

## **Bentley Motors Limited – Terms and Conditions for the Purchase of Production Material and other Goods**

### **1. Definitions**

In these Terms and Conditions of Purchase:

- 1.1 **"Company"** means Bentley Motors Limited.
- 1.2 **"Goods"** means the Goods to be provided by the Supplier to the Company under the Order.
- 1.3 **"Intellectual Property"** means any patents, trade marks, service marks, registered designs, utility models, unregistered design rights, copyright (including copyright in drawings, plans specifications, designs and computer software), database rights, rights in inventions, business or trade names (including internet domain names and e-mail address names), rights in confidential information and trade secrets and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including the right to apply for registration and all applications for any of the foregoing rights and the right to sue for infringements of any of the foregoing rights.
- 1.4 **"Order"** means the contract formed by the acceptance of the Order issued by the Company on these terms and conditions.
- 1.5 **"Specification"** means the specification for the Goods as identified by the Company in the Order, in any nomination letter issued by the Company to the Supplier or in the quotation from the Supplier to the extent expressly accepted in writing by the Company .
- 1.6 **"Supplier"** means the Supplier named in the Order and any assignee and sub-contractor permitted under clause 19.2.1

### **2. Application of Terms**

- 2.1 Subject to any variation under Clause 3.1, these terms are the only terms upon which the Company is prepared to deal with the Supplier and they shall govern the contract to the entire exclusion of all other terms and conditions. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of an Order, specification or similar document shall form part of the contract and the Supplier waives any right which it might have to rely on such terms and conditions.
- 2.2 Unless any terms discussed or arising from any previous course of business between the Company and the Supplier are specifically incorporated into the Order in writing they shall not form part of the contract.
- 2.3 Any written acceptance of the Order (unless clearly stated on its face to be a counter offer) or delivery of the Goods shall be unconditional acceptance of the Order. Any performance by the Supplier of whatever nature in relation to the matters detailed in the Order will constitute acceptance of such Order and commencement of the agreement.

### **3. Variation and Withdrawal of the Order**

- 3.1 No variation or waiver of the Order shall be binding on the Company and the Supplier unless agreed to in writing and signed by an authorised person on behalf of the Company.
- 3.2 The details set out on the Order constitute an offer to contract with the Supplier and may be withdrawn by the Company at any time before the Supplier's written acceptance has been received by the Company.

#### **4. Supply of Goods**

- 4.1 The Supplier shall from the date set out in the Order and for the duration of the Order provide the Goods to the Company in accordance with these terms and conditions. The Company may require changes to the design or specification of the Goods which the Supplier shall make. The Company shall pay the reasonable costs of the Supplier in making such changes.
- 4.2 Subject to the Company's termination rights, the contract formed by the Order is binding on the parties for the length of the applicable vehicle programme production life (for which the Goods are being supplied) and both parties acknowledge the risk of the vehicle programme production life being cancelled or extended by the Company. If the Goods are not utilised by the Company in the production of vehicles, the contract formed by the Order will be binding for one year from the date of the Order. In such case and subject to the Company's termination rights, the Order will automatically renew for successive one year periods after the first term unless the Supplier provides written notice at least 180 days prior to the end of the current term of its desire that the Order not be renewed. Notwithstanding the above, if an expiry date is specified on the Order then the term of the Order will continue until that date. If the Goods are carried over by the Company into another vehicle programme without modification or with only minor modifications, then the Company may require the Supplier to supply the Goods for that vehicle programme on terms which correspond to those contained in the Order.
- 4.3 The Supplier shall meet any performance dates for the Goods specified in the Order or notified to the Supplier by the Company.
- 4.4 The Supplier shall ensure that the Goods shall:
- 4.4.1 correspond with their description and conform in all respects to the Specification;
  - 4.4.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Company expressly or by implication, and in this respect the Company relies on the Supplier's skill and judgement;
  - 4.4.3 where they are manufactured products, be free from defects in design, material and workmanship and remain so for the applicable warranty period specified in Clause 12;
  - 4.4.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
  - 4.4.5 comply with the Group Quality requirements QPN, details of which are available on the portal [www.vwgroupsupply.com](http://www.vwgroupsupply.com) under Group Quality Documents – Quality Program New Parts integral and in accordance with the requirements of TSD4238.
- 4.5 The Supplier warrants that the material composition and formula of the contractual products and any packaging shall comply with the requirements of the United States Toxic Substances Control Act ("TSCA"). The Supplier shall conform to all TSCA certification requirements and shall provide to the Company a certificate of conformity. The Supplier shall also make available to the Company the material composition and formula of the contractual products in full before the start of the inspection process for initial sampling, but at the latest at the request of the Company. The Supplier is obliged to inform the Company immediately of any changes to the material composition and formula, and to ensure that the contractual product continues to comply with the TSCA. The Supplier shall immediately inform the Company of any information and notifications it has made to courts, authorities or

other official bodies regarding the material composition and formula of the contractual product and any packaging. Upon request the Supplier shall provide the Company 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 Company, on request, in any random sampling tests carried out by the Company itself.

- 4.6 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 4.7 The Company shall have the right to inspect and test the Goods at any time before delivery. If following such inspection or testing the Company considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 4.3, the Company shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 4.8 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Company shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 4.9 Where the Supplier enters onto the Company's premises in connection with the supply of the Goods, the Supplier will observe all health and safety rules and regulations and any other security requirements that apply at any of the Company's premises.
- 4.10 The Company or its employees or agents shall be entitled to make reasonable visits to any or all of the Supplier's premises or the premises of any of the Supplier's sub-contractors or assignees for the purpose of inspecting work in progress and shall give not less than 48 hours' notice in writing of such visits. Such visits shall not imply that any Goods or work in progress inspected has thereby been accepted by the Company.

## **5. Delivery & Packaging**

- 5.1 The Goods must be delivered in the quantities and at the times and dates stated in the Order (and if no time is stated delivery must be during normal working hours). The Supplier shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition. The Goods shall be accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Goods and such other information as the Company may require.
- 5.2 The Company may by notice in writing cancel the Order if the Supplier fails to deliver any or all of the Goods by the specified dates without any liability (in particular for payment on a partial performance or apportioned basis). The right of cancellation is without prejudice to any other remedy the Company may have and on exercising the right of cancellation the Company may, at its option in respect of Goods already delivered comprising an instalment of an Order:
  - 5.2.1 choose to make payment in full or part; or
  - 5.2.2 return such Goods at the Supplier's expense or require the Supplier to collect such Goods at the Supplier's expense without any liability to make any payment either in respect of such Goods or in respect of further instalments of the Order.
- 5.3 In this Clause 5 but subject to Clause 5.5, time shall be of the essence, but the Company reserves the right to adjust the specified rate or date of delivery at any time.

- 5.4 Unless otherwise stated on the Order, the Goods will be delivered FCA/Free Carrier (as defined by Incoterms 2010) at the Supplier's production location for the Goods. The Company will not pay for non-return packing materials unless previously agreed.
- 5.5 If for any reason the Company is unable to accept delivery when the Supplier is ready willing and able to deliver, and the date for delivery has passed at the written request of the Company the Supplier shall store and keep safe the Goods until delivery is requested by the Company, the Company undertaking to pay the reasonable costs of the Supplier for such storage and safekeeping.
- 5.6 The Supplier warrants that the packing materials will be such that the Goods will resist pilferage, distortion, corrosion, leakage or contamination.
- 5.7 Unless otherwise agreed in writing property and risk in the Goods shall pass to the Company on delivery but without prejudice to the Company's right of rejection. The property and the risk in any rejected Goods passes to the Supplier immediately on written notice of rejection being served on the Supplier.

## **6. Company's Remedies**

- 6.1 If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause 4, then, without limiting any of its other rights or remedies, the Company shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:
- 6.1.1 to terminate the Order;
- 6.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- 6.1.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 6.1.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 6.1.5 to recover from the Supplier any costs incurred by the Company in obtaining substitute goods from a third party; and
- 6.1.6 to claim damages for any other costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 6.2 These terms shall apply to any repaired or replacement Goods supplied by the Supplier.
- 6.3 The Company's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

## **7. Price & Payment**

- 7.1 The price of the Goods shall be the price set out in the Order. No increase in price will be accepted by the Company without prior written agreement.

- 7.2 The price of the Goods is exclusive of amounts in respect of value added tax (VAT), but includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Company.
- 7.3 The Company shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.4 The Supplier may invoice the Company for the Goods on or at any time after the completion of delivery. Each invoice shall include such supporting information required by the Company to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 7.5 Unless otherwise stated on the Order, the Company shall pay correctly rendered invoices by the 25th of the month following the month in which the Goods are received or in which the invoice for such Goods is received, whichever is the later. Payment shall be made to the bank account nominated in writing by the Supplier.
- 7.6 If the Company fails to pay any amount properly due and payable by it under the Order, the Supplier shall have the right to charge interest on the overdue amount at the rate of Two per cent per annum above the base rate for the time being of HSBC accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Company disputes in good faith.
- 7.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Goods, and shall allow the Company to inspect such records at all reasonable times on request.
- 7.8 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Company to the Supplier.

## **8. Company Property**

- 8.1 All goods and materials handled by or worked on by the Supplier in connection with the Order shall be deemed to have been received by the Supplier in good condition unless the Company has received written notice specifying any defects or damage within twenty four hours of delivery to the Supplier.
- 8.2 The Supplier shall keep all materials, equipment and tools, drawings, Specifications, and data supplied by the Company to the Supplier ("Company Materials") in connection with the Order in good condition and insured against all risks in the Company's name but at the expense of the Supplier subject only to carrying out in a good and workmanlike manner and with proper skill and care any necessary work on or to such goods or materials necessary in connection with the production of the Goods.
- 8.3 The Supplier shall keep the Company fully indemnified against all losses and costs and expenses whatsoever which the Company may suffer as a result of any breach by the Supplier of such obligations not limited to the value of the said goods and materials.
- 8.4 If following completion of the Order or on its termination (for whatever reason) the Supplier retains a stock of any such goods or materials the same shall be returned at the Supplier's expense to the Company on demand.

- 8.5 Any such components, goods or materials supplied to the Supplier shall remain the property of the Company and shall be kept confidential and not disclosed to any third party except permitted sub-contractors in which case the Supplier shall ensure that such third party keeps them confidential.
- 8.6 All Company Materials will be returned to the Company at the end of the Order or sooner if required by the Company.

## **9. Intellectual Property**

- 9.1 In respect of any Goods that are transferred to the Company under this Order the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Company, it will have full and unrestricted rights to transfer all such items to the Company.
- 9.2 The Supplier assigns to the Company, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Goods.
- 9.3 The Supplier shall obtain waivers of all moral rights in the Goods to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 9.4 The Supplier shall, promptly at the Company's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Company may from time to time require for the purpose of securing for the Company the full benefit of the Order, including all right, title and interest in and to the Intellectual Property Rights assigned to the Company in accordance with clause 9.2.

## **10. Indemnity**

- 10.1 The Supplier shall keep the Company indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Company as a result of or in connection with:
- 10.1.1 any claim made against the Company by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Order by the Supplier, its employees, agents or subcontractors; and
- 10.1.2 any claim brought against the Company for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Goods.
- 10.2 For the duration of the Order and for a period of 12 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Order and shall, on the Company's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **11. Confidentiality and Data Protection**

- 11.1 A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing

Party's business or its products or its Goods which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Order, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 10 shall survive termination of the Order.

11.2 The Supplier will not advertise, publish or disclose to any third party (other than to the Supplier's professional advisers on a confidential and need to know basis) in any manner the fact that the Supplier has contracted to supply the Company with the Goods covered by the Order or any terms of the Order (including prices) or use any trademarks or trade names of the Company in any press release, advertising or promotional materials, without first obtaining the Company's prior written consent.

11.3 Definitions :

**Data Protection Legislation:** all applicable privacy and data protection laws including the General Data Protection Legislation ((EU) 2016/679) (**GDPR**), the Data Protection Act 2018 (**DPA**) and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2008 (SI2003/2426).

**Data Subject:** an individual who is the subject of Personal Data.

11.4 In this Order:

11.4.1 The Company is the Controller and the Supplier is the Processor, as defined in Article 4 of the General Data Protection Regulation 2016.

11.5 In relation to the processing of Personal Data, the Supplier shall:

11.5.1 only process Personal Data in accordance with the Company's written instructions from time to time (which may be specific instructions or standing instructions of general application in relation to the Order, whether set out in this agreement or otherwise notified to the Supplier), unless such processing is required by any law (other than contract law) to which the Supplier is subject, in which case the Supplier shall (to the extent permitted by law) inform the Company of that legal requirement before carrying out the processing;

11.5.2 immediately notify the Company if it considers that the Company's instructions are in breach of the GDPR or other EU member state laws; and

11.5.3 keep a written record of all such processing activities which shall include the information required to be kept under Article 30(2) of the GDPR .

11.6 In relation to the security and confidentiality of the Personal Data, the Supplier shall:

11.6.1 ensure that it has in place appropriate technical and organisational measures to ensure a level of security for the Personal Data which is appropriate to the risks to individuals that may result from the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data;

11.6.2 in addition to the confidentiality obligations in this clause 11 (Confidentiality):

(i) ensure that only those of the Supplier's Personnel who need to have access to the Personal Data are granted access to such data and only for the purposes of the

performance of this agreement and all of the Supplier's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data, comply with the obligations set out in this clause 11, and are bound by appropriate confidentiality obligations when accessing the Personal Data; and

(ii) not publish, disclose or divulge any of the Personal Data to any third party (including for the avoidance of doubt the Data Subject itself) unless directed to do so in writing by the Company;

11.6.3 not modify, amend or alter the contents of the Personal Data unless specifically authorised in writing by the Company.

11.7 If the Supplier becomes aware of a Personal Data breach, it shall notify the Company without undue delay on becoming aware of such a breach.

11.8 The Supplier shall notify the Company within 48 hours upon receiving the following:

11.8.1 a request from a Data Subject to have access to that person's Personal Data; or

11.8.2 a complaint or request relating to the Company's obligations under the Data Protection Legislation; or

11.8.3 any other communication relating directly or indirectly to the processing of any Personal Data in connection with this agreement.

11.9 The Supplier shall provide the Company with full co-operation and assistance in order to enable the Company to comply with its obligations under the Data Protection Legislation in relation to:

11.9.1 the Company's obligations in relation to responding to Data Subject requests, including (but not limited to) the following:

(i) complying with the relevant timescales as set out in the Data Protection Legislation but strictly in accordance with the Company's instructions;

(ii) providing the Company with any Personal Data that it holds in relation to the Data Subject making the complaint or request within the timescales are required by the Company; and

(iii) providing The Company with any other information as so requested by The Company in this regard,

11.9.2 the security of the Personal Data;

11.9.3 notifying Personal Data breaches to the relevant supervisory authority;

11.9.4 communicating personal data breaches to the Data Subject; and

11.9.5 impact assessments and related consultations with supervisory authorities or regulators.

11.10 The Supplier shall:

11.10.1 make available to the Company all information that The Company requests from time to time to enable the Company to verify that the Supplier is in compliance with its obligations in this clause 11; and



- 11.10.2 permit the Company or its external advisers to inspect and audit the Supplier's data processing activities to inspect and audit the Supplier's data processing activities and those of its agents, subsidiaries and Sub-contractors.
- 11.11 the Supplier shall not engage or authorise a Sub-Contractor to process the Personal Data unless:
- 11.11.1 it has obtained the prior written consent of the Company (which may be granted or withheld in the Company's sole discretion) before transferring the Personal Data to any Sub-Contractors in connection with the Order; and
- 11.11.2 the Sub-Contractor has either entered into a direct contract with the Company or a contract with the Supplier which incorporates the provisions equivalent to those in this agreement in relation to confidentiality, data protection and security, and
- 11.11.3 where a Sub-contractor is appointed pursuant to clause 11.11.1, the Supplier shall remain liable for the acts and omissions of that Sub-Contractor as if they were the Supplier's own.
- 11.12 In relation to transfers of Personal Data to areas outside the European Economic Area (EEA):
- 11.12.1 the Supplier shall not transfer any Personal Data outside the EEA without the Company's prior written consent; and
- 11.12.2 if the Company consents to any transfers pursuant to clause 11.12.1, the Supplier shall ensure that the following conditions are met in relation to such transfers:
- (i) the Supplier complies with its obligations under the Data Protection Legislation by ensuring that there is an adequate level of protection to any Personal Data that is transferred;
  - (ii) that there are appropriate safeguards in place in relation to that transfer;
  - (iii) that Data Subjects have enforceable rights and effective legal remedies; and
  - (iv) that the Supplier shall comply with any other reasonable instructions as notified to it by the Company in relation to such transfers.
- 11.13 the Company acknowledges that the Supplier is reliant on the Company alone for direction as to the extent the Supplier is entitled to use and process the Personal Data. Subject to clause 11.5.2, the Supplier shall be entitled to relief from liability in circumstances where a Data Subject makes a claim or complaint with regards to the Supplier's actions to the extent that such actions directly result from instructions received from the Company.
- 11.14 On the expiry or termination of this agreement, the Supplier shall, notify the Company of the Personal Data that it holds. If requested by the Company (or any replacement supplier as nominated by the Company), a copy of all Personal Data in a non-proprietary format. Promptly after 5 weeks following such expiry or termination, the Supplier shall securely and permanently destroy all copies of Personal Data in its possession or control (other than any copy transferred to the Company in accordance with this paragraph) unless the Supplier is required by law to retain any copies of such data. For the purposes of this clause 11.14, the Supplier shall be the Controller in relation to any such retained Personal Data, and shall process it solely as necessary to comply with its obligations under the GDPR.
- 11.15 The Supplier shall, at all times during and after the Term, indemnify the Company and keep the Company indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be

paid by the Company arising from any breach of the Supplier's obligations under this clause 11 except and to the extent that such liabilities have resulted directly from the Company's instructions.

## **12. Product Warranty**

- 12.1 Without prejudice to any other right of the Company whether express or implied or any other assurance or guarantee given by the Supplier to the Company or which the Company has the benefit of, the Supplier shall without delay repair or replace at its own expense any Goods which are or become defective within the warranty period specified below where such defect arises under proper use from faulty design, materials or workmanship or the Supplier's incorrect instructions as to use or any other breach of any guarantee, warranty express or implied. Such guarantee shall then apply to the repaired or replaced items for an equivalent warranty period from the date of repair or replacement. The warranty period is the longest of: 36 months from the date the Company accepts the Goods; the warranty period provided by applicable law; or the warranty period offered by the Company to its end users for Goods installed on or as part of vehicles beginning when the vehicle is placed in service; and provided further, that if the Company voluntarily or pursuant to a governmental instruction, makes an offer to owners of vehicles (or other finished products) on which the Goods, or any parts, components or systems incorporating the Goods are installed, to provide remedial action or to address a defect or condition that relates to motor vehicle safety or the failure to comply with any applicable law, safety standard or corrective service action, the warranty shall continue for such period of time as may be deemed necessary by the Company or required by governmental instruction where the Goods are used or provided.
- 12.2 Any breach by the Supplier of its obligations under paragraph 12.1 shall entitle the Company after serving written notice of intent to proceed to remedy the defect at the Supplier's risk and expense without prejudice to the Company's other rights.

## **13. Tooling**

- 13.1 The terms and conditions issued by the Company from time to time in respect of special operating equipment shall apply to all tools, tool elements, moulds, gauges, templates, models, dies and other operating equipment required in the manufacture, production or supply of the Goods. These can be obtained from the Company or via the portal [www.vwgroupsupply.com](http://www.vwgroupsupply.com).

## **14. Termination**

- 14.1 Without limiting its other rights or remedies, the Company may terminate the Order by giving the Supplier 3 months' written notice.
- 14.2 Without limiting its other rights or remedies, the Company may terminate the Order with immediate effect by giving written notice to the Supplier if:
- 14.2.1 the Supplier commits a material or persistent breach of the Order and (if such a breach is remediable) fails to remedy that breach within 10 days of receipt of notice in writing of the breach;
- 14.2.2 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 14.2.3 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any

compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

- 14.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 14.2.5 the Supplier (being an individual) is the subject of a bankruptcy petition order;
- 14.2.6 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 14.2.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- 14.2.8 a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 14.2.9 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- 14.2.10 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.2 to clause 14.1.9 (inclusive);
- 14.2.11 the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- 14.2.12 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

## **15. Effect of Termination**

- 15.1 On termination of the Order for any reason:
  - 15.1.1 the Supplier shall immediately deliver to the Company all Goods whether or not then complete, and return all Company Materials and property. If the Supplier fails to do so, then the Company may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Order;
  - 15.1.2 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Order which existed at or before the date of termination; and
  - 15.1.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **16. Audit**

- 16.1 The Supplier shall maintain complete and accurate records relating to all matters relevant to the relationship between the parties described in the Order including the calculation of the price and the provision of Goods. Subject always to the confidentiality provisions of this Order, the Company and/or its appointed auditors (whether internal or external to the Company) shall have the right, exercisable by fourteen (14) days' prior written notice given to the Supplier, to audit and take copies of such records.
- 16.2 Any such audit shall take place during normal business hours, with minimal disruption to the Supplier, and the Supplier shall provide to the Company and/or its appointed

auditors such reasonable co-operation, assistance and access as the Company may require. The Supplier may, at its own expense, involve a person from its own auditors (whether internal or external to the Supplier) in such audit. Any such audit shall be conducted at the cost of the Company.

- 16.3 The Company may exercise its audit right under this clause no more than once in any period of twelve (12) months unless the Company has reasonable grounds on which to suspect that the Supplier has knowingly over-charged the Company or failed to provide Goods in accordance with the Order, in which case the Company may exercise its rights under this clause at any time without notice.
- 16.4 The Supplier shall establish the same right of audit in favour of the Company in its contracts with third parties to whom it has subcontracted the performance of any obligations under this Order with the Company's consent.

## **17. Anti-Corruption**

- 17.1 Both parties shall:
- 17.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
- 17.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
- 17.1.3 have and shall maintain in place throughout the term of this Order its own policies and procedures in relation to the Relevant Requirements, including but not limited to adequate procedures under the Bribery Act 2010 and will enforce them where appropriate.
- 17.2 The Supplier agrees to promptly notify the Company, 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.
- 17.4 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
- 17.5 Breach of this clause shall entitle the party who is not in breach to terminate this Order forthwith upon written notice to the other.

## **18. Sustainable Development**

- 18.1 The Company is a member of the Volkswagen Group which has set requirements for sustainable development to be met by its business partners. These requirements can be found on the portal [vwgroupsupply.com](http://vwgroupsupply.com) under the section Cooperation and sub-section Sustainability.
- 18.2 The Supplier will at all times during the term of this Order ensure that it is aware of these requirements and will comply with them.

## **19. General**

19.1 **Force majeure** Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Order if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from providing any of the Goods for more than 4 weeks, the Company shall have the right, without limiting its other rights or remedies, to terminate this Order with immediate effect by giving written notice to the Supplier.

### **19.2 Assignment and subcontracting**

19.2.1 The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Order without the prior written consent of the Company.

19.2.2 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Order and may subcontract or delegate in any manner any or all of its obligations under the Order to any third party or agent.

### **19.3 Notices**

19.3.1 Any notice or other communication required to be given to a party under or in connection with this Order shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

19.3.2 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

19.3.3 This clause 19.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Order shall not be validly served if sent by e-mail.

### **19.4 Waiver and cumulative remedies**

19.4.1 A waiver of any right under the Order is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Order or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

19.4.2 Unless specifically provided otherwise, rights arising under the Order are cumulative and do not exclude rights provided by law.

### **19.5 Severance**

19.5.1 If a court or any other competent authority finds that any provision (or part of any provision) of the Order is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Order shall not be affected.

19.5.2 If any invalid, unenforceable or illegal provision of the Order would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

- 19.6 **No partnership** Nothing in the Order is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 19.7 **Third parties** A person who is not a party to the Order shall not have any rights under or in connection with it.
- 19.8 **Variation** Any variation, including any additional terms and conditions, to the Order shall only be binding when agreed in writing and signed by Company.
- 19.9 **Governing law and jurisdiction** The Order, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.