

General Terms of Purchase of the Volkswagen AG for Information Technology (IT) Contracts and/or Electronic Information and Communications (TK) Contracts

1. Definitions

The following expressions used in these IT Purchase Terms have the meanings listed below:

- 1.1 **Contractor** means the supplier / contractor.
- 1.2 **Order Placement** refers to our purchase order, Blanket Purchase Order or call-off order under a Blanket Purchase Order, or to an (individual or separate) contract that we have entered into with the Contractor.
- 1.3 **Copyleft License** is a licensing and utilization stipulation for open source software that may cause software components that are integrated into or joined with the respective open source software to be subject to the same terms and conditions of licensing and use as applied to the open source software in question.
- 1.4 **Work Products** mean all work results constituting the subject matter or the result of the Contractual Performances, including without limitation know-how, hardware and software supplied, and all content, access numbers, domains, sub-domains, telephone numbers and other identification numbers and symbols that the Contractor establishes or registers for our benefit or uses or provides to us for our use in the course of its Contractual Performances.
- 1.5 **IT Purchase Terms** means these "General Terms of Purchase of the Volkswagen AG for Information Technology (IT) Contracts and/or Electronic Information and Communications (TK) Contracts."
- 1.6 **Deliverables** means any object to be delivered to us by the Contractor pursuant to the Order Placement (hardware, data carriers, documents and materials, documentation, conceptual plans, etc.).
- 1.7 **Open Source Software** means all software distributed under terms and conditions of use and licensing for open source software that include, as one of their material stipulations, the obligation to distribute or disclose the source code of the software.
- 1.8 **Blanket Purchase Orders** describe the Contractual Performances (where appropriate based on our technical, commercial, and/or legal solicitation documents), stipulate the remuneration and other terms of supply as appropriate, and may contain a forecast regarding the volume of Contractual Performances we will require. Even where they include a forecast, Blanket Purchase Orders do not give rise to any obligation on our part to issue call-off orders for Contractual Performances except as otherwise expressly agreed in writing. A Blanket Purchase Order obligates the Contractor to effect Contractual Performances as specified in the Blanket Purchase Order upon receipt of our call-off order(s). No contractual obligation – in particular no obligation to accept and/or pay for Contractual Performances – arises on our part until our issuance of a call-off order.
- 1.9 **Processing** refers to any and all operations or series of operations, whether accomplished with or without the aid of automated processes, that are performed in connection with personal data, including without limitation collecting, recording, organizing, ordering, storing, adapting or modifying, reading, accessing, using, disclosing by transmitting, distributing or otherwise making available, comparing, linking, restricting or filtering, deleting, or destroying such data.
- 1.10 **Contractual Performances** means all performances to be provided by Contractor and agreed under the terms of the Order Placement.
- 1.11 **Volkswagen Group** and **"we"** refer to Volkswagen AG as well as all companies affiliated with Volkswagen AG within the meaning of §§ 15 ff. AktG (German Stock Corporation Law), in particular all companies forming a group with Volkswagen AG under § 18 AktG, including companies (if any) holding a majority ownership interest in Volkswagen AG (parent companies) as well as companies in which such parent companies hold majority ownership interests (sister companies). This applies even if such companies have their registered office / registered seat outside of Germany. Any company that ceases to be part of the Volkswagen Group shall, as regards the rights arising out of the Order Placement, be deemed to remain a Volkswagen Group company during a six (6) month transition period.

2. Applicability of these IT Purchase Terms and other Terms and Conditions

- 2.1 Unless otherwise agreed in a specific case, all of our Order Placements are subject exclusively to these IT Purchase Terms in the version in effect at the time of contracting. The Contractor's conflicting or differing terms and conditions are binding for us only if we have expressly acknowledged them in writing. The IT Purchase Terms apply even where we accept deliveries without objection or reservation despite awareness of the Contractor's conflicting or differing terms and conditions unless we have explicitly agreed to them in writing.
- 2.2 Unless otherwise expressly agreed in writing, the following – each in the version in effect at the time of contracting – also form an integral part of the terms of every Order Placement: our production equipment specifications (Betriebsmittelvorschriften), our Terms of Contract for Supply Chain Security and Proof of Origin, and our Requirements Regarding Sustainability in Relationships with Business Partners (Code of Conduct for Business Partners), which the Contractor can view, save, and print at www.vwgroupsupply.com.
- 2.3 If the Contractor renders Contractual Performances in or on our premises or grounds, our house rules and accident prevention and safety regulations form an integral part of the terms of the respective Order Placement. The Contractor may view, save, and print these rules and regulations at www.vwgroupsupply.com; see also sec. 4.12 below.
- 2.4 Where Contractual Performances are intended for use in production (production material), the provisions in Section XII nos. 1 to 6 of the Terms of Purchase for Production Material shall apply in addition for patents. The Contractor may view, save, and print these terms at www.vwgroupsupply.com; see also sec. 21.4 below.
- 2.5 Unless otherwise expressly agreed in writing, the "Obligation to Maintain Secrecy" required by sec. 27 below is an integral part of the terms of the respective Order Placement.
- 2.6 Should we in a specific and reasonable case agree to the applicability of the Contractor's or any third party's terms and conditions of licensing and use, which to be valid must be done expressly and in writing, only those provisions shall apply which define the nature and scope of the rights of use and exploitation. Provisions dealing with all other matters, including without limitation warranty for defects, liability in damages, applicable law, and/or venue and jurisdiction, shall not apply.
- 2.7 Vis-à-vis enterprises and juridical persons governed by public law, the IT Purchase Terms shall apply as well for all future procurement contracts for IT and/or TK Performances.

3. Contract Formation

No Order Placement is valid unless in writing and subject to our IT Purchase Terms. Except as otherwise expressly agreed in writing, the content and scope of the Contractual Performances are defined solely and exclusively by our Order Placement together with our technical, commercial, and/or legal solicitation documents, if any, our request for quotation / proposal, if any, and/or our performance specifications, if any.

4. Execution of Contractual Performances

- 4.1 The Contractor shall render all Contractual Performances in due and proper fashion in accordance with the current technical state of the art including current programming standards and shall produce the Work Product agreed in the Order Placement.

In so doing, the Contractor shall comply with our currently applicable (quality) standards and working practices as brought to its attention.

- 4.2 Achievement of the agreed or the standard and generally accepted quality standards shall be verified and documented by the Contractor using code scanning tools. Detailed code scanning documentation (scan findings reports agreed with us) shall be delivered with the respective Contractual Performance.
- 4.3 Prior to commencing its Contractual Performances, the Contractor shall complete, accept, and return to us the documents and questionnaires concerning information security, IT security, and data protection that we make available particularly at www.vwgroupsupply.com. These documents then become an integral part of the respective Order Placement. We will update these requirements regularly; the Contractor is required to inform itself of these updates and to implement the amended requirements. The Contractor furthermore agrees that it shall upon request furnish proof of its fulfillment of the aforementioned requirements. The Contractor is moreover required to inform us without delay of any non-compliance with or violation of the requirements here referred to and to immediately implement effective countermeasures without, however, limiting or interfering with the rendering of the Contractual Performances.
- 4.4 In carrying out Contractual Performances, the Contractor shall adhere to current information security standards, implement and comply with the requirements and measures contained in the documents referred to, especially in sec. 4.3, and at all times in particular safeguard our systems in accordance with the current technical state of the art against unauthorized third party access (such as hacker attacks) and against undesired data transmission (such as spam). The Contractor must immediately notify us in electronic form (e-mail) particularly where it becomes aware of any circumstances posing threats or risks to data, information, and/or system security and shall in such event – in close coordination with us and at its own expense – promptly implement effective countermeasures without, however, limiting or interfering with the rendering of the Contractual Performances.
- 4.5 Should the Contractor need access to our systems in order to render its Contractual Performances, this is only possible using our technologies and requires our express prior written consent. Any costs occasioned by this use shall be borne by the Contractor. The Contractor is required to inform itself as to the security guidelines and concepts applicable in this connection; the Contractor may view, save, and print these at www.vwgroupsupply.com.
- 4.6 Before providing software and/or data carriers to us, the Contractor shall scan these using a state-of-the-art virus detection program and ensure that such software and/or data carriers contain neither so-called malware (software programmed to do damage) nor any computer viruses, worms, Trojan horses (Trojans), or the like. Before providing software to us, the Contractor shall run state-of-the-art software security tests and ensure that the software contains no critical vulnerabilities that could compromise the integrity and confidentiality of our systems and data or the systems and data of third parties linked to our systems. The Contractor shall furnish proof of its compliance with the foregoing to us before providing software to us.
- 4.7 The Contractor shall carefully select the employees on whom it relies to perform the contract (both initially and/or where employees are replaced or require training) to ensure that they possess the necessary personal qualifications and technical knowledge to render the Contractual Performances in the agreed quality.
- 4.8 Both contracting parties shall designate contact persons for all information to be exchanged. The contracting parties' designated contact persons shall meet regularly to coordinate the content and manner of contractual performance as well as to exchange all information necessary to effect such performance. The contact person / project manager appointed by the Contractor shall have final responsibility for planning, coordinating, and supervising the execution of Contractual Performances.
- 4.9 The Contractor agrees that one of its principal contractual obligations shall be to maintain clear and understandable technical documentation on Contractual Performances rendered and, upon request, to inform us with reasonable specificity concerning the status of Contractual Performances. We may at any time require the delivery of Work Products in their draft or interim state; the exercise of this right shall in no way release the Contractor from its obligations under this sec..
- 4.10 Software shall in all cases be delivered to us together with user documentation and, except for standard software, with the source code and programming documentation.
- 4.11 Contractual Performances effected by the Contractor in or on our premises or grounds shall be carried out by the Contractor independently and on its own responsibility, in compliance with our technical and organizational specifications, and under the supervision and exclusive direction of the personnel to whom the Contractor has assigned these functions.
- 4.12 The Contractor is required to inform itself as to the house rules and accident prevention and safety regulations from time to time in force at the respective place of performance, in particular in or on our premises or grounds; the Contractor may view, save, and print these rules and regulations at www.vwgroupsupply.com. The Contractor shall comply with such rules and regulations.
- 4.13 We are only obligated to provide resources (hardware, software, office space, etc.) where this has been expressly agreed in writing. Any use, in particular for system operation purposes, of our premises, office space, or other facilities by the Contractor requires a separate written contract with us regulating such use, in particular specifying the duration thereof and the consideration to be paid by the Contractor therefor. An obligation on our part to provide resources does not follow merely from the fact that Contractual Performances are effected in or on our premises or grounds. Any resources that we provide may be used by the Contractor, its employees, and/or its subcontractors solely to render Contractual Performances. Passwords may not be stored or provided to other persons and must be changed at least every 90 days.
- 4.14 We reserve all rights to technical requirements profiles, illustrations, drawings, computations, samples, models, and other documents and materials that we make available to the Contractor, including without limitation all ownership rights and copyrights. Third parties may be given access to such materials only with our express prior written consent. Such materials and information shall be used solely to effect Contractual Performances and are to be automatically returned to us without request on our part upon contract completion.
- 4.15 Absent express written agreement to the contrary, the Contractor shall render all necessary infrastructure performances without additional charge to us. "Infrastructure performances" means all preparatory work necessary to effect Contractual Performances, such as designing, planning, setting up, assembling, or installing systems.
- 4.16 At our request, the Contractor will submit an offer to provide us with support performances on competitive terms. "Support performances" means all ancillary performances (e.g. training, consulting, optimizing, and maintaining / updating) needed or useful in connection with Contractual Performances.
- 4.17 The Contractor shall notify us immediately in writing if it believes the information, documents, or other materials that we have provided and it needs to perform the contract to be incomplete or incorrect.

- 4.18 The Contractor undertakes to give us precautionary warnings of any risks and to guard against disruptive influences, including those of third party origin.
- 4.19 Every delivery shall be accompanied by a delivery note containing our order data (in particular number and date of the Purchase Order, cost center).
- 4.20 Before permitting its personnel and any subcontractors used under these IT Purchase Terms to commence work, the Contractor shall instruct them in writing concerning the requirements of this sec. 4 and secure their written contractual commitment to comply therewith.
- 5. Performance Deadlines, Consequences of Lateness**
- 5.1 Agreed deadlines for delivering goods and performing work and services are binding. Should circumstances change so that such deadlines cannot be met, the Contractor is required to notify us immediately in writing. No postponement of a deadline for delivering goods or performing work or services is effective unless agreed with us in writing.
- 5.2 In every instance in which the Contractor fails to meet a deadline for delivering goods or performing work or services for reasons for which it is responsible, it shall pay a contractual penalty in the amount of 0.3% of the agreed net remuneration per workday of lateness, but not more than 5% of the agreed net remuneration overall; where interim deadlines are exceeded, these percentages shall apply only to the net remuneration attributable to the Contractual Performances to be rendered by the interim deadline in question. Unless time-barred, the contractual penalty may be claimed by us at any time up to and including the due date of the final payment under the Order Placement.
- 5.3 In the event of Contractor delay constituting default, we are entitled to assert all statutory rights and claims in addition to the contractual penalty provided for in sec. 5.2. Contractual penalties paid will be credited against liability in damages by reason of delay constituting default.
- 6. Circumstances Interfering With Contractual Performances**
- Should the Contractor for any reason believe that circumstances have arisen that interfere with its ability to render Contractual Performances or have reason to suppose that such circumstances may arise, the Contractor shall immediately notify us thereof in writing and agree on appropriate countermeasures with us.
- 7. Open Source Software**
- 7.1 The use of Open Source Software that is subject to a Copyleft License is prohibited in connection with Contractual Performances; the use of other Open Source Software requires our prior written consent. Should the Contractor intend to use Open Source Software in connection with Contractual Performances, the Contractor agrees that the following shall be incumbent upon it as cardinal contractual obligations: (i) notifying us which Open Source Software components it proposes to use; (ii) notifying us of the license terms and conditions applicable thereto and providing us with a copy thereof; and (iii) confirming that no so-called copyleft effect will be triggered that would cause the software performance as a whole to be considered Open Source Software. To the extent the use of Open Source Software is permissible under this section, the Contractor is required to ensure that such reliance on Open Source Software does not restrict or limit the contractual or intended use of the Contractual Performances by the Contractor or by Volkswagen Group Companies.
- 7.2 In the event the Contractor uses Open Source Software in connection with the Contractual Performances without our prior consent or with consent that was based on information within the meaning of the preceding paragraph that was culpably incomplete or inaccurate, we may at our discretion revoke the contract or require that the Contractor replace the Open Source Software with equivalent proprietary software; sec. 21.1 sent. 3 and 4 shall apply analogously.
- 7.3 During the limitation period for legal defects (defects in title or other rights) under sec. 25.1, the Contractor shall indemnify us against, hold us harmless from, and procure our release from all third party claims and associated costs, regardless of amount, by reason of the use of Open Source Software. Sec. 21.3 shall apply analogously.
- 7.4 If required under the respective terms and conditions of licensing and use, the Contractor shall deliver the source code of the Open Source Software to us at the latest on the agreed date of delivery.
- 8. Rights of Use and Exploitation**
- 8.1 Where standard software (software developed for the needs of a majority of customers in the market and not developed by the Contractor specifically for our needs) is provided to us by the Contractor by any means including download, the Contractor grants us, with respect thereto, non-exclusive, irrevocable, perpetual, and sub-licensable rights of use and exploitation, without restrictions as to geographic or material scope; such rights are moreover transferable to Volkswagen Group companies and other companies deemed the equivalent thereof by the parties' mutual agreement. Where the Contractor licenses our use of software by a specified number of users, the software / systems may be used simultaneously by this number of users unless otherwise clearly specified (concurrent user license). For purposes of this section, "user" means employees of Volkswagen Group companies or of third parties having a business relationship with Volkswagen Group companies or under contract to such companies.
- 8.2 With respect to all other Work Products and Deliverables (e.g. custom-made software, customized software, documentation, source code, concepts, etc.), we acquire exclusive, irrevocable, perpetual, transferable, and sub-licensable rights of use and exploitation without limitation as to geographic or material scope.
- 8.3 The Contractor shall ensure that all employee inventions arising in the course of Contractual Performances are transferred to us free of charge.
- 8.4 All rights referred to in this section may be exercised by us or by third parties acting on our behalf, provided any exercise by third parties acting on our behalf is solely for our business purposes.
- 9. Ownership**
- 9.1 Title to all Deliverables to be permanently provided to us is conveyed to us by the Contractor effective when these are created and in their respective evolving state(s) of development.
- 9.2 The title to Deliverables which the Contractor conveys to us shall be free and clear of all third party rights.
- 10. Place of Performance, Passage of Risk**
- 10.1 The place of performance for all supplies of goods, work, and services shall be, of our various places of business, the one for which the Contractual Performances are intended. In the absence of such intention, the place of performance is Berliner Ring 2, Wolfsburg, Germany. Where the Contractor makes software available to us via download, its performance obligation is not discharged until the software has been successfully downloaded.
- 10.2 The risk of accidental destruction or accidental deterioration of Work Products or Deliverables does not pass until handover to us or, where applicable, acceptance by us, at the destination we have designated in the particular case. Risk regarding goods partially delivered and work or services partially performed shall not pass until performance is complete.

11. Copyright-Related Rights

To the extent the contract requires the Contractor to deliver or make available content / information that it owns, controls, or is required to provide (content providing), the Contractor shall at its own cost acquire, from the holders of the respective rights / copyrights or from the collection associations that administer these rights, all rights of use and exploitation, copyright, and related rights necessary to effect the Contractual Performances. The Contractor shall indemnify us against, hold us harmless from, and procure our release from all third party claims raised due to the Contractor's failure to discharge the foregoing obligation or failure to discharge it to a sufficient extent, unless such failure is without fault on the Contractor's part.

12. Acceptance

Where the Contractual Performances involve the production of a work (cf. §§ 631 ff. of the German Civil Code) and/or the parties have agreed that the Contractual Performances shall be subject to acceptance, the following shall apply:

12.1 Complete fulfillment of the requirements set forth in sec. 4, in particular submission of the documentation required by sec. 4.2, is required before notice may be given under sec. 12.2 that the Contractual Performances are ready for acceptance.

12.2 The Contractor shall give written notice that the Contractual Performances are ready for acceptance. The contracting parties shall then agree a time and place for our receipt of the Contractual Performances. Unless waived by us in writing in a specific instance, acceptance testing shall be carried out on at least ten (10) consecutive workdays under simulated and/or real operating conditions. The precise details and in particular the time period for this acceptance testing shall be as specified by us in consultation with the Contractor. We may also carry out the acceptance testing ourselves, or we may require the Contractor to carry out the acceptance testing in our presence. In this connection, we are entitled to verify the fulfillment of all requirements, in particular those described in sec. 4 and sec. 7 above, using code scanning tools or to have the Contractor perform such verification. We shall make a written record of any defects noted during the acceptance testing.

12.3 If no defects are noted or if the noted defects are immaterial, we will declare acceptance in writing, within fifteen (15) days of our receipt of the Contractual Performances where acceptance is to take place without acceptance testing and within fifteen (15) days of the conclusion of acceptance testing where acceptance is to be preceded by such testing, unless a longer period has been mutually agreed. Our acceptance of partial performances does not bar us, at the time of overall acceptance, from raising rights based on defects in these these partial performances to the extent the defects only manifest themselves through the interaction of system parts.

12.4 The Contractor shall promptly correct defects that preclude acceptance and resubmit its performance for acceptance. The provisions of sec. 12.1 to 12.3 above apply mutatis mutandis with regard to such resubmission.

13. Handover

To the extent the Contractual Performances involve the sale of things (cf. §§ 433 ff. of the German Civil Code) and/or the parties have agreed on handover to us, the Contractor shall give written notice that the Contractual Performances are ready for handover at least ten (10) workdays prior to the intended handover date and agree with us on the place and exact time of handover.

14. Duty to Inspect, Notification of Defects

To the extent we have a legal obligation to inspect for and notify of defects, such notice is timely if given within two (2) weeks of delivery / handover in the case of manifest defects and within two (2) weeks of discovery in the case of other defects.

15. Remuneration

15.1 The remuneration provided for in the Order Placement is binding. Unless otherwise expressly agreed in writing, the prices include packaging and delivery "free stipulated delivery address." There is no obligation to return the packaging unless expressly so agreed. However, at our request the Contractor shall at its own expense take back the packaging at the place of performance specified in sec. 10.1 of these IT Purchase Terms. The remuneration specified in the Order Placement constitutes payment in full for all Contractual Performances.

15.2 Where the Order Placement provides for remuneration based on hours worked, the Contractor shall document its work in time records that have been countersigned by us; a **sample time record sheet** containing the required information may be downloaded from www.vwgroupsupply.com. The Contractor must submit its time records to us on a weekly basis for countersignature.

16. Travel and Accommodations Expenses

Expenses for travel and accommodations will be reimbursed only to the extent the respective Order Placement expressly so provides and we have in writing approved in advance both the specific business travel and the costs to be incurred.

17. Invoicing

17.1 Invoices shall be submitted to us only in electronic form and solely in the following manner:

- Free invoice entry via our Group Business Platform: www.vwgroupsupply.com => Login => Information => Tools => Financial Applications (FIN)
- Direct invoice transmission via EDI
- Invoice transmission through a specified provider

The Contractor may request details by sending an e-mail to e-invoice@volkswagen.de.

17.2 In justified cases cleared in advance with the Volkswagen AG Supplier Accounting Dept. (e-invoice@volkswagen.de), the Contractor may by way of exception send paper invoices to the following address:

Volkswagen AG, Kreditoren, Brieffach 1852, 38436 Wolfsburg

17.3 Invoices must be submitted to us in reviewable form and must state the supplier code, the Purchase Order number, the call-off number, the BM number, the account(s) to be charged, and the name of the purchaser. All required invoicing documentation must be attached.

17.4 Invoices shall comply with the requirements of German VAT law. We will furnish bookkeeping vouchers to the Contractor (credit notes, debit notes, payment advices) solely in electronic form via EDI or as a download from www.vwgroupsupply.com => Login => Information => Tools => Financial Applications (FIN).

18. Terms of Payment; Taxes

18.1 Unless otherwise individually agreed in writing in a specific instance, the agreed remuneration shall be payable within thirty (30) days after the proper office under sec. 17 receives an invoice from the Contractor that separately shows any applicable value added tax. However, the invoice is due and payable only if the Contractual Performances have been completely rendered by the Contractor and accepted by us or completely handed over to us, as the case may be.

18.2 The stipulated remuneration is exclusive of value added tax which, if applicable, shall be added thereto at the appropriate rate.

- 18.3 The Contractor shall bear all direct taxes (e.g. taxes withheld at the source) imposed or remitted in Germany by reason of the remuneration paid to the Contractor. To the extent we are required by law to withhold tax (such as source tax) on any portion of the remuneration, only the balance remaining will be disbursed. Any applicable withholding tax will be remitted on a quarterly basis to our tax office of proper jurisdiction. Where contractual payments are exempt from withholding tax or subject to a reduced rate of withholding tax under the terms of an applicable tax treaty, the resulting increased payment will only be disbursed if a valid certificate entitling us to reduce the withholding amount has been provided to us no later than the time of payment in all cases in which the applicable law requires such a certificate. We will provide the Contractor with the original of an appropriate tax certificate showing any tax withheld. Tax amounts withheld shall never give rise to a payment delinquency under sec. 19 of these IT Purchase Terms.
- 18.4 We may declare set-off or withhold payment or other performance in any case in which we have a legal right to do so.
- 19. Delinquent Payment**
- 19.1 In the event a payment delinquency, the Contractor may charge delinquent payment interest at a rate of 5 percentage points above the base per annum interest rate of the European Central Bank and claim any damages in excess of this amount. We are entitled to show that actual damages were nil or less than this amount. No payment on our part becomes delinquent until it falls due and the Contractor has delivered a written demand for payment of the overdue amount to us.
- 19.2 The Contractor is entitled to suspend Contractual Performances because of our payment delinquency only where the delinquent amount is not insubstantial and we have failed to make payment despite receipt of a written demand for payment stating that performance will be suspended if payment is not received within a reasonable specified new deadline of not less than four (4) weeks.
- 20. Warranty for Defects**
- 20.1 Where the Contractual Performances are defective, we may, except where they consist in providing an ongoing service (*Dienstleistung*), set a reasonable deadline for substitute performance (cure) by the Contractor, within which it shall, at our option, either remedy the defects in the Contractual Performances as rendered or render new Contractual Performances. The Contractor shall bear all costs arising in connection with the substitute performance (cure). If the Contractor fails to cure as requested or does not do so within the deadline set or two attempts to cure are unsuccessful, we are entitled
- to ourselves remedy the defect or have a third party do so and require payment from the Contractor of the expenses necessary for this purpose, or
 - to reduce the agreed remuneration by an appropriate amount, or
 - to revoke the contract and require reimbursement of any remuneration already paid and
 - claim compensation for the damage we suffer by reason of the defect and reimbursement of the expenses we incurred in reliance on receipt of defect-free Contractual Performances.
- In the event of termination or partial revocation of the contract, the Contractor shall receive remuneration only for Contractual Performances that have been accepted as free of defects, that are not covered by the partial revocation or were rendered after termination and that are of significant economic utility to us. The foregoing is without prejudice to our right to claim damages and reimbursement for expenses. We furthermore retain our full statutory warranty rights.
- 20.2 Where the Contractor provides software components to us as part of software maintenance, defects therein and defects arising from the interaction of the software (components) with the software being maintained shall be remedied in accordance with the terms of the maintenance contract. With respect to such defects we shall, however, enjoy all rights described in sec. 20.1 in the event the maintenance contract ends before expiration of the limitation period for warranty claims.
- 20.3 To the extent Contractual Performances are intended for use in production (production material), the related warranty claims for defects in quality become time-barred, by way of derogation from the preceding provision, two (2) years – from first registration of the new vehicle in which they were installed or from installation as a replacement part, as the case may be – or three (3) years after delivery to us, whichever occurs first.
- 21. Infringement of Intellectual Property Rights**
- 21.1 In the event Contractual Performances infringe third party rights (including industrial property rights and copyrights), the Contractor shall make every reasonable effort to cure these defects by acquiring the necessary rights. If the Contractor is unable to obtain such rights, the Contractor shall provide us with substitute Contractual Performances and Deliverables (especially documentation) that are of equal value to us but do not infringe third party rights (circumvention solution). The circumvention solution is of equal value only if it does not limit our agreed use of the Contractual Performances and Deliverables or does so only to an insignificant extent. The Contractor shall bear the cost of the circumvention solution and of any necessary adjustment to the environment of the Contractual Performances, unless it is not responsible for the infringement of the third party rights.
- 21.2 During the limitation period for legal defects (defects in title or other rights) under sec. 25.1, the Contractor shall indemnify us against, hold us harmless from, and procure our release from all third party claims and associated costs, regardless of amount, by reason of infringement of third party rights, unless it is not responsible for the infringement of the third party rights, for instance because the infringement is due solely to our use of the Contractual Performances in a manner that is not permissible under the Contractor's terms and conditions of use (e.g. an impermissible connection of software with third party software).
- 21.3 In the event claims alleging infringement of third party rights due to the Contractual Performances are raised against us, the Contractor is required to independently conduct the legal defense for us at its own cost. To the extent necessary and at the Contractor's expense, we will assist the Contractor to a reasonable extent in its defense against third party claims. We are entitled to take control of the defense ourselves, but will in this event coordinate our actions with the Contractor. In this event as well, the Contractor is still required to bear all necessary costs.
- 21.4 To the extent Contractual Performances are intended for use in production (production material), the provisions in Section XII nos. 1 to 6 of the Terms of Purchase for Production Material shall apply in addition for patents. The Contractor may view, save, and print these at www.vwgroupsupply.com.
- 22. Other Author Involvement**
- During the limitation period for legal defects (defects in title or other rights) under sec. 25.1, the Contractor shall indemnify us against, hold us harmless from, and procure our release from any claims that are raised against us by authors or originators who are involved in creating the contractual Work Product.

23. Rights to Information / Presentation / Inspection

The Contractor enjoys rights to information, presentation, and inspection solely as provided in §§ 101 to 101b of the German Copyright Act (UrhG) and only after making an advance payment in the amount of our anticipated reasonable internal and external costs and after posting security in a reasonable amount to cover the risk and to cover the damage we may suffer by reason of the measure, such security to take the form of money placed in escrow or delivery of an unconditional bank guarantee. The term "costs" for purposes of this sec. 23 includes without limitation expenses for verification of the legality of the requested measure, expenses for planning and structuring the requested measure so that it is proportionate and in particular consistent with data protection and confidentiality considerations, and expenses for carrying out the requested measure including detriment resulting from limitations on and/or loss of functionality due to the requested measure; such costs are compensable in accordance with § 101a (5) UrhG. The amount of the advance cost payment, the amount of the security, and the place at which the information, presentation, or inspection will be carried out shall all be fixed by us in our reasonable discretion; § 315 of the German Civil Code applies analogously.

24. Liability

We may require compensation from the Contractor for all damage (including without limitation defects in and damage to the goods, damages consequential to defects, economic damage, economic consequential damage, and useless expenditures) caused by the Contractor and/or its governing bodies, employees and other personnel, agents and representatives, performance assistants, or other third persons acting at its request, provided the damage is due to the Contractor's breach of a guaranty, a warranty, a representation, or a duty. The Contractor shall, however, not be liable for breaches of duties to the extent it shows that the breach was not due to fault on its part. We in addition retain all statutory damage claims.

25. Limitation of Claims

25.1 Warranty claims for defects become time-barred after two years in the case of defects in quality ("material" defects) and three (3) years in the case of legal defects (defects in title or other rights); should the applicable statute of limitations for such claims be longer, it shall apply instead. The limitation period begins to run upon our acceptance of Contractual Performances that are subject to acceptance, upon our confirmation of handover of Contractual Performances that are subject to handover, and as provided by law in all other cases. The foregoing applies as well to software components provided to us as part of software maintenance.

25.2 The statutory limitation periods apply to liability claims and other claims.

26. Data Protection

Where the Contractor is given access to personal data in the course of rendering Contractual Performances, it shall ensure compliance with applicable data protection law, in particular by processing personal data solely for purposes of rendering Contractual Performances (use solely for intended purpose), by limiting the access of its personnel to the data to the absolutely necessary minimum, by obtaining binding written undertakings from its personnel to respect data confidentiality, and by instructing these persons as to the provisions of data protection law which they must observe; the Contractor shall furnish proof of its compliance with the foregoing to us upon request. The Contractor shall furnish proof of its compliance with the foregoing to us upon request. The Contractor warrants that it shall protect personal data in accordance with the technical state of the art. Where the Contractor is to process personal data on our behalf, it must, before receiving access to our personal data, first enter into the from time to time and case to case necessary data protection agreement, which we shall provide. The Contractor warrants that the processing of personal data that is attributable to us or our customers shall take place only within the territory of the Federal Republic of Germany, or that of a member country of the European Union, or that of a contracting state of the Agreement on the European Economic Area. Any derogation from the foregoing shall require an express written agreement between us and the Contractor and shall be contingent on the conclusion of all necessary contracts.

27. Nondisclosure

The Contractor agrees to maintain strict secrecy regarding both the existence of the business relationship with us and all information exchanged in the context of this business relationship. The obligation to maintain secrecy continues in force for a period of ten (10) years after the end or complete performance of the respective Order Placement. The terms of the separate obligation to maintain secrecy that may be downloaded at www.vwgroupsupply.com shall apply in addition. The Contractor shall sign this document and return it to us unless the obligation is already in force.

28. Subcontractors

Any delegation of Contractual Performances to third parties by the Contractor requires our express prior written consent; such consent shall not be unreasonably withheld. The obligations incumbent on the Contractor hereunder must be imposed by it in writing on any third party on which it relies; the Contractor shall furnish proof of its compliance herewith to us at our request. The Contractor is not permitted to delegate Contractual Performances to independently employed (free-lance) individuals (natural persons). The Contractor shall indemnify us against, hold us harmless from, and procure our release from all third party claims raised due to the Contractor's failure to respect this prohibition, unless such failure is without fault on the Contractor's part. For purposes of this sec. 28, the terms "third party" and "third parties" include without limitation companies affiliated with the Contractor within the meaning of §§ 15 AktG (or any similar statutory provisions).

29. Use as Reference, Advertising

The Contractor shall make no reference to the business relationship with us in advertising or otherwise without or prior written consent. The same applies for the use of our trademarks, trade names, and other insignia.

30. Business Liability Insurance

The Contractor is required to take out and maintain business liability insurance in an amount appropriate to the risks posed by the respective Order Placement; the Contractor shall promptly furnish proof of its compliance herewith to us upon request.

31. Right to Audit the Contractor

The Contractor grants us the right, exercisable at any time upon prior notice, to enter the Contractor's premises to inspect and audit all data pertaining to business transactions between ourselves and the Contractor and to audit its IT and data security measures; we or third persons commissioned by us may enter the Contractor's premises during normal business hours for this purpose. The cost of such audits shall be borne by the Contractor if they result in the discovery of violations of the provisions of the respective Order Placement and/or of these IT Purchase Terms, unless the violation involves no fault on the Contractor's part.

32. Changes in Ownership

The Contractor is required to notify us without delay, automatically, and without prior request on our part of any change in the composition of its shareholders or other owners that takes place during the term of an Order Placement by us and which the Contractor is obliged to make available to the public (such as by entry in the Commercial Register). We are entitled to terminate the contractual relationship with immediate effect if any such change causes a change in control with respect to the Contractor (for instance, because a majority stake in its shares has been sold or third parties have acquired a controlling influence) and this change in control is potentially detrimental to our interests.

33. Export

Where Contractual Performances under an Order Placement are expressly or, from the Contractor's perspective, recognizably intended for export, the Contractor is required, without additional remuneration, to include in the delivery paperwork all information necessary to enable us to furnish all information and arrange for all action required under the export control provisions of the European Union and the United States, under German foreign trade law, and under any and all other relevant customs provisions.

34. Prohibition on assignment

The assignment of contractual rights or delegation of contractual obligations by the Contractor is ineffective without our prior written consent. The Contractor is not entitled to assign its accounts receivable from us or have them collected by third parties without our prior written consent, which shall not be unreasonably withheld. The assignment of an account receivable from us without our consent is nonetheless effective; we may, however, at our discretion, discharge our liability by making payment to either the Contractor or the third party.

35. Venue

Subject to the following sentence, legal actions may be brought only before the court within the jurisdiction of which the Contractor's respective counterparty (Volkswagen AG or other entity) has its venue. We are in addition entitled to bring an action in any other court of proper jurisdiction.

36. Choice of Law

This contract is exclusively subject to the law of the Federal Republic of Germany. The terms of the U.N. Law on the Sale of Goods (United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980) shall not apply.

37. Authoritative Version

The English version of these IT Purchase Terms is a non-authoritative translation of the original German version, which is alone authentic, binding, and authoritative.