carried out by the Purchaser himself.  
The Supplier agrees to use the most environmentally compatible, economical, and technologically state-of-the-art method for the production and recyclability and recoverability of the delivery items.  
Necessary country-specific releases (e.g. CCC-Certification) must be obtained early enough to provide the results by the time of sample inspection and/or by the deadline agreed.  
The Supplier shall ensure compliance with the requirements of the specific quality formula ("Formel Q-konkret") and the Porsche AG quality requirement specifications ("Q-Lastenheft") and the other applicable directives listed therein.
- 9.2 If the type and scope of inspections and the inspection equipment and methods have not been agreed between the Supplier and the Purchaser, the Purchaser is prepared, at the request of the Supplier and as far as his knowledge, experience and opportunities allow, to discuss the inspections with the Supplier to determine the level of inspection technology required in each case.
- 9.3 The Supplier shall also keep separate records in the case of vehicle parts which are specially

marked, for example with "D", in the technical documentation or by special agreement. These separate records shall document when, in what way and by whom the characteristics of the contract items subject to mandatory documentation were inspected and what the results of the required quality tests are. The inspection documentation shall be retained in accordance with the Porsche AG quality requirement specifications ("Q-Lastenheft") and submitted to the Purchaser as required. The Supplier shall impose an obligation to the same effect on subcontractors to the extent allowed by law. For guidance, reference is made to VDA Volume 1 "Documentation and archiving – Code of practice for the documentation and archiving of quality requirements".

- 9.4 If public authorities which are responsible for vehicle safety, exhaust gas regulations and the like require access to the Purchaser's production process and inspection documentation for the purpose of verifying certain requirements, the Supplier shall agree that, at the Purchaser's request, he is willing to grant public authorities the same rights in his facilities and to provide all reasonable support.

## 10. Warranty and limitation period

10.1 On delivery of defective goods, and where the applicable statutory and the following preconditions are met, the Purchaser shall - unless otherwise agreed - be entitled to demand the following:

- a) Before commencing production (processing or installation), the Purchaser must first give the Supplier the opportunity to reject or rectify the goods, wherein the Purchaser has the right to choose the type of rectification. If the Supplier refuses to carry out the rectification, if the rectification is unsuccessful, if the Purchaser does not find it reasonable or if the Supplier does not meet the Purchaser's requirement to carry out the rectification within a reasonable time in the individual case, the Purchaser shall be entitled to make further claims based on defects in accordance with § 437 No. 2 and 3 of the German Civil Code ("BGB"). Under the same assumptions, the Purchaser shall be entitled to rectify the defect himself or have it rectified by third parties at the Supplier's expense and risk. If the Purchaser is obliged to return the goods as a consequence of claims based on defects, the Purchaser shall be entitled to return the goods at the Supplier's risk.
- b) If, in spite of observing the obligation according to Section 4 (Notification of defects), the defect is not discovered and accordingly notified until after the commencement of production, the Purchaser shall likewise have the right to statutory claims based on defects and the right to remedy the defects himself in accordance with the above provisions. In particular, the Purchaser may demand compensation for the transport costs (including towing costs) required for the purpose of rectification, as well as dismantling and installation costs (labour and material costs) from the Supplier.
- c) If the Purchaser suffers damages based on the deficiency of the goods supplied or on an infringement of secondary obligations (e.g. the obligation to clarify, advise or investigate), the Purchaser may demand compensation for damages resulting therefrom in accordance with the statutory provisions.

Further claims due to the supply of defective goods arising from § 437 of the German Civil Code ("BGB") or directly from the regulations mentioned therein remain unaffected.

- 10.2 The parts which are to be replaced by the Supplier shall be made available to the Supplier by the Purchaser on request without delay at the expense of the Supplier.
- 10.3 Claims arising from defect liability shall lapse on expiry of 48 months from the transfer of risk unless a longer limitation period is provided by law. Notification of a defect to the Supplier shall suspend the limitation period. If the Supplier is notified of a defect within the limitation period, the Supplier shall forego any defence under the statute of limitations.
- 10.4 Claims for defects shall not arise if the fault is the result of a failure to comply with operating, maintenance and installation instructions, the result of improper or inappropriate use, incorrect or negligent handling, and natural wear and tear or the result of interference with the contract items by the Purchaser or third parties.
- 10.5 In the event of defective deliveries this section 10 shall not affect the Purchaser's claims under product liability law, for tortious acts or for actions performed without due authority. Guarantees relating to characteristics and durability must be expressly designated in detail as such in writing.

## 11. Liability

Unless alternative liability provisions are agreed elsewhere in these terms, the Supplier shall be obliged to provide compensation for damages directly or indirectly incurred by the Purchaser as a result of defective delivery, infringement of official safety regulations or any other grounds for which the Supplier bears responsibility.

- 11.1 There is an obligation to provide compensation for damages unless the Supplier is not responsible for infringing the obligation.
- 11.2 If claims are asserted against the Purchaser on the basis of mandatory strict third party liability, the Supplier shall assume liability with regard to the Purchaser to the same extent as he would if he were directly liable.  
§ 426 Para. 1 P. 2 and Para. 2 of the German Civil Code ("BGB") shall apply to the compensation for damages between Purchaser and Supplier. This shall also apply in the event of direct claims asserted against the Supplier.
- 11.3 Claims by the Purchaser shall be excluded if the damage is the result of failure to comply with operating, maintenance and installation instructions, improper or inappropriate use, incorrect or negligent handling, natural wear and tear or incorrect repair for which the Purchaser is responsible.
- 11.4 The Supplier shall be liable for measures which are taken by the Purchaser to ward off damages (e.g. recall campaigns) to the extent that the Supplier is legally obliged to do so.
- 11.5 If the Purchaser wishes to assert claims against the Supplier in accordance with the above provisions, the Purchaser shall consult with and notify the Supplier in full and without delay. The Purchaser shall give the Supplier the opportunity to examine the damage. The contracting parties shall agree on the measures to be taken, in particular in the event of settlement negotiations.

## 12. Proprietary rights

- 12.1 The Supplier shall be liable for claims arising from the infringement of proprietary rights and applications to register such rights (proprietary rights) committed when contract items are used in accordance with the contract where at least one of the family of proprietary rights has been published in the Supplier's own country, by the European Patent Office or in the Federal Republic of Germany, China, France, the United Kingdom, Austria or the USA, or when existing third party rights impede the undisturbed use by Purchaser.
- 12.2 The Supplier shall indemnify the Purchaser and his customers against all claims from the use of

such rights unless he was neither aware nor could be expected to be aware of the conflicting proprietary rights of the third parties.

- 12.3 This shall not apply if the Supplier has manufactured the contract items in accordance with drawings, models or other equivalent descriptions or information produced and furnished by the Purchaser and either is not aware of, or in connection with the products developed by him, cannot be expected to be aware that proprietary rights are affected thereby.
- 12.4 The contracting parties undertake to inform each other immediately of any infringement risks or alleged cases of infringement of which they become aware and to give each other an opportunity to mutually prevent any claims based on these from arising.
- 12.5 At the Purchaser's request, the Supplier shall inform the latter of any use of its own and licensed, published or unpublished, proprietary rights or applications for such rights with respect to contract items.

## 13. Free and Open Source Software

- 13.1 The Supplier shall not use any "free and open source software," i.e. software that can usually be obtained free of charge and open source (hereinafter referred to as "FOSS"), in deliveries and services for the Purchaser, even if the FOSS's terms of use explicitly permit use of the FOSS.
- 13.2 The Supplier can apply to the Purchaser to use FOSS on a case-by-case basis by
- a) Sending the complete and correct information on the specific FOSS, including, for example, its precise name and version, all associated terms of licensing and use, the source from which the FOSS is obtained, and copyright notices and author attributions
- b) Specifying the reasons for using the FOSS
- c) Confirming that a compatibility check on several different FOSS components/licences has been carried out successfully.
- 13.3 The FOSS which the Supplier has applied to use may only be used if the Purchaser has given its prior written approval.
- 13.4 In cases of doubt, the approval shall be effective only for the specific work status of the Supplier's scope of services/deliveries and must be applied for again before new work statuses, versions, updates, upgrades or other deliveries and services are provided.
- 13.5 In using FOSS, the Supplier shall provide deliveries and services such that the contractual service to be provided to the Purchaser or software and systems at the Purchaser are not impaired, in particular by the "copyleft effect" or the "viral effect." FOSS shall also only be used if there is no conflict with the digital signature or the authenticated vehicle programming method of the Purchaser and authentication information, cryptographic keys or other information relating to the software used in the vehicle remain unaffected and in particular do not have to be disclosed to third parties.
- 13.6 If subcontractors are used to fulfil the agreement, they must be obligated to comply with this Section 13.
- 13.7 If the Supplier violates one of the obligations specified in this Section 13 or infringes provisions of the terms of licensing or use of the FOSS used, it shall indemnify the Purchaser and its affiliated companies against claims, damage, losses or costs caused by such violations/infringements and defend them against claims by third parties at the request of the Purchaser. A violation of this Section 13 shall constitute a breach of a cardinal contractual obligation.
- 13.8 The provisions in this Section 13 shall apply accordingly to the use of "open content," i.e. content such as databases, fonts, media and photographs that is usually free of charge, but can be obtained subject to compliance with specific licensing terms.

## 14. Use of production equipment and confidential information provided by the Purchaser

Models, molds, templates, samples, tools and other production equipment, including confidential information, which the Purchaser makes available to the Supplier or which is paid for in full by the Purchaser, shall, unless otherwise agreed in a separate agreement between the Purchaser and the Supplier, only be used in deliveries to third parties with the prior written consent of the Purchaser.

## 15. Retention of title

The Supplier reserves the right to the ownership of all goods supplied by him until the delivery concerned has been paid for in full. Other forms of retention of title shall not be recognized by the Purchaser.

## 16. Deployment of staff, Minimum wage

- 16.1 The Supplier is required to screen all persons that are deployed on the Purchaser's factory premises to perform owed service before the start of contractual performance. Therefore, the last name, first name, date and place of birth are to be verified against sanctions lists pursuant to Council Regulations (EEC) No. 2580/2001, No. 881/2002 and No. 753/2011 as well as any amendment which has been or will be issued by the European Commission. The check has to be repeated periodically, but at a minimum once per year. The Purchaser has the right to request proof from the Supplier that the appropriate verifications have been performed.
- 16.2 The Supplier shall undertake to pay his employees at least the statutorily prescribed or contractually agreed minimum wage.
- 16.3 Further, the Supplier shall undertake only to employ such subcontractors that likewise contractually undertake to pay at least the statutorily prescribed or contractually agreed minimum wage to their employees.
- 16.4 The Supplier shall place the subcontractors instructed by him under obligation in accordance with Clause 16.3.
- 16.5 In the event of an infringement of the provisions of the Minimum Wage Act, the Supplier shall undertake to comprehensively indemnify the Purchaser from all obligations associated with such an infringement and also to compensate the Purchaser for any damages resulting from a culpable infringement.
- 16.6 The same obligation shall apply to the Supplier if a subcontractor instructed by him should infringe the provisions of the Minimum Wage Act.
- 16.7 If a claim should be made against the Purchaser by an employee of the Supplier for payment of the statutory minimum wage, the Supplier shall undertake to the Purchaser to provide all information necessary for the defence against the claim and any action for payment. This shall also apply following termination of the contractual relationship between the Supplier and the Purchaser.
- 16.8 The Supplier shall guarantee to place subcontractors instructed by him under obligation in accordance with Clause 16.7 and to pass the necessary information to the Purchaser without delay if an employee of the subcontractor lodges claims against the Purchaser.

## **17. Data Protection, Attribution of data**

- 17.1 In case the Supplier has access to personal data while performing the contract, the Supplier shall observe all applicable laws and regulations on data protection and privacy. In particular, the Supplier shall only process personal data as required by the contractual obligations (specification of purpose), shall make sure that the Supplier's employees only have access to personal data to the extent strictly required, and shall commit the Supplier's employees to data secrecy in writing as well as instruct the Supplier's employees on applicable laws and regulations on data protection and privacy and submit proof to the Purchaser upon request. In case of commissioned data processing by the Supplier on the Purchaser's behalf, the parties shall – before the Supplier receives access to the personal data from the Purchaser – execute the required data protection agreement that the Purchaser provides in the respective context (particularly an agreement on commissioned data processing). The Supplier warrants that the processing of personal data that are allocated to the Purchaser or the Purchaser's customers is only conducted in the territory of the Federal Republic of Germany, a Member State of the European Union or a Member State of the Agreement on the European Economic Area. Derogations from this provision shall be agreed upon by the Purchaser and the Supplier in writing.
- 17.2 The Supplier acknowledges that all data created at the Purchaser, the Supplier, the end customer or another third party from or in connection with use of the subject matter of the agreement shall be attributed to the Purchaser, if the end customer or another third party is not entitled to it under prevailing law. The Supplier shall not claim ownership of or any other rights to this data and shall not use the data in particular for big data purposes, such as for collecting data, creating databases or conducting data analyses. The right of the Supplier to use the data for fulfilling this agreement, where it is required for that purpose, shall remain unaffected.

## **18. Compliance and sustainability**

- 18.1 The Supplier shall take all necessary and appropriate measures to combat corruption and avoid any other violation of the law, in particular violations of the provisions against antitrust law, competition law, environmental protection law, customs law, foreign trade law and of employees' rights. The Supplier shall take the appropriate organizational (including, but not limited to, appropriate legal or contractual) measures to prevent his legal representatives, employees, sub-contractors, consultants or other third parties acting on his behalf from becoming liable to prosecution for committing or failing to act in light of, for example, bribery, corruptibility, granting of undue benefits, acceptance of undue benefits, money laundering, fraud or embezzlement.
- 18.2 In the event of an infringement of these obligations relating to the performance of this contract, or if sufficient reason exists to suspect such an infringement in relation to this contract, the Supplier must inform the Purchaser without undue delay and inform him which measures he is taking to remedy such infringement and prevent future violations. If the Supplier fails to inform the Purchaser without undue delay or to take appropriate remedial measures within 60 days of learning of the situation, the Purchaser shall be entitled to terminate the relevant contract without notice or to end the entire business relationship immediately.
- The Supplier shall indemnify, defend, and hold the Purchaser, its directors, officers, agents and employees harmless from any and all claims, causes of action, losses, damages, liabilities, costs and expenses, including attorneys' fees, to the extent arising from any breach of the obligations under this section; provided, however, that Supplier shall not be obligated to indemnify, defend, or hold harmless the Purchaser to the extent arising from negligent or intentionally wrongful acts of the Purchaser or anyone for whom the Purchaser is responsible.
- 18.3 The "Requirements of the Volkswagen Group regarding sustainability in its relationships with business partners (Code of Conduct for Business Partners)" available at [www.vwgroupsupply.com](http://www.vwgroupsupply.com) also apply.
- 18.4 If the Purchaser or the public authorities require access to the production process and/or the service provision process and to the Supplier's documents and processes related to an order for the purpose of verifying certain requirements, the Supplier shall undertake to allow such a verification and/or audit in his domain and to provide all reasonable support.

## **19. General provisions**

- 19.1 If one of the contracting parties suspends payments or if application is made to instigate insolvency proceedings against its assets or for out-of-court settlement proceedings, the other contracting party will be entitled to revoke the portion of the contract not yet executed. This shall also apply accordingly if the economic position of a contracting party deteriorates in such a way as to seriously jeopardize fulfilment of the contract.
- 19.2 If one of the provisions of these terms and of additional agreements are or become ineffective, this shall not affect the validity of the remaining provisions. The contracting parties are obliged to negotiate in good faith a rule which replaces the ineffective provision.
- 19.3 Unless otherwise agreed, the law of the Federal Republic of Germany shall apply exclusively. The application of the terms of UN Trade Law (United Nations Convention on Contracts for the International Sale of Goods) of April 11, 1980 shall be excluded.
- 19.4 The place of performance is the Purchaser's registered office. Alternative provisions may be agreed for the delivery itself.
- 19.5 The exclusive court of jurisdiction shall be Stuttgart; however, the Purchaser retains the option of lodging claims with the court at the location of the Supplier's registered office.
- 19.6 These Terms and Conditions are produced in German and English. In the event of contradictions and discrepancies between the German and the English version the German version shall prevail.